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APPLICATION OF CRIMINAL SANCTIONS AGAINST CHILDREN AS A PERPETRATORS OF ABUSE THAT CAUSE DEATH FROM THE JUVENILE CRIMINAL JUSTICE SYSTEM PERSPECTIVE

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Abstract

The main objective of this study is to describe the application of criminal sanctions against children who commit acts of abuse that result in death, as well as the legal protection from the viewpoint of the Juvenile Criminal Justice System. This study employs a normative juridical legal research research methodology; the technique used in this legal research is statutory, case-based, and conceptual approach. The study's study found that the legal regulation of children who commit violent crimes under the Criminal Code does not reflect an authentic understanding of what constitutes violence. Only in article 89 of the Criminal Code does it indicate that what constitutes committing violence causes individuals to faint or become helpless (weak). Along with Article 89 of the Criminal Code, Article 170 is one of the articles included in Book II on Crime's Chapter V headed "Crimes against Public Order." Consequently, the criminal conduct as defined in Article 170 is first and foremost a criminal act that violates or disturbs public order. Criminal responsibility for children who commit acts of physical violence that result in death is tied to the arrangement in Article 351 paragraph (3) of the Criminal Code, as criminal responsibility is imposed on children when the child is found to have fulfilled the criminal element through an error committed by the child, violence committed by the child, and victims who are victims of physical violence are known to have died at the time or after the physical violence was committed.

Keywords: *Criminal Sanctions, Criminal Acts of Abuse by Children, Death, Legal Protection, Juvenile Criminal Justice System*

1. INTRODUCTION

According to Article 1 of Law No. 35 of 2014 amending Law No. 23 of 2002 concerning Child Protection, a child is defined as anybody under the age of 18 (eighteen), including a child still in the womb. The path of a child's life is unique in that his degree of success or failure throughout his formative years will decide his personal growth and destiny. Children's issues have long been at the forefront of national and international debates, since children are the younger generation who are the inheritors of the nation's principles and a critical role in implementing future growth. Consequently, children are the most critical component, since human existence and the survival of a country and state are inextricably linked (Hutabarat et al., 2022).

A child's right to life, growth and development, as well as their right to be protected from violence and discrimination, are explicitly guaranteed by the state because of the crucial role they play in nation. Child rights must be preserved and the state shall fulfill,

protect, and respect the rights of children, according to Article 21 Paragraph (2) of Law number 35 of 2014 about Amendments to Law number 23 of 2002 concerning Child Protection.

It is intended that through obtaining protection, children will be able to grow and develop normally and will be safeguarded from the threat of criminality that endangers them. The protection of children's rights has largely been regulated through laws and regulations, policies, businesses, and activities that ensure the protection of children's rights is realized, first and foremost on the basis of the fact that children are a vulnerable and autonomous group, in addition to the existence of groups of children who face obstacles to their spiritual, physical, and social development (Waluyadi, 2009).

As a result of this conduct being destructive to society and the state, the state responds with legislation in an attempt to minimize the degree of crime. Crime is defined as any action that is outlawed by the state. Not only have children been victims of crime but they have also become perpetrators of illegal activities, illustrating how crime has extended to all ages (Gultom, 2014).

When discussing the processes to be used to children who commit crimes and the need to apply procedures that are in the best interests of the child, there are a few key points to consider. Such inquiries must be addressed, since criminals must be punished, according to the law. Meanwhile, the crucial term when discussing something that is beneficial for children is not to punish (Waluyadi, 2009).

The Juvenile Criminal Justice System Act of Law number 11 of 2012 strives to offer the greatest possible care for children without jeopardizing society's interests or the institution of justice. The Juvenile Court's mission is same to that of other courts: to examine, decide, and resolve disputes involving children. In this instance, nurturing and safeguarding children needs both institutional and legal assistance that is more adaptable. Numerous variables may impact the crimes committed by minors, including the following:

1. Family issue

   Family situations that can cause children to commit violent crimes in order to express their annoyance and anger include less harmonious parental relationships, divorce that causes problems, the birth of children out of wedlock that causes problems between parents and their children, a father who commits violence against their children, and mental disorders in either the father or mother.
2. Economic Factor

   Poverty in a family often results in dissatisfaction with life and produces a number of challenges in terms of defining daily requirements, education, health, buying clothing, and rent payments, all of which may eventually harm the mind of both the parents and the children.
3. Surrounding environmental factors

   The environment in which a child lives may also have an effect on his or her mentality, as can living in slum regions, regular brawls amongst inhabitants, drug trafficking, alcohol and free sex, and frequent exposure to violent and sexual situations.

The problem of juvenile delinquency is a problem that almost all countries in the world experience, including Indonesia. Child delinquency is a deviant behavior carried out by

children which leads to acts that violate the law. Incidents of criminal acts committed by children (Juvenile delinquency) today also occur in various regions, namely:

1. Children as perpetrators of criminal acts of abuse that cause death that occurred in the jurisdiction of the Central Jakarta District Court, according to the Central Jakarta District Court Criminal Case Decision number: 12/Pid,Sus-Anak/2020/PN Jkt Pst.
2. Children as perpetrators of criminal acts of abuse that cause death that occurred in the jurisdiction of the Mataram District Court, according to the Mataram District Court Criminal Case Decision number: 12/Pid.Sus- Anak/2016 PN.Mtr.
3. Children as perpetrators of the crime of murder accompanied by mutilation that occurred in the jurisdiction of the Medan District Court number: 774/Pid.Sus-Anak/2015/PN.Mdn.

As a reference in analyzing the application of criminal law against perpetrators of minors, the author also compares with examples of similar cases that have been discussed in the approved research, namely:

1. Iqbal Ali Ramdani, with the research title "Criminal Sanctions Against Murders Perpetrated by Minors Under the Criminal Law of Children in Indonesia" (Iqbal, 2020).

   The research discover that, law enforcement officers must pay attention to the provisions of the rules that apply to defendants who in this case are categorized as children, in terms of imposing sanctions more towards education and character building for children so that threats of imprisonment are the last alternative in giving sanctions to children. It is hoped that a judge will not only see what are mitigating things for the defendant and are deemed sufficient to provide justice for the accused, not to provide a deterrent effect or retaliation for the crimes that have been committed by the perpetrators of the crime. The judge must determine which should be prioritized between the interests of legal certainty or the interests of justice. In other words, the type of criminal sanction when viewed from the purpose is more towards prevention so that people do not commit crimes, not aimed at preventing the crime from happening.
2. Ramadhiya Ardani, with the research title "Implementation of Criminal Sanctions Against Perpetrators of the Crime of Murder committed by Children in Yogyakarta" (Ardani, 2018).

   The research results reveal that law enforcers are even more observant in handling and investigating cases that occur, especially those involving a child. Law enforcers can carry out targeted socialization specifically for children both through schools and the general public regarding the introduction of law to children so that awareness of the law arises. The existence of the Juvenile Justice Law is expected to be implemented properly. In addition, parents have an important role in the development of children, including parenting, approach, attention and supervision of children and instilling good values / morals in life. In addition, the community must be more alert and immediately report to local law enforcement if they know of incidents that violate the law.
3. Almunawar Sembiring, with the research title "Implementation of criminal sanctions

against child perpetrators of murder accompanied by mutilation from the perspective of criminal law and crimonology" (Sembiring, 2017).

The resuls reveal that in order to reduce crime in terms of children in conflict with the law, the government should optimize the regulations governing children in conflict with the law and related regulations. So that the community does not lose confidence in law enforcement in efforts to overcome children in conflict with the law. Parents should pay special attention to their children, because children who are approaching adulthood are likely to become victims or perpetrators of criminal acts.

Correspondingly, the purpose of this paper is to examine the implementation of criminal sanctions against children who are perpetrators of crimes of abuse that lead to death, as well as the formulation of legal protection from the perspective of the Juvenile Criminal Justice System.

2. THEORETICAL BASE

2.1. Application of Sanctions

The definition of application in the Big Indonesian Dictionary (KBBI) is the act of applying. Meanwhile, some experts believe that application is an act of practicing a theory, method, and other things to achieve certain goals and for an interest desired by a group or group that has been planned and arranged beforehand (Usman, 2002 in (Hasibuan, 2016)).

Sanction is a punishment or coercive action that is given because the person concerned fails to comply with a law, rule, or order, as defined by Black's Law Dictionary Seventh Edition as follows:

"A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)."

In this case, the general term used to refer to all types of sanctions, whether in the realm of civil, administrative, disciplinary, and criminal law is punishment (Marbun, 2012).

2.2 Criminal Sanctions

Criminal sanctions are misery or suffering imposed on someone who is guilty of committing an act prohibited by law. Criminal sanctions against judges for children are regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In the law, criminal sanctions that can be imposed on children are described in Articles 71 to 81.

a. Child

A child according to Article 1 point 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is "someone who is not yet 18 (eighteen) years old and is even still in the womb".

b. Children in Conflict with the Law

Children in Conflict with the Law according to Law Number 11 of 2012 concerning the Criminal Justice System Ana is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. The Law on Juvenile Court looks at the child's side of the actions he has committed, if the child commits a crime

before the child is 12 (twelve) years old, it is not categorized as a naughty child so that from a legal point of view he cannot be held accountable, on the contrary if he has reached the age of 12 (twelve) years to 18 (eighteen) years old can be held accountable for their actions, then if the child before the age of 18 (eighteen) years is married then it is not categorized as a child and the judicial process through general court is not juvenile justice.

c. Criminal act

A crime has the same meaning as a criminal event or offense. According to the formulation of legal experts from the straafbaarfeit translation, namely an act that violates or is contrary to the law or law, which act is carried out in error by someone who can be accounted for.

2.3 Legal Protection Theory

According to Satjipto Rahardjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law (Rahardjo, 2009).

Furthermore, Phillipus M. Hadjon highlight that legal protection for the people is a preventive and responsive government action . Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and responsive protection aims to prevent disputes from occurring, including their handling in the judiciary (Hadjon et al., 2005).

2.4 Criminal Theory

In general, it can be stated that there are 3 (three) groups of sentencing theories, namely: (a) absolute theory or retributive/*vergeldings* theory; (b) relative or objective theory (utilitarian/*doeltheorie*); (c) combined theory (*verenigings* theory).

2.4.1 Absolute Theory

According to absolute theory, punishment is imposed solely because someone has committed a crime or criminal act (*qual peccatum est*). Crime is an absolute consequence that must exist as a retaliation to the person who committed the crime. For example, if someone commits a murder, then the punishment commensurate with the act is to be sentenced to death.

2.4.2 Relative Theory

According to the relative theory, punishment is not to satisfy the absolute demands of justice. In other words, punishment is not just to commit a crime but has certain useful purposes. Retaliation itself has no value, but only as a means to protect the interests of society (social defense).

2.4.3 Combined Theory

According to the combined theory (*verenigings-theorien*), the purpose of the crime and the justification of the imposition of a crime, apart from being a retaliation, it is also recognized that punishment has benefits for both individuals and society. The first author to propose this theory was Pellegrino Rossi (1787 – 1884). The theory is referred to as a combined theory because according to Rossi, punishment is not only an effort to retaliate, but also has various effects, including repairing something that is damaged in society and generale prevention.

3. RESEARCH METHOD

This study uses a normative juridical legal research type with the approach of statutory approach, a case approach and a conceptual approach. The statutory approach is an approach that is carried out by analyzing the rules and regulations related to these legal issues. The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent power. The conceptual approach is an approach that departs from the views and doctrines that develop in the science of law.

The sources of primary laws that will be used are as follows:

1. 1945 Constitution of the Republic of Indonesia
2. The Criminal Code Number 1 of 1946.
3. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
4. Law Number 39 of 1999 concerning Human Rights.
5. Law Number 4 of 1979 concerning Child Welfare.

Furthermore, data collection techniques conducted by means of interviews, and literature study. The data obtained from both field studies and document studies are basically level data that is analyzed qualitatively, that is, after the data has been collected it is then poured in the form of a logical and systematic description, then analyzed to obtain clarity on problem solving, then conclusions are drawn deductively, namely those that are descriptive in nature. general to the particular.

4. RESULT AND DISCUSSION

4.1 Formulation of Sanctions according to the Juvenile Criminal Justice System Act (Law Number 11 of 2012)

Everyone who is responsible for the care of children must be aware of and adhere to their responsibilities, which include the rights of their pets. In accordance with Article 2 of Law No. 4 of 1979 concerning Child Welfare, children's rights are defined as follows: welfare, care and guidance; services to develop their abilities and social life; maintenance and protection from the environment during pregnancy and after birth; protection from the environment that can harm growth and development; protection from the environment that can harm growth and development (Gultom, 2014; Iskandar et al., 2021).

In the Criminal Procedure Code, there are several rights that can be used by victims of persecution in a criminal justice process, namely as follows:

1. The right to exercise control over investigators and public prosecutors
2. The victim's rights relate to his position as a witness.
3. The right to claim compensation due to an act of abuse that befell the victim
4. The right for the family to allow or not allow the police to perform an autopsy.

With regard to the right of the victim to file a claim for compensation through the amalgamation of decisions as regulated in Articles 98 to 101 of the Criminal Procedure Code. Interested parties need to pay attention to several things, namely as follows:

1. Losses that occur must be caused by the crime itself.
2. Losses caused by criminal acts or other people who suffer losses (victims) as a direct result of the crime.
3. The claim for compensation resulting from the crime was addressed to the perpetrator of the crime (the defendant).
4. And, the claim for compensation that was submitted to the defendant was combined or examined and decided at the same time at the examination and decision.

Meanwhile, in Article 2 of Law no. 4 of 1979 concerning Child Welfare, it is stated that:

1. Children have the right to welfare, care, upbringing, and guidance based on love, both within their families and in special care to grow and develop properly.
2. Children have the right to services to develop their abilities and social life, in accordance with the culture and personality of the nation, to become good and useful citizens.
3. Children have the right to care and protection, both during pregnancy and after birth.
4. Children have the right to protection of the environment that can harm or hinder normal growth and development.

According to Article 1 of the Law of the Republic of Indonesia No. 31 of 2014 on Amendments to Law No. 13 of 2006 on the Protection of Witnesses and Victims, a victim is defined as a person who suffers physical, mental, and/or economic damage as a result of a criminal act. The provisions of Article 5 of this Law specified that "witnesses and victims have the same right to obtain protection for their personal, family, and property security and to be free of threats related to the testimony they will, are currently giving, or have given; to participate in the process of selecting and determining the form of security protection and support; to provide information without fear of reprisal; to obtain a translator; to be free of entangled questions; and to obtain information regarding court decisions; obtain information in the event that the convict is released; identity is kept confidential; get a new identity; get a temporary residence; get a new place of residence; obtain reimbursement of transportation costs as needed; obtain legal advice; obtain temporary living expenses assistance until the protection period ends; and/or receive assistance".

Article 90 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that "Child Victims and Child Witnesses are entitled to medical rehabilitation and social rehabilitation efforts, both within the institution and outside the institution". In addition to these rights, there are several rights of children as victims to receive media assistance and psycho-social rehabilitation assistance.

The juvenile criminal justice system (also referred to as SPPA), relates to the formulation of criminal sanctions against child offenders and the application of the criminal justice system to juvenile offenders.(Novira & Marlina, 2013)

Table 1 Formulation of Sanctions according to Law Number 11 of 2012

LAW NUMBER 11 OF 2012
Criminal sanctions 1. Basic Crime a. Criminal warning b. criminal subject to the following conditions: (1) coaching outside the institution (2) community service; or (3) supervision c. Work training d. Counseling e. Prison 2. Additional Crime a. Deprivation of profits obtained from criminal acts; or b. Fulfillment of customary obligations
Action Sanction 1. Return to parent/guardian; 2. Submission to someone; 3. Treatment in a mental hospital; 4. Treatment at the Social Welfare Organization (LPKS) 5. Obligation to attend formal education and/or training held by the government or private bodies; 6. Revocation of driving license; and/or 7. Repairs due to criminal acts.(Novira & Marlina, 2013)

The provision of criminal sanctions and actions, is determined based on the subject of the child who commits it, if the child who commits it is a naughty child whose category is a child who commits a criminal act, a criminal or action can be imposed. However, if the perpetrator is a naughty child whose category is a child who commits an act that is prohibited for children, then criminal sanctions can only be applied to him (Novira & Marlina, 2013).

Law number 11 of 2012 puts imprisonment as the latest principal punishment (ultimum remidium), as a form of implementing improvements, coaching, and educating children who are perpetrators of criminal acts, as well as providing far more sanctions for actions as things that better support the goal of construction in this law. Article 69 paragraph (2) states that "the imposition of criminal sanctions and sanctions for actions are determined based on the age of the perpetrator's child, children who are not yet 14 years old can only be subject to action" (Novira & Marlina, 2013).

Article 71 paragraph (3) of Law Number 11 of 2012 stipulates that "special provisions in the formulation of sanctions, namely if the material penalty is cumulative punishment in the form of imprisonment and fines, the fine will be replaced with job training". This means that the formulation of sanctions in this law depends on the material law that has been violated by the child, if for example the material law violated by the child contains an alternative sanction system, then the sanction is given to the child, as well as on the formulation of a single sanction. This applies as long as it does not conflict with the provisions stipulated in Law Number 11 of 2012 concerning the juvenile criminal justice

system (Novira & Marlina, 2013).

In a single formulation, the sanctions that are set are only one form of the type of sanctions, both in the form of crime and action. Although this kind of formulation has a weakness because it is absolutely rigid, and is imperative. In fact, a single formulation system that is very rigid and absolute is felt to be in contradiction with the idea of correctionalism, because the conception of correctionalism is based on the idea of rehabilitation, resocialization and individualization of criminals. This system does not provide an opportunity for judges to apply appropriate sanctions to defendants. On the basis of that many experts argue to avoid using a single formulation. If it is forced to formulate, then the rigid and absolute nature of a single formulation needs to be balanced with the formulation of sentencing guidelines for judges. In the Draft Criminal Code, to compensate and avoid rigidity and absolute single formulation a guideline has been formulated as a safety valve. Those formulated in the guidelines include:

a. The judge's authority not to impose a single sentence of imprisonment is formulated;
b. The conditions or conditions for not being able to impose a prison sentence;
c. An alternative type of sanction that can be imposed by a judge in lieu of a prison sentence that has not been imposed. In Article 49 of the concept, it is emphasized that the conditions that must be met in order not to impose a sentence are:
    1) The defendant commits a crime which is only punishable by a single imprisonment;
    2) The court is of the opinion that it is not necessary to impose a prison sentence after considering the purpose of punishment, guidelines for sentencing, as well as guidelines for imposing imprisonment.

If the above conditions are met, the court can impose a fine even though the crime in question is only punishable by a single imprisonment. In the alternative formulation, it is intended to provide a policy framework to apply the principle of subsidiarity in the use of sanctions. This means that the threat of a heavier sanction is only used if the lighter weight of the sanction is deemed not to support the achievement of the sentencing objective. In addition, the alternative formulation can give freedom to judges to choose one form of sanctions that are threatened in a law. Even though in the alternative formulation the judge has the opportunity to choose the type of crime, but in an effort to undergo the imposition of sanctions in accordance with the purpose of punishment, then the law should provide guidelines for judges in making their choices. Article 51 paragraph (1) of the RKUHP emphasizes that the choice of judges in imposing sanctions must always be oriented to the "purpose of punishment", and prioritize lighter types of punishment if the lighter sentence has fulfilled the purpose of sentencing.

4.2 Criminal Liability by Child as a Perpetrators of Physical Violence that cause Death

A child who commits physical violence that causes the death of the victim must be responsible for his actions. The responsibility of a child must be based on applicable laws and regulations because the child's actions are categorized as criminal acts. A child must be responsible for the death of the victim and if the child is proven guilty, he can be subject to criminal sanctions for the actions he has committed.

Talking about the criminal responsibility of children, it cannot be separated from the

crime of physical violence committed by children. Because criminal acts of violence committed by children are only meaningful when there is criminal responsibility for the child, where criminal responsibility is the continuation of objective reproaches that exist in the crime and subjectively to someone who meets the requirements to be punished for his actions.

In cases involving children and children, actually the perpetrators, witnesses, and victims are all victims. Children who become perpetrators do not escape from weak parental supervision or previously the child has seen or received bad behavior from their environment. Based on this, to state that the child in this case has committed a criminal act of violence, the child's actions must fulfill the elements intentionally as contained in the formulation of the criminal act of physical violence committed by the child, as well as the elements against the actions committed by the child. which is related to the chronology of the case and the facts of the trial, that it was found that the child had committed an act as regulated in Article 338 of the Criminal Code Jo. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. The elements are as follows:

1. Whose element

   Based on Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime. criminal act. Children at the age of 17 years and 2 months. So that children are still included in the provisions of Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. From the beginning of the examination in Children at the age of 17 years and 2 months. So that children are still included in the provisions of Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. From the beginning of the examination at the trial, it was found that the child is a physically and mentally healthy person so that he is considered competent as a legal subject. The child as a legal subject who is proposed in court as a criminal, has his identity checked as stated in the indictment and this criminal charge, and the child justifies it, so that there is no error in the child's submission in the trial (*error in persona*). Thus the element of whoever has been proven legally according to law.

2. Elements on purpose

   The intention here is aimed at the loss of another person's life, this is what distinguishes it from the act of murder, because in the case of persecution, there is no intention or intention to take another person's life. The condition of intentionality is knowing and wanting (willens en wetens). That the element intentionally includes its actions and objects. This means that he knows and wants someone to die by his actions. And it is precisely in this element that the main difference between murder and persecution is that it results in the death of another person. In terms of abuse, the child as the perpetrator really doesn't want the victim to be persecuted to die, but the child only wants the victim to get sick, damage his health or get injured.

   Furthermore, it should be noted that based on the theory of intentional criminal law, it consists of 3 (three) forms, namely:

   a. Deliberation as an intention, namely the existence of a goal to have an effect;
   b. Deliberate with a definite purpose, namely the perpetrator knows for sure and is

absolutely sure that in addition to the intended effect there will be another result;
c. Deliberation as a possibility is that someone commits an act with the aim of causing a certain result, but the perpetrator is aware that other consequences may arise which are also prohibited and threatened by law.

Because of this element is related to the inner attitude of the child, in order to prove this element, the material actions must first be proven, therefore the next element must be proven first. Based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Decision No: 1295 K/Pid/1985 that "the intentional killing of another person can be proven by the tool used to commit the crime and the place on the victim's body where the tool was injured". From these facts, the child's actions can be qualified as an intentional act. Thus, the element of intentionally has been fulfilled legally according to law.

3. The element of taking other people's lives

Based on the fulfillment of one of the elements of Article 338 of the Criminal Code in conjunction with the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Child must be declared legally and convincingly proven to have committed a criminal act as charged in a single indictment.

A criminal act or a criminal act only refers to the prohibition and threat of action with a crime. People who commit crimes are subject to criminal sanctions, as threatened depending on the existence of errors, because the principle of criminal responsibility is "Not being punished if there are no mistakes" (*Geen straf zonder schuld; Actus non facit reum nisi mens sir rea*). A person can be convicted, first there must be two conditions that become one condition, namely an unlawful act as an element of a criminal act and the act can be accounted for as an element of error. Errors must be accompanied by evidence with the judge's belief in an accused before the court.

Moeljatno, stated that it is impossible for a person to be held accountable (punished) if he did not commit a criminal act, but even if he commits a criminal act, he cannot always be punished (Moeljatno, 2008). In this context, children will still be punished with a different punishment model for the mistakes they have made.

The basis for the existence of a criminal act is the principle of legality, while the basis for criminal prosecution is the principle of error. This implies that the maker or perpetrator of a criminal act can only be punished if he has made a mistake in committing the crime. When someone is said to have made a mistake is a matter of criminal liability. A person has an error when at the time of committing a crime, from a social perspective he can be reproached because of his actions.

Criminal liability leads to the punishment of the perpetrator, if he has committed a crime and fulfills the elements that have been determined by law. Viewed from the point of view of the occurrence of a prohibited act, a person will be criminally responsible for these actions if the action is against the law. Viewed from the point of view of the ability to be responsible, then only someone who is

able to be responsible will be held accountable.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that "children in conflict with the law' are children who are 12 (twelve) years old but not yet 18 (eighteen) years old, so here it is clear that the legislators The law has agreed that the age of 8 (eight) years is indeed an age that still cannot be held accountable for the actions he has committed, because a child at that age still does not understand what he did". If a child who is not yet 12 (twelve) years old commits or is suspected of committing a crime or in other words that the child is not yet 18 (eighteen) years old, then the child will still be tried in the juvenile court.

Based on this fact, related to the application of sanctions Persecution as described previously is a form of action that can harm others physically and can even result in the loss of another person's life, is expressly regulated in Article 351 to Article 359 of the Criminal Code. Looking at the existing arrangements, at least the persecution is divided into three, namely: 1. Mild persecution; 2. Severe persecution; and 3. Persecution resulting in death. Except as referred to in Articles 353 and 356, that "persecution which does not cause illness or impediment to carrying out a job or search is threatened as light maltreatment, with a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiahs".

Based on the description above, the application of punishment to minors is basically different from the application of punishment to people who are old enough or adults. As according to the Juvenile Criminal Justice System, it is clear that minors who commit physical violence that results in death will be processed according to the applicable provisions, namely by looking at the elements of the article charged, but the trial process is in accordance with what is regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. If it turns out that the elements of the article on physical violence resulting in death are proven and committed with errors, then according to Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, punishment or imprisonment can be imposed on minors who have committing a crime is a maximum of (one-half) of the maximum penalty of imprisonment for adults.

A child who commits a crime, such as physical violence that results in death for the victim, will still be punished according to the applicable law. Although the process of applying legal sanctions against criminal acts of minors will be different from adults because the legal principle of "*lex specialis derogat legi generalis*" is applied, meaning that special legal rules override general legal rules, as regulated in Law Number 11 of 2012 regarding the Juvenile Criminal Justice System with the consideration that children are a mandate and gift from God Almighty who has the dignity and worth as a whole human being and to maintain their dignity, children are entitled to special protection, especially legal protection in the judicial system (Assa, 2019).

Judge is a job that has a big responsibility for the implementation of law in a country. In a sense, judges are the last bastion of law enforcement in a country. Therefore, if judges in a country have very fragile morals, then the legal authority in that country will be weak or mired (Supriadi, 2019).

The judge in adjudicating a case submitted to him must know clearly about the facts and events in the case. Therefore, before making a decision, the Panel of Judges must first find

the facts and events that were revealed from the defendant and the victim, as well as the evidence presented by the parties in the trial.

Decision making by judges in court is based on the indictment and everything that is proven in court trials, as stated in Article 191 of the Criminal Procedure Code. The indictment from the public prosecutor is the legal basis for the criminal procedure, because it is based on the indictment that the examination of the court hearing is carried out. A trial in court a judge cannot impose a crime outside the charge.

The judge who is the personification of the law must guarantee a sense of justice for everyone who seeks justice through a legal legal process, and to ensure that sense of justice a judge is limited by signs such as accountability, moral and ethical integrity, transparency and supervision (Kamil, 2012). The condition for integration is the idea that judges should decide cases in a way that makes the law more coherent, preferring interpretations that make the law more like a single moral vision (Imaningrum, 2019).

The basis of the judge's consideration in making a decision can be used as material for analysis of the orientation of the judge. In making a decision, it is also very important to see how the decision handed down is relevant to the purpose of the punishment that has been determined. In imposing a sentence on a defendant, especially a child, it needs to be handled specifically in order to provide protection and welfare for the child, considering that the emotional nature of the child is still unstable and cannot distinguish between good and bad actions (Gultom, 2014).

The obligation of judges who handle criminal acts of children who are in conflict with the basic law is to provide justice while protecting and nurturing children so that they can meet their future. In the author's opinion, the judge must be sure that the decision taken is in the best interest of the child because the judge's decision will affect the next life of the child concerned. The judge must really consider that the decision will lead the child to a good future to develop himself as a responsible citizen for the life of the family, nation and state.

Some of the main duties and obligations of judges in the field of normative justice, among others:

1. To judge according to the law without discriminating against people;
2. Assist justice seekers and try their best to overcome all obstacles and obstacles for the sake of creating a justice that is simple, fast, and low cost;
3. Must not refuse to examine and try a case that is submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it;
4. Provide information, considerations and advice on legal matters to other state institutions when requested;
5. Judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society.

Judges' roles in juvenile criminal justice are thus tied to the sorts of offences that may be imposed on juveniles. As a result, judges handling criminal cases involving children must be aware of the underlying issues, including the child's background; in this situation, the judge must exercise extreme caution in administering justice, avoiding arbitrariness and acting in line with the child's requirements. In this case, the judge is confronted with two competing interests: on the one hand, to serve the community's interests by enforcing the law indiscriminately; but on the other hand, to consider the future and the interests of the

child, whose mind has not yet matured, and to re-examine the purpose of holding the law. The law does not seek to satisfy, but to provide justice consistent with legal understanding. Therefore, a good judge will examine the trial from several angles and will investigate the causes of the errors.

5. CONCLUSION

Legal arrangements for children who are perpetrators of violent crimes according to the Criminal Code do not provide an authentic understanding of what is meant by violence. Only in article 89 of the Criminal Code it is stated that which is equated with committing violence, making people faint or helpless (weak). In addition to Article 89 of the Criminal Code, from a systematic point of view of the Criminal Code, Article 170 is one of the articles placed in Book II on Crime in Chapter V entitled "Crimes against Public Order". Hence, the criminal act as formulated in Article 170 is first of all a criminal act which constitutes a violation or disturbance to public order.

Criminal responsibility by children who are perpetrators of physical violence that results in death can see the arrangement in Article 351 paragraph (3) of the Criminal Code is tied, as criminal responsibility is imposed on children when the child is proven to have fulfilled the criminal element in the form of an error committed by the child, violence the physical abuse was done by the child, and the victim who was the victim of the physical violence is known to have died at the time or after the physical violence was committed.

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THE PROBLEM OF CORRUPTION LAW ENFORCEMENT THAT CAUSES STATE LOSSES SINCE THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA NUMBER 25 / PUU-XIV / 2016 DECISION

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Abstract

The various forms of acts of corruption and the various factors that cause corruption in their growth are increasingly widespread, so that the boundaries of the characteristics of acts of corruption and the characteristics of acts that are not corrupt but characterized by very detrimental to the state and society become difficult to distinguish, and lead to uncertainty about how to formulate groups. his crime. This research is normative legal research that uses primary and secondary legal sources with library research collection techniques through legislation approach, historical approach and case approach. The results obtained are the legal considerations of the judges of the Constitutional Court of the Republic of Indonesia in the Decision of the Constitutional Court Number 25/PUU/XIV/2016 in Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption in Decision Number 25/ PUU-XIV/2016 which grants the abolition of the phrase "can" is to create legal certainty for the State Civil Apparatus (ASN) regarding discretionary policies or decisions or the implementation of the Ermessen freies principle which is criminalized as a criminal act of corruption because it is detrimental to state finances.

Keywords: *Criminal Corruption, Law Enforcement Problems, Evidence, State Losses*

1. INTRODUCTION

Eradicating corruption is defined in Law Number 30 of 2002 concerning the Corruption Eradication Commission (refers to KPK) as a "series of actions to prevent and eradicate corruption through coordination, supervision, monitoring, investigation, prosecution, and examination in court with community participation, in accordance with relevant regulations and regulatory requirements". Consequently, the three key aspects of the corruption eradication strategy are prevention, prosecution, and community engagement (Hermien et al., 2017).

In an attempt to eliminate the causes and possibilities for committing corruption crimes, which are extended offenses, remarkable actions must be implemented in the areas of prevention, prosecution, and community engagement. In keeping with Article 1 Paragraph 3 of the 1945 Constitution, Indonesia is a country built on law (*rechtstaat*) and not on power (*machtsaat*). Consequently, law enforcement is one of the primary means of maintaining order in Indonesia (Hutabarat, Fransisca, et al., 2022).

Efforts through law enforcement can be seen through the historical development of anti-corruption laws and regulations in Indonesia, which have undergone four changes, namely in 1960, 1971, 1999, and 2001, which have been sufficient to demonstrate the existence of

serious government efforts to eradicate corruption in Indonesia (Hutabarat, Delardi, et al., 2022).

In Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, the criminal act of corruption is constituted as an unlawful conduct in both the formal and material senses. The phrase "can" underlines that the criminal act of corruption is a formal crime, while the phrase "harmful to state finances" denotes an unlawful nature in a material sense.

The criminal act of corruption as a formal offense means that a perfect act of corruption does not need to wait for state losses to arise, as long as it can be interpreted according to common sense that an act has the potential to cause state losses, then the act can already be categorized as a criminal act of corruption.(Chazawi, 2005)This is in line with the statement of the House of Representatives (DPR) as the legislator (positive legislator).(Asshiddiqie, 2007) in the Decision of the Constitutional Court Number 003/PUU-IV/2006 which states that the elements of Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 are all deliberately intended to cover all forms of corruption, whether detrimental to state finances or potentially detrimental to state finances. Sanctions can be given if the elements against the law have been met. This is a form of extraordinary handling of extraordinary crimes of corruption (extra ordinary crime).

A perfect act of corruption does not need to wait for state losses to occur, as long as it can be understood according to common sense that an act has the potential to produce state losses, then the conduct can already be classified as a criminal act of corruption (Chazawi, 2005). This is consistent with the House of Representatives' (DPR) statement as the lawmaker (positive legislator) (Asshiddiqie, 2007) in the Constitutional Court Decision Number 003/PUU-IV/2006, which states that the elements of Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 are all intentionally intended to cover all forms of corruption, whether detrimental to state finances or potentially detrimental to state finances. Sanctions may be imposed if the elements of the law are satisfied. This is a type of extraordinary handling of extra ordinary crime.

Since there is a strong drive to eradicate corruption as well as to warn everyone not to commit a criminal act of corruption, the word "can" is used in Article 2 Paragraph 1 and Article 3 to emphasize the aspect of prevention (deterrence). After the decision of the Constitutional Court Number 25/PUU-XIV/2016, which states that the phrase "can" in Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption does not have binding legal force, these aims and objectives have undergone a shift.

Corruption offenses are no longer predicated on a possible loss (potential or predicted state financial loss), but rather on actual loss (real state financial loss) as outlined in the Constitutional Court Decision Number 25/PUU-XIV/2016, which implies that the expression "can" is no longer binding. When the phrase "can" is used in Article 2 Paragraph (1) of Law No. 20 of 2001 about the Eradication of Criminal acts of Corruption, the Constitutional Court's two opinions on the matter are inconsistent.

In this instance, the following are some examples of incidents that are connected to variations in the findings of the audit of state losses:

1. In the corruption case of PT. Asuransi Sosial Angkatan Bersenjata Republik Indonesia (ASABRI). The judge considered that the calculation of state losses of Rp. 22.788 trillion by the Audit Agency (in this case is BPK) was unproven and had no basis. The judge conclude that the BPK and experts were inconsistent when calculating state losses in the ASABRI case. The method used is total loss, namely recognized receipt of funds before the audit is completed so that the judge decides with money in lieu of state losses of only Rp 12.643.400.946.226.
2. In the case of the mega-corruption of the electronic identity card (e-KTP) project carried out by Setya Novanto. The Supreme Audit Agency (BPK) assessed the total state loss as Rp. 2.5 trillion, while the Development and Finance Supervisory Agency (BPKP) assessed the total state loss as Rp. 2.3 trillion.
3. In the case of corruption in the routine budget of the Lebong Regency DPRD Secretariat for the 2016 Fiscal Year, which was carried out by Teguh Raharjo Eko Purwoto Bin Suroto (late), DKK. The Supreme Audit Agency (BPK) assessed the total state loss as Rp. 1.353.217.500,- (one billion three hundred fifty three million two hundred seventeen thousand and five hundred rupiah) while the Development and Finance Supervisory Agency (BPKP) assessed the total state loss as Rp. 1.029.520.007,- (one billion twenty nine million five hundred twenty thousand seven rupiah)

Based on the aforementioned issue, the main objective of this study is to determine and analyze the decision of the Constitutional Court, which ruled that the word "can" is contrary to the 1945 Constitution of the Republic of Indonesia and has no legal basis in fact, as well as the occurrence of legal uncertainty regarding the institution authorized to calculate Total State Losses and Slowing the Process of Eradicating Criminal Acts of Corruption.

2. THEORETICAL BASE

2.1. Judge's Decision

A judge's decision is a declaration that is issued by a judge in his or her capacity as an official of the state who is allowed to do so. It is stated during a trial and is intended to put an end to or find a resolution to a case or disagreement between the parties (Sutiyoso, 2008). In order to find a solution that is fair and equitable, the court will make a decision.

As stated in Article 14 of Law Number 48 of 2009, which states that a deliberation session of every judge is obligated to submit written considerations or opinions on case that is examined and becomes an inseparable part of the decision, judges are required to take into consideration a number of factors in order to reach a decision that is as fair as possible when making a decision. One of these factors is the method of opinion or judge's consideration. As a result, it is not surprising for a decision to result in diverse opinions being held by various judges.

2.2. Law Enforcement Theory

According to Soerjono Soekanto, law enforcement is an activity to reconcile the relationship of values that are described in norms of action and attitudes as a series of final value translations. To build and sustain a harmonious social environment (Soerjono, 1983).

Enforcement of criminal law is the implementation of criminal law by law enforcement officers. In other terms, criminal law enforcement is the execution of criminal laws. Thus, law enforcement is a system involving the alignment of ideals, regulations, and ordinary human behavior. Ultimately, these norms become guidelines or benchmarks for behavior or behaviors that are deemed acceptable or should be. The conduct or attitude of the act seeks to build, preserve, and ensure peace.

2.3 Theory of Judicial Power

According to what Bagir Manan said, there is a kind of universal opinion that "an independent judicial power is a necessary for the establishment of justice and truth," and as a result, an independent judicial power is an absolute necessity for the community.

As for the meat and potatoes of the power that an independent judiciary possesses (Handoko, 2015), this refers to the power that comes with forming a judiciary, which includes the authority to investigate and make a decision on a particular case or disagreement. It is meant to ensure that the judge is free from the many anxieties or fears that may arise as a result of a judgement or legal provision being made, and that the judge is able to operate in a manner that is objective, honest, and impartial. Legal actions, both routine and extraordinary, taken by and within the context of the judicial power itself are the only means by which an independent court can exercise any form of control over its own operations in the context of judicial supervision. Therefore, any type of interference from power that is not within the competence of the judiciary ought to be prohibited, and any actions taken against judges ought to be carried out only in compliance with the law.

In accordance with Article 24 Paragraph 1 of the Constitution of 1945, the judicial power is an autonomous power to administer justice and uphold law and justice. Thereby, it has been acknowledged that the responsibility of judges is to execute rechtsvinding (participating in finding the law (Kansil, 1989). Accordingly, Article 10 of Law Number 48 of 2009 about Judicial Power prohibits judges from declining to inspect, hear, and rule on a case submitted to them through the court.

3. RESEARCH METHOD

This study uses a normative legal research type focusing on the statute approach, historical approach, and case approach. Primary legal materials are the main legal materials in current research, which involves several relevant regulations such as 1945 Constitution of the Republic of Indonesia, Law Number 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 48 of 2009 concerning Judicial Power, Law Number 1 of 2004 concerning State Treasury, Constitutional Court Decision Number 25/PUU-XIV/2016, Constitutional Court Decision Number 003/PUU-IV/2006 Constitutional Court Decision Number 31/PUU-X/2012 as well as Supreme Court Circular Number 4 of 2016.

Furthermore, data collection is done by literature study, where literature study is the single method used in normative legal research (Suratman & Dillah, 2014). Through library research, legal materials are subsequently collected. The collection of legal materials consists of primary legal materials, secondary legal materials and tertiary legal materials classified according to the relevant legal issues. The legal materials are then managed to obtain an

explanation through the management of legal materials that are deductive in nature, namely drawing conclusions that describe the issue in general to specific or more concrete problems.

4. RESULT AND DISCUSSION

4.1. Comparison Based on the Petitioner's Party and the Petitioner's Statement

It was submitted as a petition for judicial review on two decisions of the Constitutional Court, specifically the Constitutional Court Decision Number 003/PUU-IV/2006 and the Constitutional Court Decision Number 25/PUU-XIV/2016. The petition began with an analysis of the phrase "can" in Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning Eradication of Criminal Acts of Corruption.

The underpinning for testing the Constitutional Court Decision No. 003/PUU-IV/2006 is Article 28D Paragraph (1) of the 1945 Constitution, whereas the cornerstone for testing the Constitutional Court Decision No. 25/PUU-XIV/2016 is Article 1 Paragraph (3), Article 27 Paragraph (1), Article 28G Paragraph (1), and Article 28I Paragraphs (4) and (5) of the 1945 Constitution. These inconsistencies constitute the foundation for the Court's determination that the petition is not ne bis idem, thereby granting the Court the authority to review and rule on the original application. The following is a comparison between the two decisions:

The presence of seven applicants who submitted an application for judicial review of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption to the Constitutional Court on February 22, 2016 was the impetus for the Constitutional Court to issue its decision Number 25/PUU-XIV/2016. This decision was the result of the Constitutional Court's deliberation. In this particular case, the applicants are as follows:

1. Firdaus, S.T., M.T.
2. Drs. H. Yulius Nawawi
3. Ir. H. Imam Mardi Nugroho
4. Ir. H. A. Hasdullah, M.Si.
5. H. Sudarno Eddi, S.H., M.H.
6. Jamaludin Masuku, S.H.
7. Jempin Marbun, S.H.

According to a decision by the Constitutional Court Number 25/PUU-XIV/2016, each Petitioner who applied for review of Article 2 Paragraph (1) and Article 3 has the following qualifications:

1. Petitioner I, on the other hand, is an individual Indonesian citizen who was convicted based on the Mamuju District Court Decision No. 08/Pid.Sus/TPK/2013/PN.MU as he was found to have violated Article 3 of the Anti-Corruption Law.
2. Whereas Petitioners II and III are both individual citizens of Indonesia who are currently being investigated for possible violations of the Corruption Law's Article 2 Paragraph (1) and/or Article 3 provisions, respectively.
3. Petitioners IV through VII are Indonesian citizens who are currently state civil officials and are possibly liable to the Anti-Corruption Law's Article 2 paragraph (1) and Article 3 provisions.

A petition for judicial review of the Constitutional Court's decision number 003/PUU-IV/2006, which was filed on March 9, 2006, was presented addressing the identical topic. An Indonesian citizen by the name of Dawud Djatmiko is the applicant in this case. At the time, the applicant was in the process of being investigated as a suspect by the Prosecutor's Office. Agung of the Republic of Indonesia in connection with the alleged corruption in the process of land acquisition for the toll road construction project for the Taman Mini Indonesia Indah Cikunir toll road.

Based on this allegation, the applicant was indicted by the Public Prosecutor (JPU) in the trial of the East Jakarta District Court with the primary charges of Article 2 Paragraph (1), Article 18 Paragraph (1) letters a, b of Law Number 31 of 1999 concerning the Eradication of Criminal Acts Corruption jo. Law Number 20 concerning Amendments to Law Number 31 of 1999 jo. Article 55 Paragraph (1) 1st jo. Article 64 Paragraph (1) of Criminal Code (KUHP). Subsidiary indictment Article 3, Article 18 Paragraph (1) letter a, b of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes jo. Law Number 20 concerning Amendments to Law Number 31 Of 1999 jo. Article 64 Paragraph (1) of the Criminal Code (KUHP).

The applicant filed the application for several reasons, according to the Constitutional Court ruling No. 25/PUU-XIV/2016. First, the phrase "can" violates their constitutional rights as state officials who frequently feel worried and concerned since every action in issuing or carrying out policies on their obligations in carrying out their duties is always subject to criminal threats, even though in issuing or carrying out policies they do not intend to act corruptly, but in practice it sometimes suffers unexpected losses due to administrative negligence which has an impact on state financial losses or the state economy.

Considering that, relying on the applicant's experience, administrative negligence is a possibility, yet the law defines administrative negligence as corruption, he is convicted of a crime. Consequently, if individuals maintain a formal offense as described in Article 2 Paragraph (1) and Article 3 of Law No. 20 of 2001 Concerning Amendments to Law No. 31 of 1999 Concerning the Eradication of Criminal Acts of Corruption, it will be contrary to the new legal policies reflected in Law No. 30 of 2014 Concerning Government Administration, in particular Article 20, Article 70, Article 71, and Article 80 pertaining to administrative errors. Administrative errors that formerly focused the criminal approach have shifted to the legal approach of state administration, from a policy with imprisonment to a policy with the punishment of public financial returns.

Furthermore, in reference to the explanation that is based on Article 1 Number (22) of Law Number Number 1 of 2004 Concerning the State Treasury, as well as Article 1 Number 15 of Law Number 15 of 2006 Concerning the Supreme Audit Agency, both of which state that state losses are a shortage of money, securities, and goods that are real and definite in number. Furthermore, Indonesia has ratified the United Nations Convention Against Corruption of 2003, which is based on Law No. 7 of 2006.

On the basis of the Anti-Corruption Convention, the absence of state losses as a corruption offense is deemed reasonable, as the scope of corruption offenses has been clearly outlined, namely bribery in the government sector, bribery in the private sector, embezzlement in office, embezzlement in private companies, trading in influence, abuse of office, public officials who enrich themselves, launder the proceeds of crime, conceal the

existence of crimes, and conceal the existence of corruption. However, Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 regarding the Eradication of Corruption Crimes do not include a loss to the state element, and the intent is not to punish with corruption the actions of the State Civil Apparatus (ASN) that violate administrative regulations, fail to comply with regulations, or do not comply with the law.

Thirdly, the phrase "can" in the Big Indonesian Dictionary (KBBI) denotes able, willing, intend, and allowed, so the diversity of meanings produces confusion in the implementation of criminal law by law enforcers, which can lead to injustice among citizens.

The application for evaluation of the phrase "can" in the Constitutional Court Decision Number 003/PUU-IV/2006 is based on the fact that the phrase "can" has two meanings, namely as a result of criminal acts of corruption that harm state finances and as a result of criminal acts of corruption that do not harm state finances. The applicant considers the various repercussions to have separate non-criminal punishments and are contained in different paragraphs in order to promote legal certainty. In this matter, the applicant is concerned with the language "can" in Article 2 paragraph (1) and Article 3, because the inclusion of this phrase may entice him or her into committing a criminal act of corruption.

4.2. Comparison Based on Consideration of the Content of Decisions regarding the Elimination of the Phrase "can" and Factors Affecting the Inconsistency of Judges' Decisions

In the Decision of the Constitutional Court No. 003/PUU-IV/2006, a judge rejected the request for the abolition of the phrase "can" in Article 2 Paragraph (1) and Article 3 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption for the following reasons:

First, the phrase "can" in Article 2 Paragraph (1) and Article 3 of the status quo Law highlights the prevention (deterrence) and shock therapy efforts for the broader community, which are motivated by a strong desire to eliminate corruption and issue warnings to everyone not to commit illegal acts of corruption and to limit or prevent future damages to the state on a qualitative and quantitative scale (potential loss).

Second, the phrase "can" in Article 2 Paragraph 1 relates to perpetrators of corrupt criminal crimes, whereas in Article 3 it refers more to abuse of power. The description of the offense is formally material, indicating that sanctions can be imposed if the components against the law have been met, even if the amount of state losses is estimated, because the element of state losses is a consequence factor. Nevertheless, if the criteria against the law are not met but the ones resulting in state losses are, criminal sanctions can also be imposed (Article 32 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption).

Thirdly, regarding the applicant's assessment of the punishment that should be different, the Court concludes that the criminalization of the perpetrators of attempted corruption in Article 15 of Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning Eradication of Criminal Acts of Corruption is in accordance with Article 27 Paragraph (2) of the United Nations Convention Against Corruption, 2003, which has been ratified by Law of the Republic of Indonesia Number 106 of 2004. According to Article 15 of the status quo statute, "attempt" (poging) offenses are classified as completed offenses.

The Constitutional Court's Decision No. 25/PUU-XIV/2016 granted the request for the abolition of the phrase "can" in Article 2 Paragraph (1) and Article 3 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 in order to prevent it from being misused to persecute numerous activities that are suspected to be detrimental to state finances, including policies or discretionary decisions or the implementation of the freies Ermessen principle that are taken on the basis of an urgent nature. Related businesses that threaten public finances may also be found guilty of doing corrupt activities. Even though there is no element of purpose to jeopardize state finances, this situation makes public officials hesitant to make decisions due to the possibility of being charged with criminal acts of corruption.

A distinct opinion (Disenting Opinion) is presented by one judge, Laica Marzuki, in the Constitutional Court Decision Number 003/PUU-IV/2006. Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption contain the term "can" in the phrase "which can impair state finances or the state economy." The scope of meaning is unclear and rather broad, so it fails to meet the legality principles of a criminal provision, namely *lex certa*, which states that the provision must be clear and not confusing (containing certainty), and *lex stricta*, which states that the provision must be interpreted narrowly, with no analogies allowed.

In keeping with Point E of the Attachment to Law No. 10 of 2004 on the Establishment of Legislative Regulations, entitled Elucidation, it is stated that the Elucidation acts as the official legislative interpretation of certain body standards. The explanation offers just a description or further elaboration of the body's governing rules. Explanation as a technique of elucidating norms in the body must not leave the norms stated unclear (point 165). The explanation cannot serve as a legal basis for the creation of additional regulations. As stated in Articles 176 and 177 of Law No. 12 of 2011 on the Establishment of Legislation, entitled Explanation, this remains valid.

Court Judge Laica Marzuki ruled that the explanation of Article 2 of Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 regarding the Indirect Eradication of Corruption used as a reference as a legal basis due to the vague and expansive reach of Article 2. Nonetheless, the Constitutional Court's Decision No. 003/PUU-IV/2006 was based on the opinion of the majority of constitutional judges, which the Court subsequently considered. The majority of justices in Decision No. 003/PUU-IV/2006 of the Constitutional Court recognized that the emphasis on prevention elements is the most important factor in contributing to the strong desire to remove corruption, which has resulted in significant losses to the state and society. This is the court's primary rationale for rejecting the deletion of the word "can."

According to the findings of researchers, there is a coherence between the judges' considerations in the Constitutional Court Decision Number 003/PUU-IV/2006 and the initial objective of establishing the Corruption Eradication Law, which is formulated as a formal offense based on the General Elucidation and Elucidation of Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning the Eradication of Criminal Act.

The intention of a criminal act of corruption as a formal offense is based on Indonesia's historical experience with corruption laws and regulations. The crime of corruption was earlier constituted as a material offense under Law Number 3 of 1971, based on Article 1

paragraph (1) of Law Number 3 of 1997. The material offense of corruption under Law Number 3 of 1971 is defined as a criminal act that is only considered to exist if it has truly met the elements of causing harm to state finances. The final result is that if the perpetrators of corruption return the state's financial losses or the results of corruption, the aspect of injuring the state's finances is naturally removed, and the offender is not processed or presented to the court for criminal liability (Yuntho et al., 2014).

Moreover, regarding the suspect in the corruption case, the Head of the Finance Section of the DKI Jakarta Regional Government who was examined by the DKI Jakarta High Prosecutor's Office in 1989 was considered completed after the state loss was refunded. The same thing happened in Lampung in a corruption case involving the Head of the Lampung Logistics Depot (DOLOG) in 1992 (Danil, 2021).

On the basis of these issues, efforts to eradicate corruption are still considered ineffective, which led to the amendment of the legislation on corruption crimes. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was enacted jo Law Number 20 of 2001 with the formulation of a criminal act of corruption as a formal unlawful act (Danil, 2021).

There are inconsistency among the nine Constitutional Justices regarding the decision of the Constitutional Court Number 25/PUU-XIV/2016. Specifically, there are four Constitutional Court Justices who expressed different opinions (dissenting opinion) on the basis of the Constitutional Court's decision Number 003/PUU-IV/2006.

The four judges believe that there has been no fundamental change in academic views regarding the nature of the criminal act of corruption, and thus there is no fundamental reason in empirical-sociological conditions that can be rationally used as a strong reason for the Constitutional Court to abandon its position stated in Decision Number 003/PUU. -IV/2006.

Instead, five judges who had different viewpoints were taken into consideration for the judgment that ultimately served as the foundation for the Constitutional Court's Decision Number 25/PUU-XIV/2016, which granted permission to exclude the phrase "can." The court believes that Law Number 30 of 2014 concerning Government Administration will modify the paradigm of applying aspects of injury to state finances in corruption, and these considerations pertain to that law.

Since the passing of the Law on Government Administration, it is no longer possible for a criminal act of corruption to include causing the state to suffer losses as a result of administrative errors. The decision to take these factors into account was made in order to provide legal protection for the State Civil Apparatus (ASN), which is frequently involved in criminalizing claims of abuse of authority in criminal acts of corruption due to administrative errors or ignorance. In addition, the Court believes that the removal of the phrase "can" will produce and ensure legal certainty. This is due to the fact that the phrase "can" can be interpreted in a number of different ways.

After taking all of these factors into account, the author concludes that there is a significant amount of legal uncertainty as a result of the change in the classification of corrupt offenses for the following reasons:

1) There is no relationship between Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption with Law Number 30 of 2014 concerning Government Administration The element of real state losses in Law Number 30 of 2014 concerning Government Administration

should not have anything to do with the phrase “can” in Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 because it was built on different legal principles. This can be seen from the aspect of the approach. The Government Administration Law certainly uses an administrative approach, while the Corruption Eradication Act uses a criminal approach. In addition, it can also be seen based on aspects of intention or atmosphere (*means rea*), and aspects of the consequences of actions (*actus reus*).

According to Fatkhurohman in a journal entitled "Shifting Corruption Offenses in the Decision of the Constitutional Court Number 25/PUU-IV/2016" said that “abuse of authority in Law Number 30 of 2014 concerning Government Administration based on aspects of intention or atmosphere (means rea) in general is an element of error who have no intention to enrich themselves, others or corporations”. Meanwhile, the abuse of authority in Article 3 of Law Number 20 of 2001 in conjunction with Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption based on the aspect of intention or atmosphere (*means rea*) in general is having the intention to enrich oneself, others and corporations. The aspect of the intention is also the same as the unlawful act in Article 2 Paragraph (1).

Misuse of power in Law No. 30 of 2014 pertaining to Government Administration, based on the consequences of the conduct (actus reus), is likely to result in personal damages under the category of administrative breaches. Meanwhile, the misuse of authority in Article 3 and unlawful conduct in Article 2 Paragraph (1) of Law No. 20 of 2001 in conjunction with Law No. 31 of 1999 on the Eradication of Corruption Crimes are damaging to third parties, in this case the state (Fatkhurohman & Kurniawan, 2017).

2) Criminalization of State Civil Apparatus (ASN) in Issuing Policy

Article 2 paragraph (1) and Article 3 are frequently abused to entangle numerous activities suspected of being harmful to state finances, such as policies or discretionary decisions, or the execution of the Ermessen freies concept, which generally arises owing to administrative errors.

Law Number 30 of 2014 concerning Government Administration was born to avoid abuse of authority, including administrative errors. The administrative error uses an administrative approach as stated in the Law on Government Administration which will later be canceled or not by the State Administrative Court (PTUN) (Fathuddin, 2015).

Therefore, the concern regarding the criminalization of the State Civil Apparatus (ASN) in issuing policies is not appropriate if it is related to the Corruption Crime Act, especially the abolition of the phrase "can".

Discretion or action on initiative (freis ermessen) can be carried out under three conditions, namely: “first, there are no laws and regulations governing the in concreto settlement of a problem, even though the problem requires an immediate solution. Second, the laws and regulations that form the basis for the actions of government officials have provided complete freedom. Third, there is a legislative delegation, namely the granting of the power to regulate itself to the government which is actually owned by a higher level apparatus” (Ridwan, 2014).

Law Number 30 of 2014 concerning Government Administration, in particular Articles 25 to 32, has regulated the existence of discretion including its limitations.

This provides clearer legal certainty regarding the procedure for the use of discretion. This means that Law Number 30 of 2014 concerning Government Administration has provided legal protection for State Civil Apparatus (ASN) in exercising discretion so there is no need to worry about the phrase "can" in Article 2 Paragraph (1) and Article 3 of the Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption.

3) Absence of *Nebis in dem* of Constitutional Court Decision Number 25/PUU-XIV/2016 with Constitutional Court Decision Number 003/PUU-IV/2006 The legal reason for the Constitutional Court to grant re-examination of the Constitutional Court Decision Number 25/PUU-XIV/2016 is because there is a basis different testing. This is based on the legal basis of Article 60 paragraph (2) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the material content of paragraphs, articles, and/or parts of the law that has been tested, a re-test may be requested if the contents of the 1945 Constitution of the Republic of Indonesia which are used as the basis for the examination are different.

Table 1 Comparison of Basic Constitutional Testing Article 2 paragraph (1) and Article 3

No	Basis for Reviewing the Decision of the Constitutional Court Number 003/PUU-IV/2006	Basis for Reviewing the Decision of the Constitutional Court Number 44/PUU-XI/2013	Basis for Reviewing the Decision of the Constitutional Court Number 25/PUU-XIV/2016
1	Article 28D Paragraph (1)	Article 1, paragraph 3) Article 27 Paragraph (1) Article 28D Paragraph (1) (2) Article 28I Paragraph (2)	Article 1, paragraph 3) Article 27 Paragraph (1) Article 28D Paragraph (1) Article 28G Paragraph (1) Article 28I Paragraph (4) (5)

Regarding the absence of nebis in dem Constitutional Court Decision Number 25/PUU-XIV/2016, the author refers to the Constitutional Court Decision Number 44/PUU-I/2013, which also examines Article 2 Paragraph (1) and Explanation of Article 2 Paragraph (1) Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning the Eradication of Criminal Acts of Corruption, as detailed in the table above.

Based on the Court's consideration of the Constitutional Court Decision Number 44/PUU-XI/2013, it is stated that “although there are differences in the basis for testing between petition Number 003/PUUIV/2006 and the a quo petition, namely Article 1 Paragraph (3), Article 27 Paragraph (1), Article 28D Paragraph (2), and Article 28I Paragraph (2) of the 1945 Constitution, however the Petitioner's petition regarding the constitutionality review of Article 2 Paragraph (1) and the Elucidation of Article 2 Paragraph (1) of the Law on the Eradication of Criminal Acts of Corruption is essentially the same as application Number 003/PUU-IV/2006 so that the application is *ne bis in idem*”.

In Decision Number 25/PUU-XIV/2016, although the Court both saw the substance of the petition, the Court specialized in considering the reality of legal conditions in the norm (law in text) with the law that occurs in reality (law in context) on the grounds that The previous assessment, namely the Decision of the Constitutional Court Number 003/PUU-IV/2006, has repeatedly proven that it has created legal uncertainty and injustice in

eradicating corruption, thus stating that there is no ne bis in idem. With the basis of thinking as described above, the author actually sees the potential for legal uncertainty that occurs in the judicial review of the 1945 Constitution, because the Court does not determine a definite measure of the enforceability and continuity of a legal norm that has been tested several times.

After the ruling of the Indonesian Constitutional Court number 25/PUU-XIV/2016, the difficulties experienced by law enforcement in combating corruption-related offences that resulted in financial losses for the state. This will have an effect, albeit an indirect one, of lowering public trust in the constitutional institutions' ability to produce legal certainty and justice. As a result, in order to evaluate the effectiveness of judges in making decisions, it is required to investigate the ramifications of the inconsistent decisions that have been made using knowledge. These consequences include the following:

1) Shifting Formal Offenses to Material Offenses

Based on Article 2 Paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, highlight that "initially an action can be said to be a criminal act of corruption if it only fulfills three requirements, namely: 1) Person, group or corporation; 2) Act against the law and/or abuse the authority, opportunity or means; 3) With the aim of enriching oneself, other people or corporations". The existence of an element of state financial loss or state economic loss is only an element as a result of the three elements of conditions for the occurrence of a criminal act of corruption that have been mentioned. Therefore, a crime has occurred if the elements of the crime have been fulfilled and not the consequences.

The abolition of the phrase "can" in Article 2 Paragraph (1) and Article 3 makes the element resulting from state financial losses a prerequisite for the occurrence of a criminal act of corruption so that an action can only be said to be a criminal act of corruption if it is known in advance the real amount of the nominal state financial loss or loss to the country's economy. It is no longer based solely on an attitude against the law and/or abuse of authority as well as the potential for state financial losses. This, in the author's observation, means eliminating the existence of a probationary act (*poging*) with the same sanctions as the main punishment as the understanding of corruption as an offense is completed in Article 15 of Law Number 31 of 1999.

2) Legal Uncertainty Regarding the Institution Authorized to Calculate the Amount of State Losses

There is a need to know the amount of state losses or real state economic losses as an element of the requirements for the occurrence of criminal acts of corruption, then it should also be known which institution is authorized to calculate the losses. But in reality, the authority of the agency to calculate the amount of state losses still overlaps. Based on the mandate of the 1945 Constitution, in particular Article 23E, it is stated that "the institution authorized to examine the management and responsibilities of state finances is carried out by the Financial Audit Board (BPK), which is independent".

However, over time, based on the Elucidation of Article 32 of Law Number 31 of 1999 in conjunction with the Decision of the Constitutional Court Number 31/PUU-X/2012, it has added to the gap in the authority of the state loss calculating agency, because the regulation states that an authorized institution other than the Financial Audit Board (BPK) is the Financial and Development Supervisory Agency (BPKP) and other agencies or public

accountants.

The issuance of the Circular Letter of the Supreme Court (SEMA) Number 4 of 2016, further adds to legal uncertainty and at the same time does not accept omnes against the decisions of the Constitutional Court which are final and binding. The Supreme Court Circular (SEMA) states that only the Supreme Audit Agency (BPK) is authorized to audit state finances. However, the circular rule often used as a reference in the court process even though the scope of the SEMA regulation only applies to the internal of the Supreme Court itself.

Differences in legal regulations related to the authority of institutions that have the right to calculate state losses have given rise to a separate polemic regarding certainty in determining the institutions that have the right to calculate and determine the amount of state losses, considering that the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP) in calculating and determining the amount state losses are often different because of differences in terms of institutional relations, types of audits, objects, nature, as well as authorities and functions.

In the case of corruption in the routine budget of the Lebong Regency DPRD Secretariat for the 2016 Fiscal Year, which was carried out by Teguh Raharjo Eko Purwoto Bin Suroto (late), DKK. The Supreme Audit Agency (BPK) assessed the total state loss as Rp. 1.353.217.500,- (one billion three hundred fifty three million two hundred seventeen thousand and five hundred rupiah) while the Development and Finance Supervisory Agency (BPKP) assessed the total state loss as Rp. 1.029.520.007,- (one billion twenty nine million five hundred twenty thousand seven rupiah).

In addition, in the corruption case of PT. Asuransi Sosial Angkatan Bersenjata Republik Indonesia (ASABRI). The judge considered that the calculation of state losses of Rp. 22.788 trillion by the Supreme Audit Agency (BPK) was unproven and had no basis. The judge was of the view that the BPK and experts were inconsistent when calculating state losses in the ASABRI case. funds before the audit was completed so that the judge decided to pay for state losses of only Rp. 12.643.400.946.226.

Another example also occurred in the case of mega-corruption of the electronic identity card (e-KTP) project conducted by Setya Novanto. The Supreme Audit Agency (BPK) assessed the total state loss as Rp. 2.5 Trillion. Meanwhile, the Financial and Development Supervisory Agency (BPKP) assessed the total state loss as Rp. 2.3 trillion.

The existence of these differences clearly creates legal uncertainty that can be used as a loophole for corruptors as an excuse to choose an institution that benefits them. This will certainly have an impact on even greater state losses.

3) Slowing the Process of Eradicating Corruption Crimes

The removal of the phrase "can" has the consequence that an act that only has the potential to harm the state (potential loss) is not a criminal act of corruption, so if law enforcement officials fail to prove that there is a real amount of state financial loss (actual loss), the perpetrators of corruption can be freed. from lawsuits.

Prior to the enactment of the Constitutional Court Decision Number 25/PUU-XIV/2016, in the interest of the investigation, investigator, prosecution and examination process, it is allowed to detain suspects. The detention process has a different time period for each level of the legal process. Based on Article 38 Paragraph 1 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, it is explained that the authority relating to

investigation, investigation and prosecution as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code also applies to investigators, investigators, and public prosecutors at the Corruption Eradication Commission. This means that the general provisions related to detention contained in Law Number 8 of 1981 concerning the Criminal Procedure Code are also still valid.

a. For the period of detention at the level of the Public Prosecutor, based on Article 25 the detention period is 50 days;
b. For the detention period at the District Court level, based on Article 26 the detention period is 90 days;
c. For the detention period at the High Court level, based on Article 27 the detention period is 90 days;
d. For the detention period at the Supreme Court Justice level, based on Article 28 the detention period is 110 days;
e. And this detention period can be increased by 60 days, provided that the suspect experiences severe physical and mental disorders, and is threatened with a minimum sentence of 9 years or more. This provision is regulated in Article 30.

Therefore, efforts made by Investigators and Investigators from the Police, the Prosecutor's Office, or even from detention.

Law Number 8 of 1981 concerning the Criminal Procedure Code states that "the total period of detention is 370 days with the division of the stages of the legal process as follows:

For the detention period at the investigator level, based on Article 24 of the Corruption Eradication Commission, it is not an easy thing to implement, given the limited time in searching for the incident of the crime, seeking sufficient initial evidence when the suspect commits a criminal act of corruption which later on, the initial evidence will be upgraded to status. evidence, and the last is to determine the perpetrators of the corruption.

Moreover, after the enactment of the Constitutional Court Decision Number 25/PUU-XIV/2016, every effort to enforce the law on criminal acts of corruption must have a calculation of state financial losses, a crime of corruption must take a long time, then it is possible that evidence will be lost first. because it was intentionally damaged by the suspect before the investigation was carried out. So determining the amount of real losses in a precise and accurate sense becomes very difficult to do, especially in large-scale losses. If it fails to determine the actual amount of the loss, then the defendant will certainly be free from lawsuits.

The case of an acquittal because it was not proven that the elements could harm state finances occurred in the Surabaya Corruption Court Decision Number 18/Pid.Sus/2011/PN. Sby regarding the Corruption Crime of Procurement of Goods. A defendant named Ir. Gatot Suharto was sentenced to 1 (one) year 6 (six) months in prison by the public prosecutor for violating the provisions of Article 3 of Law No. 31/1999 in conjunction with Law No. 20/2001 on the real eradication of acts before the determination of the suspect. The investigator in this case must first prove the actual amount of the loss before proving the criminal act. Therefore, it is no longer possible for the Corruption Eradication Commission (KPK) to take action as a preventive action.

Calculating how much state losses are caused by the Corruption Crime in conjunction with Article 55 Paragraph (1) to 1 of the Criminal Code. The defendant as Team Leader CV.

Aulia Technical Consultant as Supervisory Consultant for the Surabaya City Government Elevator Works signed the Minutes of Physical Examination of the Work in the Context of Level I (first) submission so that 100% payment was made even though the work result was not 100%. The defendant's actions have caused state financial losses amounting to Rp 2,085,143,465 (two billion eighty five million one hundred forty three thousand four hundred and sixty five rupiah). The loss arises because the payment has been made 100% even though the work has not been 100%. In its decision, the Surabaya Corruption Court of Justice acquitted the Defendant Ir. Gatot Suharto with the consideration that there was no audit of state losses from the BPK or BPKP so that the Public Prosecutor could not prove the existence of state financial losses or the state economy. This decision was later strengthened by the Supreme Court's Decision Number 69K/Pid.Sus/2013 which rejected the appeal from the Public Prosecutor.

In the case of corruption in the procurement of goods, the requirement for calculating state losses in real terms causes investigators to have to wait for the procurement of goods to be completed by the end of the fiscal year to be able to show actual losses, so that the impression that law enforcement officials allow the perpetrators of corruption to cause state losses.

In addition, the law enforcement process in efforts to eradicate corruption will also be slow because investigators must first wait for the results of the calculation of the actual amount of state losses by the authorized institution which in the implementation process takes a very long time so that it hampers the prosecution process, for example in handling Hambalang project corruption case. The KPK's efforts to process the defendants Deddy Kusdinar, Andi Alifian Mallarangeng and Teuku Bagus Mukhamad Noor at the prosecution level at the Corruption Court were hampered because the Corruption Eradication Commission (KPK) was still waiting for the results of an audit by the Supreme Audit Agency (BPK) regarding the calculation of state losses in the Hambalang project (Yuntho et al., 2014).

The handling of a number of corruption cases in the regions is also hampered by waiting for the results of the state financial audit. The report from the monitoring committee for the Investigation and Eradication of Corruption, Collusion and Nepotism (KP2KKN) Semarang stated that in 2013 there were at least 17 corruption cases handled by the Prosecutor's Office and the Police in Central Java which had not been completed because they were still waiting for an audit or calculation of state financial losses from the State Audit Board (BPK) or the Financial and Development Supervisory Agency (BPKP) representing Central Java (Yuntho et al., 2014).

That it can be seen that several factors influence the inconsistency of the Constitutional Court Decision Number 25/PUU-XIV/2016 with the Constitutional Court Decision Number 003/PUU-IV/2006, including:

1. Sociological factors, namely the presence of fear and concern in the midst of society, especially for those who work as State Civil Apparatuses (ASN) who in carrying out their duties make or issue a policy are always under criminal threat because the policy results in state financial losses, even though they do not actually have intention to enrich oneself, others or corporations. In this case, the error made is an act of administrative error or negligence of the State Civil Apparatus (ASN).

2. The juridical factor is the dissenting opinion of judges between decisions because the judge's opinion affects the judge's consideration in deciding the decision case. The existence of dissenting opinions of judges is regulated in Article 14 of Law Number 48 of 2009.
3. There is a philosophical factor, as stated by Montesquieu that the constitution is used as the main basis because of its living and spirited norms (Ali & Heryani, 2012). Therefore, the Court's action is an act to make the law soulful in accordance with the problems that live and develop in society. However, it would be better if the Court also did not forget the initial idea of forming a law with a soul.

Regarding the abolition of the phrase "can", in particular, even though judges are authorized to interpret statutory regulations through legal excavation, according to Logemann, judges must still submit to lawmakers (Utrecht & Mohammad, 1962). The point is that the judge cannot just interpret the words that are read, but must go deeper than that. Judges are obliged to seek the will of the legislators, because they cannot interpret what is not in accordance with the will of the law.

5. CONCLUSION

The constitutional court judges' legal considerations in Decision No. 25/PUU/XIV/2016 of the Constitutional Court on Article 2 Paragraph (1) and Article 3 of Law No. 20 of 2001 Concerning the Eradication of Corruption Is in Decree No. 25/PUU-XIV/2016 which authorizes the elimination of the phrase "can" is to provide legal certainty against the State Civil Apparatus (ASN) against the policy or decision of discretion or execution of the ermessen freies principle, which is deemed a criminal act of corruption harmed the nation's finances. In addition, it is to ensure legal certainty against the phrase "can," which is deemed to be open to multiple interpretations, which has been a problem in the past for law enforcement of corruption crimes that result in state losses. In accordance with the Constitutional Court of the Republic of Indonesia's Decision No. 25 / PUU-XIV / 2016, wherein law enforcement must have a calculation of state financial losses, a crime of corruption must be prosecuted within a short period of time, either by the CPC or the BPKP, whose audit results resulted in different calculations of the country's losses.

After the decision of the Constitutional Court of the Republic of Indonesia No. 25/PUU-XIV/2016 in Article 2 Paragraph (1) and Article 3 of Law No. 20 of 2001 Concerning the Eradication of Criminal Acts of Corruption that the phrase "can" be eliminated, problems have arisen in the enforcement of criminal acts of corruption that resulted in state loss. In Article 2 Paragraph (1) and Article 3 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 for the Eradication of Criminal Acts of Corruption, the previously formal consequences for shifting offenses against criminal acts of corruption became material. The qualification of a criminal act of corruption as a material offense necessitates that law enforcement officials determine the actual amount of state financial losses, despite the fact that the institutions authorized to determine the amount of state losses continue to overlap, causing legal uncertainty and impeding the eradication of corruption.

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EXECUTION OF DECISIONS OF THE INDUSTRIAL RELATIONS COURT WITH PERMANENT LEGAL FORCE (*INKRACHT*)

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Abstract

The research will discuss the execution of industrial relations court decisions with permanent legal force, aiming to reveal and analyze how the process of implementing industrial relations court decisions with permanent legal force and what factors hinder the execution of industrial relations court decisions with permanent legal force. This is a literature study using normative legal research. The data collected by library research, namely by the study of written information about the law that comes from various sources and is widely published and is needed in normative legal research. The findings highlight that the procedure for the execution of industrial relations court decisions that have permanent legal force has not been explicitly regulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement. However, Industrial Relations Dispute Settlement confirms that the Industrial Relations Court applies procedural law applicable to civil procedural law within the General Courts as stated in Article 57 of Industrial Relations Dispute Settlement. The lack of good faith on the part of the losing party to voluntarily carry out their obligations as stated in the verdict is one of the factors impeding the execution of the Industrial Relations Court's decision, which has permanent legal force. In addition, it is difficult for the winning party, in this case the workers, to determine which company assets can be executed against the losing party, and the execution cost is too high for the court to issue an execution order.

Keywords: *Execution of Decision, Industrial Relations Court, Permanent Legal Force, Dispute Settlement, Good Faith*

1. INTRODUCTION

Disputes between employees and the employer are common in working relationships. Disputes between workers and companies that frequently occur involve Disputes on Termination of Employment (PHK). Many of these disputes are also resolved through deliberation (agreement) between the parties, in this case the workers and the company, and not a few are also resolved through institutions trial that reaches the trial in the industrial relations court. Disputes between employees and employers become a national political issue, particularly in the employment sector, as they recur year after year (Sudja'i & Mardikaningsih, 2021).

In accordance with Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes, if there is an industrial relations dispute between workers and the company, it must be resolved in a bipartite manner first between the parties through deliberation, and if that fails, it may proceed through mediation through an institution of mediation. Whenever the implementation carried by authorized agency and mediation are unsuccessful, the objecting party may file a lawsuit in accordance with the jurisdiction of the Industrial Relations Court.

The Industrial Relations Court is a special court housed within the General Court, and for the first time by law, an Industrial Relations Court has been established in each District/City Court located in each Provincial Capital whose jurisdiction encompasses the relevant Province. In accordance with Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, the Industrial Relations Court has the authority to examine, hear, and rule on industrial relations disputes if the disputing parties attempt a settlement through the courts (PHI). The procedural law applicable to the industrial relations court is the civil procedural law applicable to the general court system, with the exception of those provisions specifically outlined in this statute. The Industrial Relations Court has the duty and authority to examine and decide cases at the first level involving disputes over rights, at the first and final levels involving disputes of interest, at the first level involving disputes over the termination of employment, and at the first and final levels involving disputes between trade unions within the same company.

Article 2 of Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes specifies the following types of industrial relations disputes: (a) rights disputes; (b) conflicts of interest; (c) disputes over termination of employment; and (d) disputes between trade unions/labor unions within a single company. The ideals of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes are conceptually very noble, which is to realize harmonious, dynamic, and fair industrial relations optimally based on values. This is in response to the increasing and increasingly complex problems of industrial relations disputes in the industrialization era. Pancasila, as well as the need for institutions and mechanisms for resolving industrial relations disputes in accordance with the principles of speed, accuracy, simplicity, equity, and affordability.

In a matter of fact, obtaining justice through the industrial relations court is not as simple as one might assume, as the application of civil procedural law proves to create new problems. A Court Decision is null and void if it is not implemented; consequently, the Judge's Decision has executive legal force, i.e. the authority to enforce the terms of the decision through the use of state instruments. As for what gives a judge's decision executive authority, it is the heading that reads "For the sake of Justice Based on God Almighty" (Muhammad, 2000). In principle, only decisions with permanent legal effect can be implemented (execution). A decision is said to have permanent legal force if it contains a form of permanent and definite legal relationship between the litigating parties, because the defendant (the losing party) must obey and fulfill the legal relationship (Harahap, 2007).

In Law No. 2 of 2004 regarding the Settlement of Industrial Relations Disputes, the procedural law and procedures for the execution of a court decision are not explicitly outlined. Article 57 of Law No. 2 of 2004 merely confirms that the Industrial Relations Court applies the civil procedural law applicable to the General Courts. There has been a lack of applicable law in this regard. There is no law that specifically regulates the execution of industrial relations court decisions with permanent legal force (*inkracht*), meaning that there is no law that governs the execution of industrial relations court decisions. Thus, when discussing execution rules, reference must be made to the laws and regulations contained in the *Herziene Inlandsch Reglemen* (HIR) or *Rechtsreglemen voor de Buitengewesten* (RBg).

The Industrial Relations Court Decision with permanent legal force (*inkracht*) can be continued in the execution phase if the losing party does not voluntarily carry out or fulfill the decision's terms. On the basis of an *inkracht* decision, the process of execution or

implementation of a decision with legal force can still be carried out if the winning party (applicant for execution) requests execution against the losing party (applicant for execution). To carry out the execution is not a simple task, and to carry out the execution of the Industrial Relations Court's decision requires a lengthy period of time and procedure. Numerous factors impede the implementation of the Industrial Relations Court's decision, including the lack of good faith from the executing respondent (company) to implement the decision voluntarily and the frequent use of flimsy excuses to delay the implementation of the decision, as well as the inability of the execution applicant (worker) to report what goods or assets of the executing respondent (company) will be executed (Clarke, 2012; Littlejohn, 2020; Tegnan & Isra, 2016).

Execution can be interpreted as carrying out or enforcing court orders with permanent legal effect (*inkracht*). If the losing party does not voluntarily fulfill its obligations as stated in the judgment, the procedure for enforcing the judgment is through the use of legal force. On the basis of a request from the execution applicant, the Industrial Relations Court of the District Court has the authority to carry out the execution of industrial relations court decisions.

On the basis of the aforementioned descriptions, the author is interested in discussing and researching more specifically in this paper how the process of Executing the Decision of the Industrial Relations Court with Permanent Legal Force (*Inkracht*) occurs in the Industrial Relations Court and what factors contribute to it. complication in the implementation of the decision.

2. RESEARCH METHOD

This study employs normative legal research with field data as supplementary information. In normative legal research, research is conducted by examining literature or utilizing secondary data which is a written data in the form of literature, reports, and scientific studies, to statutory regulations (Soekanto, 2006)**.** Understanding the law, legal concepts, and legal principles pertinent to the issue at hand requires the discovery of ideas that give rise to comprehension (Asikin, 2004).

The approach method used in this research is the conceptual approach, the statute approach and the sociological approach. The technique used in this research is library research, namely the study of written information about the law that comes from various sources and is widely published and is needed in normative legal research (Abdulkadir, 2004).

3. RESULT AND DISCUSSION

3.1. Research Result

The Industrial Relations Court's examination of the case concludes with a decision, but the issue is not yet resolved by the decision. It is common for the losing party, in this case the company, to look for reasons to delay the implementation of the judge's decision. There are even some companies that do not want to carry out the judge's decision, necessitating court intervention to enforce it. The prevailing party may petition the court to execute the decision, and the court will do so by coercion (execution force).

In spite of the fact that the competent authority executes the judge's decision in accordance with the authority granted by the Court's chairman, not everything goes smoothly in practice. On the field, numerous obstacles arise during the process of implementing the decision's execution. The execution itself is not simple to carry out; therefore, it cannot be ruled out that there will be obstacles that prevent the execution from being carried out during its implementation.

According to Dr. H. Wildan Suyuthi, S.H., M.H., the process of execution, particularly in civil cases, is very taxing on the litigants in terms of time, effort, money, mental effort, and physical exertion. Decisions are meaningless if they only result in black-and-white outcomes. In order to achieve a victory that is close at hand, it is often necessary to undergo a lengthy process. This occurs because the execution frequently encounters numerous obstacles in practice. This is primarily because the losing party typically finds it difficult to accept defeat and tends to reject legally binding decisions in various ways. Therefore, the Chief Justice must sometimes "intervene" to expedite the execution (Suyuthi, 2004).

Law No. 2 of 2004 governing the Settlement of Industrial Relations Disputes governs the process of resolving labor disputes (hereinafter referred to as UUPPHI). Article 57 specifies that the procedural law applicable to the Industrial Relations Court is the civil procedural law applicable to the courts within the General Courts, with the exception of those provisions specifically outlined in this law. The procedure for carrying out court decisions (execution) is not governed by UUPPHI; therefore, the execution of industrial relations court decisions is governed by the Civil Procedure Law applicable to Courts within the General Courts, namely the provisions of the *Herzien Inlandsch Reglement* (HIR) and the *Rechtsreglement voor de Buitengewesten* (Rbg). Execution is governed by Articles 195 to 224 of the HIR or Articles 206 to 258 of the Rbg. However, not all provisions of the aforementioned articles are currently in effect. Specifically, Articles 195 to 208 of the HIR, Articles 206 to 240 of the Rbg, and Article 258 of the Rbg are still genuinely effective. The Dutch colonial government left in effect HIR and Rbg, which are civil procedural laws. HIR and Rbg are currently undergoing change as a result of the discussion of the Civil Procedure Law Draft (Maryono & Azhar, 2018).

The issuance of a decision by a judge of the Court of Justice regarding the contested matter is the most significant aspect and culmination of the final phase of proceedings before the Industrial Relations Court (PHI). In general, a judge's decision resolving a dispute always includes a ruling that one of the losing parties must voluntarily carry out the decision. In other words, if the judge's decision is not carried out voluntarily, the losing party will be compelled to carry out the judge's order (execution) (Erwin, 2015).

If the defendant (the respondent for execution) is unwilling to carry out the decision voluntarily, then the Head of the District Court in this case is the Head of the Industrial Relations Court.

As stated in Article 196 HIR or Article 209 RBg, the Chairperson of the Industrial Relations Court is required to issue a warning (*aanmaning*) or a warning to the executing party so that he is willing to implement the decision. (2) The chairman issued an order to summon the loser to appear before him and issue a warning so that he may implement the decision within the stipulated time limit of no more than 8 (eight) days (Hariyanto, 2019).

The Head of the District Court shall issue a warning, reprimand, or order against the execution defendant, after the execution applicant has made the request for execution. Unless preceded by a request for execution from the execution applicant, the District Court Chief may not issue a warning to the party whose execution has been requested. The plaintiff or a representative with special power of attorney submits the application for execution to the Head of the District Court, in this case the Head of the Industrial Relations Court. As soon as the Chairperson of the Industrial Relations Court receives the request for execution from the execution applicant, the Chairperson of the Industrial Relations Court shall summon the defendant (the respondent for execution) to be warned and simultaneously notify the time period given to the defendant (the defendant for execution) to fulfill its obligations in accordance with the judgment rendered by the Panel of Judges.

In the case of warning the defendant for execution, the Industrial Relations Court conducts incidental hearings attended by the Chair of the Industrial Relations Court, the Registrar, the Defendant (Execution Respondent), and the Plaintiff (Execution Petitioner), and the trial must be included as authentic evidence in the official report. This report serves as the basis for determining the order for the confiscation of execution if the execution defendant fails to fulfill his obligations to carry out the decision's terms. After the execution defendant has been issued a summons and a warning, the Chairman of the Industrial Relations Court will issue a decision to the Registrar and the Seizure Officer containing, among other things, an order to carry out a confiscation of execution against the execution defendant.

According to the preceding explanation, in order for the execution of a court order to be considered legally valid, several conditions must be satisfied. Conditions for a valid execution are as follows:

1) Warning (*Aanmaning*)

Warning is a basic condition of execution, because without warning execution cannot be executed. Warning becomes important related to the execution of the execution itself, whether it can be implemented or not. A new execution can be executed (as a concrete action) since the warning time has passed. A warning is an effort made by the Head of the District Court in the form of a warning to the defendant so that he carries out the decision voluntarily. The warning period given by law is maximum, which is a maximum of 8 (eight) days (Article 196 HIR/Article 207 RBg). This means that within eight days the defendant is asked to carry out the decision voluntarily.

2) There is an Execution Order

In accordance with the provisions of Article 196 paragraph (1) and Article 208 paragraph (1) RBg, an execution order is a letter of determination by the head of the PN addressed to the clerk or bailiff to carry out the execution. The PN chairman's order is in the form of a stipulation. This form of determination is imperative and may not be in oral form. Article 197 paragraph (1) / Article 208 paragraph (1) RBg explains that ex officio the head of the PN makes an order to carry out the execution and the order is by letter.

3) There is a Minutes of Execution

The minutes of execution are a formal requirement for the validity of the execution. The provisions on the minutes of execution, regulated in Article 197 paragraph (4) of HIR and Article 209 paragraph (4) of RBg, expressly instruct the official who carries out the

execution to make an official report of the execution. Therefore, without an execution report being made, the execution is considered invalid (Erwin, 2015).

The function of carrying out actual and physical executions is carried out by the Registrar or Bailiff while the function of the Chairperson of the Industrial Relations Court is to order executions and lead executions. In the division of execution functions, it does not mean that the Chairperson of the Industrial Relations Court is free from responsibility. Although the actual and physical execution is carried out by the Registrar and/or Bailiff, this function is only a delegation or delegated to him, but each has responsibilities and the Chairperson of the Industrial Relations Court is the most responsible. If there is a deviation in the execution, the responsibility remains with the Chairperson of the Industrial Relations Court. The order to carry out the execution must be through a letter of determination from the Chair of the Industrial Relations Court and is imperative in the sense that the Chairperson of the Industrial Relations Court may not issue a decision to carry out the execution verbally, it must be determined in writing. In the event that an official carries out an execution, he or she must make a report on the confiscation of execution because without the official report it is considered invalid. The formal validity of the execution can only be proven by an official report. As for what is listed in the minutes, including witnesses, who assist in the execution must also be included in the minutes.

Based on the description above, it is known that a warning or warning is an early stage of the execution process. The warning process is a formal requirement for all forms of execution, both in the form of real execution and execution of payment of a sum of money. If the warning call is not heeded by the defendant (the respondent for execution), then from that time the Chair of the Industrial Relations Court issues a letter of determination containing an order to the clerk or bailiff to carry out "execution confiscation" (executorial *beslag*) of the defendant's assets, in accordance with the terms and procedures regulated in Article 197 HIR or Article 208 RBg.

The order in the form of a letter of determination is a direct stage of physical execution in the field, with an execution order, the clerk or bailiff can immediately complete the actual execution. One thing that needs to be considered in the execution of confiscation is that the confiscated goods really belong to the confiscated or the defendant (the respondent for execution).

3.2. Factors Inhibiting the Execution of Industrial Relations Court Decisions

Barriers to execution do not imply delaying execution in general civil cases, such as the existence of *verzet*, *deden verzet*, etc. What is meant here is the impediment to the execution of the Industrial Relations Court Decision at the District Court, which has permanent legal force, as a result of the losing party's unwillingness to voluntarily fulfill its obligations as stated in the verdict. In addition, it is difficult for the winning party, in this case the workers, to determine which company assets can be executed against the losing party, and the execution cost is too high to execute the judgment by filing an execution request with the court. Related to execution costs, it is a common problem, both in terms of execution costs, down-payment of execution costs, and how to collect execution costs, as well as free executions based on Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes.

By referencing Article 121 paragraph (4) HIR or Article 145 paragraph (4) RBg, the Execution Applicant pays the execution fee in advance, as explained by M. Yahya Harahap

that as a down payment, and the replacement can only be billed to the defendant (executed) after the execution is complete. The obligation to prioritize payment of execution fees to the execution applicant is predicated on the understanding that execution fees are an integral component of court fees. If the execution fee is the same as the court fee, the provisions of Article 121 paragraph 1 HIR or Article 145 paragraph 4 RBg will fully apply to the payment of the execution fee (by analogy). In this article, it is emphasized that the clerk may only record the lawsuit in the register book if the plaintiff has made the initial payment of court fees. So long as the plaintiff has not paid the clerk-scheduled down payment:

a. Claims may not be recorded in the register of claims (cases) and;
b. At the same time, the lawsuit (case) cannot be tried.

From the provisions of Article 121 paragraph 4 HIR or Article 145 paragraph 4 RBg, the cost of the case must be paid first by the plaintiff. As long as the plaintiff has not paid the court fees, the lawsuit filed may not be registered, and at the same time is prohibited from being tried. Analogy to the provision if this provision is related to execution:

a. Payment of execution fee must be paid in advance by the Execution Applicant (plaintiff);
b. As long as the Execution Applicant (plaintiff) has not paid the execution fee in advance, the execution cannot be carried out (Harahap, 2007).

Based on the preceding explanation, it is common knowledge that implementing a court decision requires a lengthy procedure and significant costs, including warning fees, execution confiscation calls, auction fees, and newspaper announcement costs. This may result in execution delays due to the Petitioner's lack of budget, while the government's budget has not increased or decreased. As a result, this will create legal uncertainty for workers/laborers, who are the weaker party attempting to obtain their rights through execution. Hold a deliberation for workers who are economically optimistic about their right to receive a sum of money from the company, even though the Industrial Relations Court has ruled in their favor. This presents a dilemma for workers/laborers seeking justice before the law, as legal certainty does not necessarily guarantee that their rights will be respected by the entrepreneur/company that lost the case.

4. CONCLUSION

4.1. Conclusion

Based on the findings and discussion, it can be concluded that:

1) The execution of industrial relations court decisions that are legally binding (*inkracht*) is not regulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement, so that the execution of industrial relations court decisions follows the Civil Procedure Code applicable to Courts within the General Courts namely those regulated in the *Herzien Inlandsch Reglement* (HIR) and *Rechtsreglement voor de Buitengewesten* (Rbg). In connection with the execution of the decision of the judge of the industrial relations court which has permanent legal force (*inkracht*), the authority to carry out the execution rests with the Chairperson of the Industrial Relations Court on the basis of a request for execution by the applicant for execution, the Chairperson of the Industrial Relations Court is obliged to give a warning (*aanmaning*) or reprimand to the

respondent for execution so that he is willing to carry out his obligations as ordered by the decision. In the case of carrying out the execution of a court decision, there are several conditions that must be met so that the execution is considered legally valid, namely the mandatory warning (*Aanmaning*), the existence of an execution order and all activities in the process of implementing the execution of the decision are stated in the minutes of execution.

2) The factors that hinder the execution of the Industrial Relations Court Decision which has permanent legal force (*inkracht*) are because there is no good faith on the part of the losing party to carry out their obligations voluntarily as stated in the verdict. In addition, the difficulty of the winning party, in this case the workers, is to find out what company assets can be executed as the losing party, and the next obstacle is related to the execution cost which is too expensive to carry out the execution by submitting an execution request to the court.

4.2. Suggestion

Several suggestions may be taken into account:

1) Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (UUPPHI) still has many shortcomings in its regulation, especially regarding the procedure for carrying out the execution of industrial relations court decisions which have permanent legal force (*inkracht*), UUPPHI should regulate clearly and firmly in the execution of industrial relations court decisions that have permanent legal force (*inkracht*) in order to guarantee legal certainty for workers to seek justice.
2) It is hoped that in the future it will be possible to improve the laws and regulations regarding the settlement of industrial relations disputes in order to accommodate the problems that often arise in industrial relations disputes.
3) It is recommended that the Company as the Defendant or Execution Respondent is willing to carry out the decision voluntarily, so that the execution process of the decision does not have to take further legal action and the Company must obey the court's decision by providing fulfillment of the rights of employees as ordered by the decision.
4) There is a need for strict legal sanctions against companies/entrepreneurs as defendants or defendants for cassation who are not willing to carry out the decision voluntarily since the decision has permanent legal force, with the hope that the judicial process does not reach the level of the execution process.

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SINABANG DISTRICT COURT LAW ENFORCEMENT EFFORTS AGAINST FOUR-WHEEL VEHICLE EMBEZZLEMENT IN SIMEULUE REGENCY

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Abstract

Embezzlement in the Criminal Code is classified as a crime. The embezzlement is contained in Article 372 of the Criminal Code. The focus of this research is on law enforcement in dealing with criminal acts of embezzlement as well as inhibiting factors in law enforcement in handling criminal acts of embezzlement. Based on the results of research and discussion, it shows that law enforcement in handling criminal acts of embezzlement is carried out by means of crime prevention and prevention methods. The prevention approach is carried out through counseling and socialization in order to foster social responsibility for the residents of Simeulue Regency against the crime of embezzling four-wheeled vehicles. Legal counseling is especially carried out in areas prone to crime. The criminal approach is carried out through efforts to enforce the law of the Simeulue district in order to ensure that the perpetrators of the crime of embezzlement are legally processed in order to obtain criminal sanctions and guarantee legal certainty. Factors causing embezzlement of four-wheeled vehicles against law enforcement in handling criminal acts of embezzlement include: criminal sanctions in Article 372 of the Criminal Code that have not provided a deterrent effect, limited law enforcement agencies, limited state special budgets for law enforcement, lack of public awareness of the importance of understanding crime, society becomes a crime.

Keywords: *Law Enforcement, Crime, Four Wheel Embezzlement*

1. INTRODUCTION

In general, the residents of Simeulue Regency desire to own a four-wheeled vehicle, but only a small portion of the community can afford to do so due to inadequate economic factors. Furthermore, the price of a car is extremely high, preventing everyone from owning a four-wheeled vehicle. This is what fosters evil thoughts and the desire to own or embezzle other people's four-wheeled vehicles in order to own a vehicle and pawn it to others, and the money from the embezzled car mortgage is used to purchase private cars so that the perpetrators have their own four-wheeled vehicle.

This automobile embezzlement was committed in a variety of ways, but the majority of instances involved pawning the vehicle. This is keenly felt and has resulted in a significant amount of tensions throughout the community, particularly in the Simeulue Regency. After conducting research utilizing data from the Sinabang District Court, Simeulue Regency, it was determined that there were a number of criminal cases involving the theft of four-wheeled motor vehicles. In 2021, the police reported 18 cases, and in 2022, they reported 8 cases. From 2021 to 2022, it is evident that car embezzlement cases continue to increase. The Sinabang District Court has ruled on thirteen instances of embezzlement from 2021 to 2022.

The crime of embezzlement is governed by the provisions of Article 372 of the Criminal Code, which states: "Anyone who intentionally and against the law claims to be his own property that is wholly or partially belongs to another person but which is under his control is threatened with embezzlement with a maximum sentence of imprisonment of four years or a maximum fine of nine hundred rupiah.

The fact that Indonesia is a nation based on the rule of law necessitates that every citizen's actions and behavior must be in accordance with the state's stipulations and regulations (Tegnan & Isra, 2016). When discussing legal issues, someone will encounter issues pertaining to the social activities of human life in society, which are manifested as a process of interaction and interrelationship between one human and another in social life. The law aims to regulate the relationships between individuals and between individuals and the state so that everything runs smoothly. The purpose of law is to establish peace by establishing legal certainty and justice in society, particularly in the Simeuelue Regency. Legal certainty necessitates the formulation of rules in the law that must be strictly adhered to. Therefore, all Indonesians, and particularly the residents of Simeulue Regency, should hope that the law is enforced and take no sides.

The Unitary State of the Republic of Indonesia is a law-based (*rechtstaat*) and not a power-based (*gewaltstaat*) state (*machtstaat*). The concept of the rule of law is derived from the experience of constitutional democracy in Europe during the nineteenth and twentieth centuries. Consequently, the characteristics of a rule of law are the rule of law, the protection of human rights, and the legality of law (Setiono, 2004). In a state of law, the laws and regulations that culminate in the constitution (the constitution) are an integral part of the legal system and serve as the basis for every power administrator.

A criminal offense is a violation of a predetermined law. Where the determined law is contained within the Criminal Code (hereinafter referred to as KUHP). In the Criminal Code, embezzlement is classified as a crime. Article 372 of the Criminal Code defines embezzlement as follows: "Whoever intentionally and unlawfully owns something that wholly or partially belongs to another person, but is in his control not because of a crime, is liable for embezzlement, with a maximum sentence of four years in prison or a maximum fine of nine hundred rupiah.

According to Yusuf (2014) it is not unanimous among experts that violation of the law is an element of criminal offense. Based on the opinion above, that if in the formulation of an offense there are elements against the law, those elements must be proven, and if they are not formulated, they do not need to be proven. This is the opinion of professionals who adhere to formalized comprehension.

Society-concerned crimes committed by individuals or groups that result in victims to establish legal certainty in a society, all crimes must be prosecuted legally (Hoefnagels, 2013). Every crime or violation can be viewed not only from the perpetrator's perspective, but also from the victim's perspective, as the person who was harmed by the crime.

Based on the background described above, the purpose of the problem in this paper is to find out what efforts are being made to tackle the crime of embezzlement of four-wheeled motorized vehicles in Simeulue Regency and the factors causing the occurrence of car embezzlement crimes in Simeulue Regency.

2. RESEARCH METHOD

This study uses a juridical empirical research method. The research location is at the Sinabang District Court, Simeulue Regency. This method explains about seeing and studying the workings of law in the Simeulue Labuan community as a real meaning, because this is related to the life of the Simeulue Regency community, often referred to as sociological law. The types of data used are secondary and primary data. Data is obtained directly while secondary data is obtained from documents that can be published and are not confidential. This study analyzes the law enforcement by the Sinebang District Court that tried the case, against the perpetrators of four-wheel embezzlement in Simeulue Regency, Aceh Province. The author's intention is to use empirical juridical research methods, namely to understand more deeply about law enforcement against four-wheel embezzlement in Simeulue Regency.

This research was conducted to obtain primary data by conducting interviews with respondents and research informants related to the authority of the duties and functions (Sonata, 2014). Several approaches are used in this research, namely the statute approach, which is carried out by examining all laws and regulations related to the legal issues being handled. Furthermore, the conceptual approach departs from the views and doctrines that develop in the science of law.

3. RESULT AND DISCUSSION

3.1. Law Enforcement Efforts in Handling the Crime of Embezzlement of Four Wheels

The enforcement of the law against the perpetrators of the crime of embezzlement of four-wheeled vehicles can be accomplished through the application of criminal law (*ultimum remidium*). This research done due to the fact that it takes into account the intensity of embezzlement crimes involving vehicles with four wheels. The crime of embezzlement of four-wheeled vehicles almost occurs in all regions of Indonesia, especially in the community of Simeulue Regency; however, this crime occurs more frequently in the community with greater opportunities.

The strict enforcement of the criminal law against the crime of embezzlement of four wheels will make those who commit the crime of embezzlement of other four wheels hesitant to act. Feelings of dread in perpetrators, so that potential perpetrators are dissuaded from committing the crime of embezzlement of four wheels. In the context of law enforcement's evidentiary process, the crime of embezzlement of four wheels is committed against the victim with the intent to control and steal something belonging to the victim.

The perpetrators of the crime of embezzlement of four-wheeled vehicles typically approached the victim directly for a crime, but the evidence of the crime of embezzlement of four-wheeled vehicles was observed from the effect it had. resulting from the commission of the crime of four-wheel theft. Proof of the crime of embezzlement involving four wheels is not centered on the mode, but rather on the elements of the article that must be demonstrated to apprehend the criminals. As outlined in Article 184 of the Criminal Procedure Code, the evidentiary process begins with the examination of witnesses, evidence, expert statements, letters, and instructions as admissible evidence. In the case of embezzlement of four wheels, law enforcement is more concerned with the consequences caused by the perpetrator than with the manner in which he or she commits the crime.

Criminal policy encompasses efforts to enforce laws or policies to prevent and combat the crime of embezzlement of four wheels. This criminal policy is also inseparable from broader policies, namely social policies consisting of policies or efforts for law enforcement and policies or efforts for community protection, particularly the protection of the citizens of Simeulue Regency. Consequently, if the policy of overcoming hypnotic crime (criminal politics) is implemented through the use of penal facilities (criminal law), then the criminal law policy (police action), particularly at the judicial/applicative policy stage (criminal law enforcement), must pay attention to and contribute to the achievement of social policy objectives.

The effect of the crime of embezzling four wheels, which has not been clearly outlined in the Criminal Code but has been felt by the community, particularly the Simeulue community, is the financial loss it causes. In order to uphold justice, the judge must act with courage and self-assurance when deciding how to try him based on the instructions or other evidence presented in the Sinabang District Court.

Regarding criminal law enforcement, the embezzlement of four-wheeled vehicles case is not only about how the law is made, but also about what law enforcement officials do to anticipate and overcome problems in law enforcement (Wiratika, 2020). In order to address problems in the enforcement of criminal law that occur in society, particularly in the Simeulue community, the crime of embezzlement of four wheels is dealt with by applying criminal law or by using preventive and punitive measures. Combating crime is a method or effort to overcome an act that, although it is not specified in the law as a criminal act, is nonetheless defined as an *onrecht*, or illegal act (Adhi & Soponyono, 2021). The purpose of law enforcement should be to harmonize the values or standards of society.

The researcher analyzes that law enforcement is an application of countermeasures in a special sense when addressing embezzlement crimes. As mentioned in point 1 of law enforcement and crime prevention, the penal approach employs the means of criminal law, namely the application of criminal law.

Efforts to enforce the law through the application of formal criminal penalties and criminal penalties imposed by the criminal justice system. To achieve the expected goals, the short-term objective is to resocialize the perpetrators of criminal acts, the medium-term objective is to prevent crime, and the long-term objective is to achieve social welfare, while the article imposed is Article 372 of the Criminal Code, where the perpetrator of the crime of embezzlement of four wheels with a certain mode is punished by imprisonment for a term of four years. For the purpose of enforcing the law in relation to the offense of embezzlement of four wheels, a punitive approach with legal remedies is utilized. The perpetrators of the crime of embezzlement of four wheels are brought before the court and punished in accordance with the applicable legal provisions.

In order to enforce the criminal law against the crime of embezzlement of four wheels, law enforcement efforts can be undertaken. The criminal law, namely criminal sanctions that pose a threat to the perpetrators, is used to enforce crimes. According to the Criminal Code, the application of criminal sanctions is a countermeasure for the enforcement of the law against four-wheel embezzlement. This is the implementation of the Act through a punitive approach, which is carried out by means of legal remedies, beginning with the theft of four wheels.

Regarding legal remedies for the crime of embezzlement of four wheels, law enforcement against perpetrators of criminal acts involving embezzlement of four wheels is primarily based on the Criminal Code. The application of sanctions against criminals is carried out with strictness. Theoretically, the researcher analyzes that law enforcement officers engage in legal efforts against the crime of embezzlement of four wheels, including the field of criminal policy. This criminal policy is also inextricable from broader policies, specifically social policies consisting of policies or efforts for law enforcement and policies or efforts to protect the community, particularly the Simeulue community. Consequently, if the policy of legal action against the crime of embezzlement of four wheels is carried out using the means of criminal law as the implementation of the Criminal Code, then the policy of criminal law, particularly at the stage of judicial/applicative policy enforcement of criminal law, must pay attention to and lead to the achievement of the objectives of the social policy. The explanation of how law enforcement handles embezzlement on a non-punitive and punitive basis is as follows:

1) Effort

The efforts made by the Simeulue Police Precinct to deal with the crime of embezzling rental four-wheeled vehicles can be divided into four, namely looking for the perpetrator, looking for the vehicle that is the object of embezzlement, coordinating with the regional police around Simeulue Regency and assisting the victim in returning the embezzled vehicle.

2) Conducting Investigations

Investigation according to Article 1 paragraph 5 of the Criminal Procedure Code is a series of investigative actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law to seek and collect evidence, which with that evidence makes clear about the crime that occurred in order to find the suspect. After the police conduct an investigation at the crime scene, then proceed with the investigation process. After arresting the perpetrator and the evidence, the investigator conducts an examination to obtain information from the perpetrator of the crime. If the information and valid evidence can be collected, the suspect can be detained. After the examination is completed, the investigator submits the results of the examination to the prosecutor, if the file is complete, the suspect is ready to be tried and sentenced by the Sinabang District Court.

3) Follow-up (surveillance)

Surveillance is to follow someone suspected of being a criminal or other person who can lead to the perpetrator of a crime, find out the activities, habits, environment, or network of criminals.

a) Tracking, namely searching by following the whereabouts of criminals using information technology, collaborating with Interpol, related ministries/institutions/ agencies/agencies.
b) Collecting evidence in connection with the investigation of the case and even trying to recover stolen goods, making arrests and then handing them over to the prosecutor's office who will later forward it to the Sinabang District Court.

4) Investigating Cases

In investigation cases, the Sinabang District Court in Simeulue Regency has the following powers:

a. Handling cases of criminal acts of embezzlement seriously, quickly and carefully.
b. Providing severe penalties/demands in order to have a deterrent effect on perpetrators of criminal acts of embezzlement
c. Examine, hear and decide cases submitted by the Prosecutor
d. Public Prosecutor. Decide in accordance with the evidence and witnesses at the trial, pay attention to mitigating and aggravating reasons and give the fairest decision in order to provide a deterrent effect on the perpetrators of the crime of embezzlement.
e. Restore the rights of victims.

The community plays an active role in assisting law enforcement officers with four-wheel embezzlement crimes, in addition to law enforcement officers themselves. Consequently, based on global criminal politics or crime prevention policies, preventive efforts are prevention efforts prior to the commission of a crime. This is due to the limitations of preventive efforts, so preventive efforts are vital to preventive efforts.

Significant steps have been taken by law enforcement to combat the crime of embezzlement of four wheels, including being more proactive towards the community in preventing and combating this crime. In order to combat four-wheel embezzlement crimes, law enforcement officials have taken significant measures, including:

a) determine law enforcement policy measures such as legal socialization by the Simeulue District Police against the crime of embezzling four-wheeled vehicles.
b) review and determine settlement steps with the main tasks and functions of the Resort Police and the Simeulue District Police in law enforcement in handling the crime of embezzlement of four-wheeled vehicles.
c) coordinating in the socialization and understanding of law enforcement in handling the crime of embezzlement of four wheels, establishing and progressively increasing cooperation with community leaders in Simeulue Regency.

By socializing law enforcement policies and coordinating with a number of community leaders in Simeulue, law enforcement implements countermeasures to combat the crime of embezzlement involving four wheels. Resort Police (Polres) and Sector Police (Polsek) activities in coordination with Simeulue's community leaders constitute a preventive effort (prevention/deterrence/control). The crime of embezzlement of four wheels is inextricably linked to the difficulty of monitoring the activities of social groups.

The meaning of supervision is expansive and carries a positive connotation. In addition, supervision refers to the process of observing all activities conducted in accordance with applicable rules, instructions, and policies. In this instance, law enforcement is conducted proactively and as quickly as possible to ensure that no violations of the applicable legal provisions occur. Considering the facts of four-wheel embezzlement crimes, the monitoring system for community activities that lead to four-wheel embezzlement crimes is still not operating optimally.

The researcher concludes that law enforcement in addressing the crime of embezzlement of four wheels with preventive measures monitors group activities that lead to criminal acts,

but that this is not yet operating optimally due to a number of factors. In the enforcement of criminal law against community activities that lead to the crime of vandalizing vehicles in a preventive manner, there is a strengthening of coordination and operation mechanisms between the relevant agencies. In the context of monitoring the activities of unscrupulous community groups that lead to the crime of embezzlement of four wheels, these agencies will carry out their respective duties and authorities in accordance with the applicable law.

Authoritarian Enforcement Efforts made to combat embezzlement Countermeasures are one of the efforts that can be made to prevent the theft of four-wheeled vehicles. Efforts to circumvent law enforcement in the investigation and prosecution of four-wheel embezzlement crimes are conducted using criminal law, specifically criminal sanctions that pose a threat to the perpetrators. The penal route focuses on repressive actions, such as eradication and crackdown measures, to combat social problems. In Simeulue Regency, social policies include legal policies in response efforts, as well as policies or rational efforts to achieve community welfare.

The imposition of criminal sanctions in the form of imprisonment, such as for the crime of embezzlement of four wheels, is carried out through a judicial process, whereas administrative sanctions can be imposed without a judicial process, although they must adhere to the principles of good governance. On the basis of this description, it is possible to conclude that instances of embezzlement of four wheels are evidence of the importance of government and law enforcement, and that comprehensive law enforcement is required. After the occurrence or existence of a crime, repressive law enforcement action is taken to address the crime of embezzlement involving four wheels. This action can be juridical based on the provisions in Article 372 of the Criminal Code.

Law enforcement of criminal cases of embezzlement is an application by means of countermeasures. The countermeasures approach is an approach using the means of criminal law as mentioned in point 1 of law enforcement and crime mitigation above, namely the application of criminal law. The countermeasures approach is an approach using criminal law means. Penal efforts by applying formal criminal penalties as well as criminal implementation penalties carried out through the criminal justice system. To achieve the expected goal, the goal in the short term is to resocialize (re-popularize) the perpetrator of the criminal act, the medium term is to prevent the occurrence of crime and the long term is the ultimate goal is to achieve social welfare, while the article imposed is Article 372 of the Criminal Code.

Criminal law enforcement efforts against perpetrators of four-wheeled embezzlement crimes are carried out through a countermeasure approach, namely by means of legal remedies. Legal remedies with the penal route focus on repressive actions, namely eradication and crackdown measures to overcome the problem of the criminal act of embezzlement of four-wheeled embezzlement. Legal policies in an effort to enforce criminal laws against the criminal act of embezzlement of four wheels are included in social policies, namely policies or rational efforts in order to achieve community welfare. The imposition of criminal sanctions in the form of imprisonment and fines against perpetrators of embezzlement crimes must be carried out through the judicial trial process, while the imposition of administrative sanctions can be carried out without a judicial trial process although it must pay attention to the principles of proper governance.

In the broadest sense, the whole policy is carried out through legislation and official bodies aimed at upholding the central norms of society Contrary to the description of the theory above, the role of conventional and transnational crime is highly expected by society. Criminal law enforcement, especially in the countermeasures of embezzlement crimes four is an effort to penalize using criminal law means

Legal remedies against criminal embezzlement are the duty and authority of law enforcement. The duties and authorities of the police are in accordance with the provisions of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia Article 13 as follows:

a) Maintain the security and order of society.
b) Enforcing the law.
c) Protecting, nurturing, and serving the community.

The law enforcement that the people of Simeulue district expect is law enforcement who has the quality to solve a case in accordance with the crime committed by the perpetrators of the crime. Quality law enforcement means being able to apply and enforce the laws in the Criminal Code and laws and regulations to ensnare criminals in accordance with the evidentiary process that has been carried out by law enforcement. Law enforcement must have a responsive and fast attitude in handling complaints and reports from the public for the occurrence of criminal acts, hence it will enforce the law properly and perfectly. On the other hand, if law enforcement does not have a professional attitude in terms of a responsive and prompt attitude, hence the rule of law cannot be enforced as it should be.

Unprofessional law enforcement, especially in terms of a less responsive and fast attitude, is one of the factors inhibiting law enforcement in handling the criminal act of embezzlement of four wheels so that there is still a criminal act of embezzlement of four wheels and cannot be handled optimally. Researchers analyzed that unprofessional law enforcement factors can result in law enforcement obstruction in handling the criminal act of embezzlement of four wheels. Law enforcement that is not professional is definitely not able to conduct investigations correctly in accordance with applicable laws, so the law enforcement actually applies articles that are not in accordance with applicable legal rules. Professional law enforcement is always expected by the people of Simeulue district so that they can guarantee legal certainty and provide a sense of comfort to the Simeulue community by applying laws that are in accordance with their criminal acts.

Theoretically, the special function of criminal law in order to provide guarantees of certainty and legal protection is a secondary function of criminal law, namely to keep the ruler in tackling the crime carrying out his duties in accordance with the rules outlined in the criminal law. The researcher analyzed that the lack of implementation of law enforcement in handling embezzlement crimes is caused by the limited number of investigative personnel within the scope of duties that handle the field of crime and violence in terms of law enforcement, investigations, investigations and forced efforts, besides that law enforcement officials are still limited in handling various cases of four-wheeled embezzlement crimes. Furthermore, from the results of the study, it was analyzed that the inhibition of law enforcement in handling the criminal act of embezzlement of four-wheeled was due to the limited personnel of law enforcement who were serious in law enforcement handling the criminal act of embezzlement of four-wheeled embezzlement

3.2. Factors Causing the Occurrence of the Four-wheeled Embezzlement Crime in Simeulue County

a. Economic Factors

The economy is the main factor that causes the perpetrator to commit a criminal act of fattening a four-wheeled motor vehicle (Adi, 2021). The high need for clothing and food, having a lot of debt, social competition and lifestyle are one of the triggers for the emergence of malicious intentions from perpetrators to commit criminal acts. Almost every year the price of basic necessities continues to increase, while the income of each individual is not necessarily able to meet the increase. So that resulted in an excuse for someone to commit a criminal act of embezzlement of a car.

As did the defendant, JK (31 years old), based on a Copy of the District Court's Judgment. Embezzlement of a car committed by the perpetrator is usually not to be owned or used personally, but the car is sold or mortgaged in order to get money in a fast way without thinking about the cause and effect of his actions. One of the perpetrators of the criminal act of car embezzlement, namely AN based on a copy of the District Court's Decision, explained that the reason he committed the crime was because he needed fast money in October 2021. Then the car he took was mortgaged to a person named Rosmaladi in Lubuk Pakam for Rp. 70.500.000, - (going to tens of millions five hundred thousand rupiah).

b. The Factor of Not Knowing the Legal Consequences.

There is still a lack of legal awareness so that there is a high probability of criminal acts (Littlejohn, 2020), especially criminal acts of embezzlement of rental cars. Rental car owners are less vigilant about the threat of embezzlement, and the lack of fear of embezzlement perpetrators of legal threats makes them dare to commit criminal acts of embezzlement. The perpetrators did this because they felt it was reasonable because they had already thickened the car so that way they considered the temporary ownership they had made them entitled to do anything about the leased object.

c. Factors of Utilization of Opportunity

The intended opportunity factor is the opportunity that arises from a gap and also the situations (Clarke, 2012) that allow a person (perpetrator) to commit a criminal act of embezzlement. A simple example of this opportunity utilization factor can be seen in the case of embezzlement of a four-wheeled vehicle carried out by the suspect. Based on a Copy of the Judgment obtained from the District Court in the case the perpetrator was found to have borrowed several times the same vehicle and had not been returned. Although at the time of going to borrow the vehicle for the umpteenth time there was suspicion from the car owner, the perpetrator had managed to embezzle the vehicle and was not returned.

d. Factor Not using driver or off-key system

Basically, the car uses a key-off system. The release of the key referred to here is when the car is remitted not along with the driver provided by the rental party so that it becomes a great opportunity for criminals to embezzle the car. However, seeing the frequent cases of embezzlement of cars, some people have begun to implement a security system

e. Factors of Weak Security System

Although car owners have made preventive efforts by installing a vehicle tracking system on the vehicles they rent out so that they can easily track the whereabouts of the

vehicles rented, not all cars in Simeulue district use it considering the cost required to install the system on all fleets of vehicles they have will cost a lot of money. The above factors were stated by the perpetrator from the results of the investigation carried out by the Simeulue police. According to the police, usually the perpetrators do give such a reason, this is done to lighten their status in the eyes of the law. However, this right does not help because the elements of the criminal act of embezzlement committed by these perpetrators are in accordance with the elements contained in Article 372 of the Criminal Code.

f. Statutory Factors (Legal Substance)

Conceptually, law enforcement in law enforcement of the criminal act of embezzlement is based on the judicial basis of Article 372 of the Criminal Code. The criminal sanctions aim to ensure that the certainty of law, order and legal protection in the current modernization and globalization can be carried out, but these criminal sanctions are still considered very low (Ramadhani, 2021). The very low criminal sanctions have not had a deterrent effect on the perpetrators of the criminal act of embezzlement. One of the factors inhibiting law enforcement in handling the criminal act of embezzlement can be seen from the law that regulates the criminal act of embezzlement, the sanctions are not enough to provide a deterrent effect, namely with the threat of imprisonment for a maximum of four years or a maximum fine of nine hundred rupiah.

The state provides a juridical basis for Article 372 of the Criminal Code for the criminal act of embezzlement, however, the facts that occur on the ground show that the criminal sanctions in the Criminal Code are not sufficient to provide a deterrent effect on law enforcement actors in handling the criminal act of embezzlement, this can be seen from the still occurrence of law enforcement obstacles in handling the criminal act of embezzlement. Obstacles in law enforcement in handling the criminal act of embezzlement can be suppressed if the sanctions given to the perpetrators have a deterrent effect both on the perpetrators and on the wider community indirectly. If the law governing the criminal act of embezzlement itself is not enough to provide a deterrent effect and also the absence of implementing regulations that are urgently needed to implement the law, this will certainly affect the perpetrators of continuously committing criminal acts of embezzlement.

g. Supporting Facilities or Facilities Factor

Law enforcement will take place properly if it is supported by sufficient facilities and facilities used to achieve the goal. Such facilities and facilities include educated and skilled human labor, adequate equipment, sufficient funds and so on. If these things are not met, then law enforcement will find it difficult to achieve its goals perfectly. Some of the obstacles that affect the performance of law enforcement in carrying out their duties in handling cases of four-wheeled embezzlement crimes include:

1) The limited number of law enforcement officers in the field to monitor and anticipate the criminal act of embezzlement of four wheels.
2) Limited operational costs that sometimes have to use personal operating costs.
3) The lack of means that resulted in law enforcement in the handling of the criminal act of embezzlement was carried out not in full and totally.

Law enforcement in handling the criminal act of embezzlement of four-wheeled is less than optimal or can be said to be less able to run due to the absence of adequate facilities or infrastructure (Kaban, 2022), then the limited special operational budget from the state for law enforcement in handling the crime of embezzlement of four-wheeled and the lack of a

special team of supervision and monitoring of law enforcement in handling criminal acts in coordination with related parties who specifically supervise the activities of the perpetrators of the criminal act of embezzlement of four-wheelers (Manullang, 2022). Theoretically, the implementation of the function of criminal law in the context of law enforcement in handling the criminal act of embezzlement of four wheels can be interpreted as a means of overcoming crimes, but the facts on the ground in an effort to realize law enforcement in handling the crime of embezzlement of four wheels experience various obstacles, especially related to factors of facilities or facilities and infrastructure from the government that do not pay much attention to how important the consequences of the criminal act of embezzlement of wheels four.

h. Community Factors

The issue of law enforcement in handling the criminal act of embezzlement of four wheels is a problem that is sometimes ignored (Hutabarat et al., 2022). The public in general does not know the importance of law enforcement in handling the criminal act of embezzlement of four-wheeled, it can be seen that there are still many people in the community who are the perpetrators of the four-wheeled embezzlement crime. Other communities who are reluctant to report to the authorities and are concerned with their family factors that are prioritized, make it difficult for law enforcement to eradicate the perpetrators of these crimes. The low legal awareness of the community makes law enforcement in handling the criminal act of embezzlement.

The basis for all of that is the professionalism of law enforcement officers. Law enforcement is essentially committed to law enforcement in handling the criminal act of embezzlement. In addition to the quality of law enforcement, the substance of the law has not escaped improvement. The substance of the law is a regulation used by legal actors at the time of committing acts and legal relations or in other words includes everything that is the output of a legal system, including in this case legal norms in the form of regulations, decisions, doctrines to the extent that all of them are used in the process concerned.

Obstacles in law enforcement in handling the criminal act of embezzlement of four-wheelers can be partially minimized. Hence, here is a need for an active role, honesty, and accuracy from law enforcement officers. Otherwise, it will only cause legal games or corruption. Success in law enforcement in handling the criminal act of embezzlement of four wheels will certainly bring great progress to the Simeulue community. Based on the weaknesses and problems that exist, in principle, an important aspect to take is to try to realize integrated law enforcement starting from government and law enforcement elements and also involve several related agencies, in law enforcement in handling the criminal act of embezzlement of four wheels.

4. CONCLUSION

Based on the findings and discussion, it can be concluded that law enforcement in handling the criminal act of embezzlement of four-wheeled vehicles is carried out using criminal countermeasures. The countermeasure approach is carried out with counseling, socialization in order to develop the social responsibility of Simeulue community residents aware of the criminal act of embezzlement of four-wheeled vehicles, legal counseling is especially carried out in the Indonesian environment, especially in Simeulue districts which

are prone to crime, handling objects of criminality. The countermeasures approach is carried out by means of legal remedies, namely perpetrators of criminal acts of embezzlement of four-wheeled vehicles are processed by law based on the provisions of laws and regulations up to the court and execution levels in order to obtain criminal sanctions and ensure legal certainty. Meanwhile, the factors causing the criminal act of embezzlement of four-wheeled vehicles are as follows:

1) Efforts to overcome the occurrence of embezzlement of four-wheeled vehicles that are carried out regularly on wheeled vehicles and their papers to ensure that these vehicles are not vehicles obtained from the results of criminal acts, especially theft and embezzlement and conducting continuous legal counseling both to the people in Simeulue district and the Indonesian people as well as to every Indonesian community to be more careful and vigilant in order to reduce the level of embezzlement crimes against four-wheeled vehicles committed by the police, and repressive efforts by conducting investigations and investigations by the police, providing severe penalties/charges in order to cause a deterrent effect on the perpetrators of the criminal act of embezzlement of four-wheeled vehicles by the Sibanang state court and examining, adjudicating and deciding cases filed by the district court.
2) Factors causing the occurrence of criminal acts of embezzlement of four-wheeled vehicles are other economic factors, factors of public legal awareness, factors of utilization of opportunities, factors of not using a driver or off-key system, as well as factors of weak security systems, community factors, statutory factors.

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THE IMPLEMENTATION OF THE NATIONAL DIGITAL SAMSAT (SIGNAL) PROGRAM IN POLDA METRO JAYA JURISDICTION FROM A SYSTEMIC PERSPECTIVE

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Abstract

The focus of this study is to examine the significance of National Digital Samsat (SIGNAL) program implementation in the Metro Jaya Police Jurisdiction, as well as the factors that impede and support the program's execution, and to analyze outcome practices from a systemic perspective in the process its implementation. In this study, the type of data collected suggests that the research approach used was qualitative. This writing of this study uses a descriptive method. This study was performed in the Samsat office in the Polda Metro Jaya, precisely in the Special Capital Area of Jakarta. According to the findings, the digital service of the Polda Metro Jaya SIGNAL program has been functioning as expected. In addition, a number of components, including equipment (computers, etc.), vehicles, and human resources, are capable of supporting the operation of the digital service program SIGNAL Polda Metro Jaya. In addition, the implementation of the SIGNAL service program is hindered by a number of obstacles, including a network issue that prevents the service from being handled out as it must be linked to the network in order to perform services (such as determining the total amount of Motor Vehicle Tax payments), an ineffective communication when carrying out duties, and the ongoing use of broker services by individuals who do not wish to deal with Motor Vehicle Tax payments. The involvement of brokers holds back the creation of clean services that adhere to the regulatory requirements.

Keywords: *Jurisdiction, National Digital Samsat, Polda Metro Jaya, Program Implementation*

1. INTRODUCTION

In the framework of the provision of public services, the government is the leading light who is responsible for making an effort to satisfy the rights of the people (Fitranti, 2014). The provision of public services by the government ought to be in accordance with the goals of ideal governance and ought to reflect the aspirations of the community. Therefore, for the bureaucracy to be professional, aspirational, and highly responsive, so that programs in public services can be integrated and adapted to the community or taxpayers, it is necessary for the government to have an efficient function in the delivery of services. In the end, customers will be satisfied with the services that they have received.

An activity or series of activities meant to address the service demands of every citizen and resident in compliance with the applicable rules and regulations for property, services, and/or administrative services supplied by public service providers are regulated under law No. 25 of 2009. A transformation in the delivery of public services, including the creation of a community-oriented program, is necessary to achieve great government service. It is simply one of a number of government agencies that have come up with new ways to meet the needs of the public.

Government or public institutions are responsible for controlling the payment of car tax (hereinafter referred to as PKB). When considering these public service organizations, the One-Stop Single Administration System (henceforth Samsat) is one of the institutions or public organizations closely related with PKB payment services (Samsat). Samsat means for Manunggal Administration System Under One Head, which is an integrated system of cooperation between the National Police, the Regional Development Planning Agency (Bapedda), and PT. Jasa Raharja. Based on Law No. 22 of 2009 concerning Road Traffic and Transportation, the National Police initiated the National Digital Samsat (SIGNAL) innovation, which is the implementation of e-policing, in order to become a leading sector in registration and identification services for motorized vehicles in Samsat. Everything in the digital world is dependent on gadget or smartphone applications. Information, communication, coordination, and even command control can be managed. Partial manual policing will be judged unprofessional and has a high likelihood of deviating from the norm. Therefore, the E-policing service is a digital era policing model that strives to break down barriers of place and time so that police services can be delivered quickly, precisely, accurately, publicly, accountablely, informatively, and conveniently available (Chrysnanda. D. L, 2019).

The rise in the number of vehicles is commonly assumed as a two-edged sword. It raises the issue of traffic, particularly in the greater Jakarta metropolitan area, which is already congested. Vehicle taxes, on the other hand, are a source of regional revenue (PAD). There are currently more vehicles on the road in DKI Jakarta than ever before. Data from the Directorate of Traffic Polda Metro Jaya shows that the number of motorized vehicles will increase by roughly 50% in 2020, as portrayed in Figure 1.

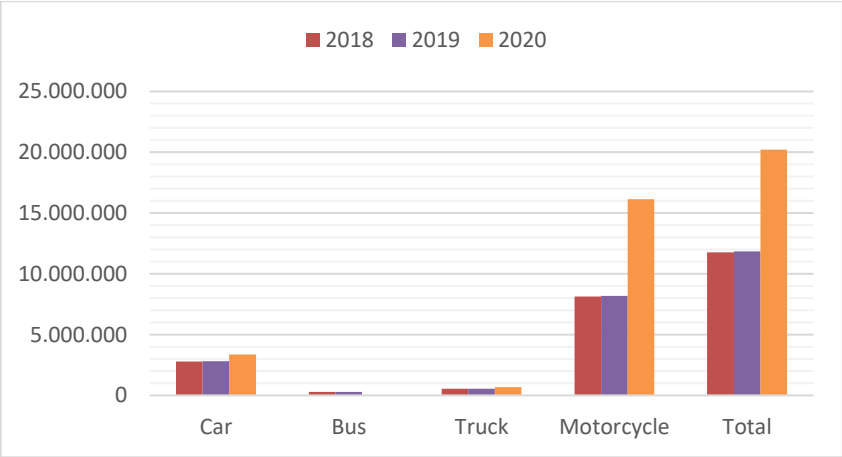

Figure 1 Number of Motorized Vehicles by Type of Vehicle (Unit) in Greater Jakarta Province for 2018-2020 period

As a government agency charged with collecting motor vehicle tax payments, Directorate General of Taxes must enhance its capabilities in order to keep up with the growing demand. The National Police Traffic Corps (Samsat Digital Nasional) is spearheading an endeavor to utilize information technology (Signal). For example, STNK endorsements, motor vehicle tax payments, and donations to the Road Transportation Traffic

Fund (SWDKLLJ) can all be handled digitally through the Signal application, which makes use of police-owned vehicle databases, the Directorate General of Dukcapil kemendagri population master database, and the provincial bapendas' integrated national motor vehicle tax information system (Utomo et al., 2022).

The owner of a motor vehicle's identity can be verified using the Signal system, which compares the driver's face to information on his or her electronic ID card at the Ministry of Home Affairs. The National Police Traffic Corps (korlantas) used the national registration function service application to create the ERI database, which is a database of motorized vehicles. This application has been in place since 2017. Thus, the annual motor vehicle tax payments can be paid anywhere and at any time with this Signal application.

Polda Metro Jaya has implemented this Signal innovation at Samsat headquarters since 10 July 2021. To better understand Polri's policies for speeding up public services for motorized vehicle registration and identification using information technology in the Polda Metro Jaya jurisdiction, the authors are keen to undertake research on the effectiveness of the Signal program. The study was carried out in the Polda Metro Jaya area of Indonesia. All stakeholders in public services must be able to accelerate their services in order to eliminate queues and face-to-face meetings due to a number of serious difficulties, such as the huge increase in the number of motorized vehicles and the COVID-19 pandemic.

This study will shed a light on the significance of National Digital Samsat (SIGNAL) program implementation in the Metro Jaya Police Jurisdiction, as well as the factors that impede and support the program's execution, and to analyze outcome practices from a systemic perspective in the process of implementing the National Digital Samsat (SIGNAL) in the Metro Jaya Police Jurisdiction.

2. LITERATURE REVIEW

2.1. Electronic Policing (E-Policing)

To define electronic policing, think of it as an electronic exchange between law enforcement and the general population. A wide range of police public services, including traffic services, a police records certificate, information about police activities, socialization, and reports of both urgent and non-urgent incidents, can be accessed via the internet (Spicer & Mines, 2002).

As it progresses, the police use technology for a variety of intelligence-related operations and services, including surveillance, traffic management, and the usage of closed-circuit television. Online learning and training, performance management, and performance monitoring have all been implemented in the field of human resources as a result. The use of police information technology includes elements such as e-policing (IT). Computer and network software and hardware are used to share information across police agencies, information and networking among police employees, and authentic data such as AFIS, automatic fingerprint recognition, etc. is transmitted.

It is also necessary to upgrade police hardware and software, create portals and directory services, and create operational databases as part the move toward E-policing. The SSC (safety and security center) implements E-policing in traffic services to assist make the road safer. Safety driving centers, such as ERI (electronic registration and identification) and SDC (safety driving centers), together with intelligence traffic analysis, such as INTAN (intelligence traffic analysis), all contribute to a safer road environment. To facilitate road

safety management, all of this falls under the umbrella of the TMC (traffic management center). Based on clever management, the electronic system is manned by cyber cops. Road safety literacy, coaching, intelligent safety, and an algorithm are all backed by various initiatives.

2.2. National Digital Samsat (SIGNAL)

An application called SIGNAL is a platform for ratifying the Annual STNK, Payment of Motor Vehicle Taxes (PKB), and Payments of Road Transport Traffic Fund Contributions (SWDKLLJ) digitally, using the National Police's motorized vehicle database (ranmor), the existing population master database (Dukcapil), Ministry of Home Affairs, and each Provincia's motor vehicle tax information system (Prasetyowati & Panjawa, 2022).

By comparing the ranmor owner's face to the electronic ID card data at the Ministry of Home Affairs, SIGNAL is able to validate their identity. While this is going on, the National Police Korlantas has been using the national single registration function registration service application that has been in place since 2017 to create the Armor Police database, which has existed since 2014. "Samsat service in one hand, may be done anywhere and anytime (One Stop Service)" is the topic of the signal application. Consequently, the National Digital Samsat (Signal) can be viewed as an application that facilitates the public's ability to safely and securely pay their annual motor vehicle tax.

2.3. Systemic Perspective

Once a system has been identified as a distinct entity in the system, it is not permitted to collapse the system into smaller and smaller subsystems. Instead, the system as a whole must be described. In order to fully describe the behavior of the system, it is necessary to provide a description of the relationships between the pieces as well as any extra information necessary to break the system down into its component parts (NECSI, 2011).

The systems perspective examines a system from the point of view of its entirety, taking into account all of the behaviors of the system in relation to its surroundings. The idea of a system in and of itself is a more general concept that denotes the separation of a portion of the universe from the remaining portions; however, the concept of using a non-reductionist approach to the task of describing the properties of the system in and of itself is the core idea behind the systems perspective (Fernández‐i‐Marín et al., 2020).

Various community activities are currently undergoing transformation as a result of the advancement of digital technology. When it comes to everyday activities, individuals are increasingly relying on digital transactions. Only a smartphone with an internet connection can now do everything from shopping to getting credit and paying electricity bills to getting transportation tickets. STNK may be ratified right now using a program called National Digital Samsat (Signal) (Damayanti, 2022).

In this context, National Digital Samsat (Signal) created in order to make transactions easier and more convenient for car owners, this innovation was created. Because digital applications are in high demand, it is expected that this application will be readily accepted by the broader public.

3. RESEARCH METHOD

This is a qualitative study with a descriptive method. This research was conducted at the Samsat Office in Polda Metro Jaya Jurisdiction, specifically in Greater Jakarta which include: East Jakarta Samsat on Jalan DI Panjaitan Kavling 55 Jatinegara, South Jakarta Samsat on Jalan Jenderal Gatot Subroto Kebayoran Baru, West Jakarta Samsat on Jalan Daan Mogot KM 13 and North Jakarta and Central Jakarta Samsat on Jl. Gunung Sahari No. 13.

The types of data used are secondary and primary data. The data collection technique was carried out by interviews, documentations and literature study. Primary data is obtained directly by means of interviews with taxpayers in the Greater Jakarta area, while secondary data is obtained from relevant documents. Several approaches are used in this research, namely the statute approach, which is carried out by examining all laws and regulations related to the legal issues being handled. Furthermore, the conceptual approach departs from the views and doctrines that develop in the science of law.

4. RESULT AND DISCUSSION

4.1. National Digital Samsat (SIGNAL) program implementation in Polda Metro Jaya Jurisdiction

Since the Polri Traffic Corps has just introduced the National Digital Samsat (SIGNAL) program, the public can now ratify annual STNK, Ranmor Taxes, and SWDKLJ online, eliminating the need to go to the Samsat office. The National Online Samsat or Samolnas application was transformed into the Signal application. Korlantas Polri Kombes Pol Taslim Chairuddin, the head of STNK's sub-directorate, described this Signal app as the "second generation" following the National Online Samsat (henceforth Samolnas). Samolnas' flaws and faults were taken into account when constructing a new model (Krishantoro et al., 2022).

Residents of 15 provinces, including DKI Jakarta, Banten, West Java, Central Java, East Java, Bali, West Nusa Tenggara (NTB), West Sumatra, Riau, Jambi, Bengkulu, the Riau Islands, South Sulawesi, West Sulawesi, and Southeast Sulawesi, can now download and use the Signal app, which was officially launched in August 2021. In addition to working with Mandiri, BNI, BRI, and BTN as banks accepting car tax payments, the police have also partnered with them. With 158 transactions, Jakarta, or the jurisdiction of the Polda Metro Jaya, is the largest of the 15 provinces that have been able to use Signal services(Kristanti, 2022).

It was said by the Polda Metro Jaya Regional Police Chief that in order to provide the best possible traffic services, the department must keep up with technological advancements. As a result, the community is continually concerned about traffic conditions, especially for those who drive. As a result, the Non-Cash National Movement program's service innovations should be more successful and efficient if the community itself takes care of vehicle documentation.

Since it takes so long to process motor vehicle paperwork, the breakthrough in the Non-Cash National Movement (GNNT) has been widely anticipated as a possible solution to the problem of managing these documents. Because of this program's speed and efficiency, he explained, "community services" may now be provided more quickly and effectively. Only

at South Jakarta Samsat is the service being held. The author therefore wishes for similar results in other Samsat, though not throughout the entire country.

The community's satisfaction with this e-Samsat facility will be monitored on a regular basis. In order to use this service, taxpayers no longer have to manually fill out the payment form. Simply type in their car identification number on the touch screen. In addition to JakOne Mobile and Bank DKI debit cards, Bank DKI and other financial institutions provide this e-Samsat service. There are hopes that the community's expectations will be met by this.

A police official in Indonesia's capital Jakarta area (plate B) indicated that motorbikes accounted for the greatest growth in motorized vehicles, followed by cars and four-wheeled vehicles. The number of vehicles on the road will inevitably have an effect on the state of the road. In the long run, congestion will only get worse. As a result, the Metro Police Traffic Division and the DKI Provincial Government are committed to providing cutting-edge services, including the construction of mass transit systems like the MRT and light rail transit (LRT). Residents will be able to use public transportation instead of driving their own cars, which should help relieve congestion (Bapenda Dev, 2018).

4.2. Factors affecting National Digital Samsat (SIGNAL) implementation in Polda Metro Jaya Jurisdiction

1) Inhibiting Factor

Motor vehicle tax is one of the local taxes that has the potential to increase the amount of local tax revenue. Motor vehicle tax collection can be done in various ways and services. One of the ways is through the services of the Polda Metro Jaya which are easily found in several strategic locations. There are several obstacles experienced by the Polda Metro Jaya, the lack of public knowledge about the Polda Metro Jaya program, although there have been efforts to provide information to the community through continuous socialization. Information about the Polda Metro Jaya should also be known by the public through social media, but so far not many have known about this information. Besides that, What has become a complaint from the community is that the STNK procurement process is sometimes complicated, which should make things easier with the Polda Metro Jaya and there is no need to come directly to the Polda Metro Jaya office (Krishantoro et al., 2022). In addition, sometimes there is an overlap of authority between several parties in providing services to the community regarding the procurement of STNK. Even at the Polda Metro Jaya office there are still procurements that use the services of brokers to speed up the existing process.

Although there are efforts that people no longer use the services of brokers in procuring STNK, this is what the authors see when conducting this research. This should not exist, because the bureaucracy must uphold the transparency and efficiency of services. Therefore, for people who want to pay motorized vehicle tax (PKB) or an annual STNK extension should be done at Polda Metro Jaya is here. Polda Metro Jaya is one of the efforts to pick up the ball to predetermined locations. However, the inhibiting factor in the service process carried out by the Polda Metro Jaya is that there are still some people who do not know the schedule for the Polda Metro Jaya to provide services to the community. So that some people still come to process vehicle tax payments at the Polda Metro Jaya office.

As for another obstacle that sometimes arises, which is a network issue which hinder the service process. Furthermore, there is also inhibting factor regarding the lack of officers

at Polda Metro Jaya who have a scientific background in IT. So, when there is a network issue, it will usually take a little longer to fix which leads to interfere with the services of the Polda Metro Jaya to provide services to the community.

2) Supporting Factor

Human resources are an important factor in supporting the smooth working process of organizations such as the Jakarta Metropolitan Police. Therefore, efforts are needed to improve the quality of human resources so that the Polda Metro Jaya management can provide and manage Human Resources properly. The available human resources must have adequate competence to support the implementation of tasks and adhere to the applicable rules. To realize professional human resources, it is necessary to increase competence through training, courses or comparative studies. Polda Metro Jaya management must continuously be able to provide professional human resources.

In terms of the quality of Human Resources at Polda Metro Jaya, the expected conditions are not only intelligence quotient, but also emotional intelligence. Both of these things are needed in human individuals because they are able to improve a person's performance in acting and making decisions. Intelligence can be obtained through formal and informal learning such as general education, vocational courses and education and training. Emotional intelligence is related to attitudes, mentality, and behavior. Polda Metro Jaya as an institution that deals directly with the community requires human resources that balance these emotional abilities and intelligence abilities. Efforts in improving human resources within the Metro Jaya Regional Police, which has been and continues to be pursued is to share experiences carried out by seniors with other members, both in the implementation of the program in general and operating vehicles (Arribe & Aulia, 2022).

One of the component factors of the service process is the facilities and infrastructure. The existence of facilities and infrastructure in providing basic facilities and supporting the service process is the basis for customers to feel satisfied, because the facilities and infrastructure are visible and can be felt before the service process occurs. Polda Metro Jaya already has complete infrastructure so that when the payment is made, the vehicle tax payment receipt is immediately received that less than five minutes for one service.

4.3. The implementation of National Digital Samsat (SIGNAL) program in Polda Metro Jaya Jurisdiction from a systemic perspective

If we adopt a systemic perspective on Signal program, these considerations point to two sets of questions that are of both, academic and practical relevance. First, to what extent do Signal program lead to the outcomes of taxpayers? Are program reforms systematically suppressed or neglected in various areas that are not directly affected by a program? Or put simply: what change is “not” happening because of Signal program implementation?

The implementation of Signal program by Polda Metro Jaya local government can be interpreted as activities on time and within the available budget/target limits, it can also mean achieving a goal and target as planned. However, even though there are activities that deviate from the original plan, but have a beneficial impact on the target beneficiary group, the benefits can be said to be effective. The party that has the most role in achieving the motor vehicle tax target is the Polda Metro Jaya service for taxpayers. According to the findings of the research that was carried out, it was discovered that many members of the community are in favor of the Polda Metro Jaya existing since it is regarded as beneficial both in terms

of the amount of time it takes and the location distance it covers. Despite the fact that there are still some people who are unknown about the Polda Metro Jaya schedule, the schedule has been updated. On the other hand, the presence of services provided by the Polda Metro Jaya is more advantageous for those who work in the morning. In point of fact, the majority of people who live in the city that serves as the capital of Indonesia are employed during the daytime hours.

In the implementation of public services, the program are still faced with conditions that do not match the current service delivery with the needs and changes in various fields of social, national and state life. In line with the perspective of state goals, Law Number 25 of 2009 concerning Public Services has been brought in order. The law states that every state administration institution is a public service provider. Polda Metro Jaya as one of the state administration institutions is obliged to actively contribute in providing excellent public services to the community. This contribution is implemented through the implementation of duties and functions as mandated in the Presidential Regulation and the Law. One of the government agencies that have duties in public services is a government agency in motor vehicle tax services, the government has established a Polda Metro Jaya office. The Polda Metro Jaya administration system was formed to expedite and accelerate the public interest services whose activities are held in one building. Polda Metro Jaya is a public organization that provides services in terms of motor vehicle taxes and motor vehicle transfer fees. Excellent service at the Polda Metro Jaya is regulated in Article 2 of Presidential Regulation Number 5 of 2015 concerning the One-Stop Administration System for motorized vehicles which states that excellent service at the Polda Metro Jaya has the characteristics of an integrated and coordinated service that is fast, precise, transparent, accountable and informative (Aprillia, 2020).

The resources that are available to support the Polda Metro Jaya digital service program are sufficient. This can be observed from the equipment (computers, etc.), vehicles, and human resources that are available. Essentially, at Polda Metro Jaya, the police officers report for duty in the morning, while the employees report for duty at the beginning of the shift and remain on duty throughout the day. In the meantime, the problem that is preventing the Polda Metro Jaya service program from being implemented is a network problem. This causes the service to be unable to be carried out because it needs to be connected to the internet network before it can carry out services such as checking the total amount of PKB payments. Aside from that, there is a lack of coordination when it comes to carrying out the obligation, and some persons are still making use of broker services because they do not wish to deal with PKB payments. The presence of a broker creates a barrier that prevents the establishment of clean services that strictly adhere to the regulations.

5. CONCLUSION

On the basis of the conclusions and the information that was gathered, one can reach the conclusion that the digital service that was implemented as part of the Polda Metro Jaya SIGNAL initiative has been operating successfully. This can be observed from the equipment (computers, etc.), vehicles, and human resources that are available to support the implementation of the digital service program SIGNAL Polda Metro Jaya. In addition, there are a number of variables that support the digital service program SIGNAL Polda Metro Jaya. By then, the implementation of the SIGNAL service program faces a number of

challenges, including a network issue that prevents the service from being carried out (due to the requirement that it be connected to an internet network in order for it to perform services, such as checking how much total payments of Motor Vehicle Tax have been made), a lack of coordination when carrying out tasks, and the fact that saome individuals continue to use broker services because they do not wish to deal with dealing with motor vehicle tax payments. The presence of a broker creates a barrier that prevents the development of clean services that strictly adhere to the regulatory frameworks.

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LAW ENFORCEMENT AGAINST FOREIGN FISHERMEN PERPETRATORS OF ILLEGAL FISHING CRIMES IN INDONESIA

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Abstract

This study aims to analyze the legal provisions regarding the criminal act of illegal fishing in Indonesian laws and regulations and to analyze law enforcement against foreign fishermen who are perpetrators of illegal fishing in Indonesian marine areas. This research is a normative legal research by using the Statute Approach, Conceptual Approach, Comparative Approach and Case Approach. The data analysis method is done by descriptive analytical, which is to describe the results of research with data as complete and detailed as possible in handling illegal fishing crimes in Indonesian marine areas. The results of this study indicate that the legal provisions regarding the criminal act of illegal fishing in Indonesian laws and regulations are regulated in Law Number 45 of 2009 Amendment to Law Number 31 of 2004 concerning Fisheries, where if a suspect foreign citizen (WNA) is arrested, but the state of Indonesia does not yet have an agreement with the country from which the foreigner is from.

Keywords: *Criminal Act, Foreign Fishermen, Illegal Fishing, Law Enforcement*

1. INTRODUCTION

The vulnerability of Indonesian seas to illegal fishing, besides the fact that the sea region contains a large potential for fishery resources, is also due to the geographical position of the Indonesian sea, which is in border seas or nearby to international seas and oceans, resulting in a high vulnerable to the entry of foreign fishermen and illegal fishing (Iswardhana, 2020). Fishermen are people whose livelihood is fishing (Sitohang, 2016). The scope of criminal activities governed by The Constitution article of Indonesia No. 45 of 2009 relating to Fisheries does not include corporate crimes, participation crimes, or criminal omissions. Essentially, the criminal crime of negligence or (omission) is perpetrated by those with authority over the issue of combatting illegal fishing (Gunarto, 2008). The subjects or actors who are specifically governed by the criminal fisheries rules can only be actors who directly engage in illegal fishing or fishing vessels that tranship illegally (Oktoza, 2015). Meanwhile, businesses, government officials, civil servants, TNI/POLRI, and ship owners are only some of the intellectual actors involved in illegal fishing that have been left untouched by the legislation on fisheries crime (Rudiansyah, 2016).

In Indonesia, illegal fishing is hampered by a lack in legal products and a poorly enforced mentality towards law enforcement at sea. On the other hand, with the passage of Law No. 45 of 2009 concerning Fisheries, there is now a chance that laws can be enforced out at sea. In this Fisheries Law, the penalties for illegal fishing are fairly severe. For instance, the legislation requires every fishing vessel to hold a fishing license (refers to

SIPI). The manager and owner of Indonesian-flagged vessels who violate this rule can be condemned to six years in prison and a fine of 2 billion IDR.

To address the issue of illegal fishing, the government must come up with a strategy that includes regional and international cooperation, especially with neighboring countries (Bentham, 1970; Tobing & Rios, 1998). By increasing this role, there are 2 (two) benefits obtained at the same time(Rifai & Nadjib, 2007). The first advantage is that Indonesia can request that other nations impose sanctions on fishing boats that are caught illegally in Indonesian territory. It is possible to minimize attempts by foreign ships that steal fish by enacting a regional anti-illegal fishing policy. For instance, this has been done through the Joint Commission Sub Committee on Fisheries Cooperation between Indonesia, Thailand, and the Philippines to debate fisheries-related issues including the delineation of international borders. This cooperation can also be used to lower MCS operating expenses so that joint operations for VMS can be carried out.

Based on the description above, this study seeks to analyze the legal provisions regarding the criminal act of illegal fishing in Indonesian laws and regulations and to analyze law enforcement against foreign fishermen who are perpetrators of illegal fishing in Indonesia.

2. RESEARCH METHOD

The research used is normative juridical, which puts the law as a building system of norms. The research approach is the Statute Approach, the Conceptual Approach, the Comparative Approach and the Case Approach. The data analysis method as mentioned is descriptive analytical, which is to describe the results of research with data as complete and detailed as possible in handling illegal fishing crimes in Indonesian marine areas.

3. RESULT AND DISCUSSION

3.1. Research Results

The following are examples of instances involving illegal fishing in Indonesian territorial sea:

Table 1 Illegal Fishing Cases in Indonesia

NO	Verdict	Defendant	Decision
1	No 12/Pid.Sus-PRK/ 2020/ PN Tpg.	Do Thanh Nhan	The defendant committed the crime of jointly owning and/or operating a fishing vessel with a foreign flag to catch fish in the Indonesian Exclusive Economic Zone (IEEZ) that does not have a SIPI (Fishing Permit) as referred to in Article 93 Paragraph (2) in conjunction with Article 27 Paragraph (2) Jo Article 102 of Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries Jo Article 55 paragraph (1) to 1 of the Criminal Code"

2	No. 11/Pid.Sus-PRK/2019/PN.Bit.	Warlito Luna Abella	The defendant Warlito Luna Abella has been proven legally and convincingly guilty of committing a crime: "Operating a foreign-flagged fishing vessel in the Indonesian Exclusive Economic Zone (IEEZ), which does not have a Fishing Permit (SIPI)"
3	No. 128/Pid.Sus-PRK/2018/PN.Wno.	Herianto Bin Edi Sujarwanto	The Defendant Herianto Bin Edi Sujarwanto was legally and convincingly proven guilty of committing a criminal act of Arresting Lobster (PANULIRUS SPP), Which Carapace Length Is Below 8 CM Or Weight Below 200 GRAM Per Head By Small Fishermen

3.2. Discussion

3.2.1. Legal provisions regarding the criminal act of illegal fishing in Indonesian laws and regulations

There are several other central government agencies involved in law enforcement activities at sea. These institutions are the Office of the State Minister for the Environment (KLH), Ministry of Transportation (DEPHUB), Directorate General of Immigration-Ministry of Law and Human Rights, Directorate General of Customs-Ministry of Finance, Navy (TNI AL), Indonesian National Police (POLAIRUD). In an effort to improve coordination of surveillance and law enforcement activities in Indonesian marine areas, including the EEZ, a national coordinating agency has been established. The Maritime Security Coordinating Board (BAKORKAMLA) was established based on a Joint Decree (SKB) between the Minister of Defense, Minister of Information, Minister of Justice, and the Attorney General in 1972. Membership of this coordinating body consists of representatives from the Navy, National Police, Customs, Ministry of Justice and Attorney General (Friedman, 2001).

There are several tasks of the marine patrol in relation to law enforcement against the laws and regulations in force in Indonesian territory (Nonet & Selznick, 2017). There are at least two tasks assigned to the marine patrol task force within the coastal or territorial areas of Indonesia. The first task of marine patrols is monitoring, supervising, and reconnaissance/observation of activities such as criminal acts committed by illegal fishing vessels by foreign fishermen.

The next task carried out by POLAIRUD for coastal areas is monitoring, supervision, and reconnaissance/observation for conservation and protection of marine biodiversity. In addition to this, marine patrols are also carried out in the Indonesian Exclusive Economic Zone (IEEZ), and sea that bordering neighboring countries. This patrol aims to maintain national sovereignty and control other prohibited activities, such as smuggling, piracy, illegal fishing activities.

In the territorial sea, the jurisdiction of that state applies and each state has jurisdiction over crimes committed in its territory or territory. However, there are also certain exceptions in its implementation, so that this principle is applied based on developments and needs in addressing strategic issues both globally, regionally and nationally. Discussing the existence

of legal regulations, means also discussing the existence of a legal regulation in its implementation in the community. Implementation here means how the regulation can be implemented according to its original designation and can solve the problems regulated in it and can also provide protection in the future so that related problems do not occur again.

The existence of legal regulations regarding the protection of the sea from illegal fishing by foreign fishermen specially made by the government or other legal regulations issued by the central government that apply in the Indonesian territorial sea can be said to be quite good, but their implementation has not been proven. This is because there are no cases that can be resolved by these legal regulations, this is because there have been no cases of marine pollution originating from shipping activities that have occurred. Hence, the legal regulations against these crimes are very detailed and can protect the Indonesian marine areas in general.

Indonesian territorial sea, which can be said to be quite wide, hence should receive more attention from all elements of society, especially from the government. This is also due to the fact that as a country whose marine wealth is very large, it must be an example for other countries in protecting marine areas from various sources of pollution and criminal acts, as well as ensuring the security of shipping traffic. For the Indonesian continental shelf, it includes the seabed and the land carrying water outside the territorial seas of the Republic of Indonesia as regulated in Law Number 4/Prp/1960, namely the area beyond 12 nautical miles with a depth of up to 200 meters or more where still may be held exploration and exploitation of natural resources.

1) Increase Indonesia's area of approximately 1.5 million square miles.
2) Increasing the intensification of preventive and repressive surveillance of marine areas against territorial violations in the sense of theft of the products of living natural resources, especially fish and abuse of the concessions granted
3) Striving to get an expansion of capabilities in supporting the natural potential that must be cultivated and balanced with the situation.
4) Strive to prevent activities that cause marine pollution and even affect marine ecosystems.

The authority over the environmental area here does not mean that the region legalizes aspects of environmental destruction and exploits all natural resources for the sake of increasing regional original income. But it also has the authority to preserve the environment in order to maintain the current natural resources that can still be enjoyed by the next generation. The issue of authority over Indonesia's territorial sea is very complicated, because in addition to its authority, it is also owned by several parties and is still under the authority of various parties. However, the authority in the field of pollution is still the authority of the environmental agency (BLH). The issue of authority over marine areas in Indonesia is very complicated, because in addition to the authority is also owned by several parties and is still the authority of the province. However, the authority in the field of pollution is still the authority of the environmental agency (BLH).(Situmorang, 1987).

Realizing its shortcomings, the National Police Headquarters POLAIRUD should have collaborated from the beginning with several related parties. Because this marine security issue is a problem that is difficult to detect, apart from being located in a marine area and requires experts in this field to handle marine problems. The authority of the POLAIRUD at

the National Police Headquarters is very strong because it is supported by the police law and other regulations under it.

3.2.2. Law enforcement against foreign fishermen who are perpetrators of illegal fishing in Indonesian marine areas

Law enforcement at sea by the state through its apparatus is essentially the implementation of the enforcement of sovereignty itself because the authority and ability to implement law enforcement is basically based on state sovereignty and is at the same time an embodiment of sovereignty (Sondakh, 2004). In the implementation of law enforcement at sea, it is distinguished between law enforcement functions relating to certain crimes at sea, and law enforcement functions relating to general crimes that occur at sea (Sondakh, 2004). The implementation of law enforcement at sea related to certain criminal acts listed in certain laws and regulations is a special provision of criminal procedural law (lex specialis) (Sondakh, 2004).

Referring to this provision, it can be concluded that in relation to the function of law enforcement in handling general crimes (which are listed in the Criminal Code) that occur at sea, law enforcement officers at sea have the authority to act as initial investigators which will then be resolved in relation to law enforcement functions. In the handling of certain criminal acts, including certain articles in the Criminal Code, law enforcement officers for general crimes have the authority to act as initial investigators, which are then completed by law enforcement officers at sea who have the authority in accordance with certain laws and regulations.

Judging from the field of activity, the implementation of law enforcement at sea can be divided sequentially, namely the police field and the judicial field (investigation). In the field of police, day-to-day sea operations (sea security) are carried out through controlling/supervising the compliance with national laws and regulations. If in the sea operation a violation of national law is found, the case is resolved through an investigation which is an activity in the judicial sector. In a judicial sense, law enforcement is defined as a process of activity in resolving a case that arises as a result of a violation at sea of applicable legal provisions, both international law and national law.

Based on the above understanding, the implementation of law enforcement at sea are activities that include supervision, termination of ships including boarding and inspection (investigation and inspection), and investigation if there is a criminal act, while further settlement is carried out on land (Sulaiman, 2013). The ability of law enforcement officers at sea in various government agencies, especially in understanding the relevant laws and regulations, is stated to be quite adequate, because each agency has increased the ability of its law enforcement officers who are tasked with enforcing the law at sea.

Facts were found in Decision No. 12/Pid.Sus-PRK/2020/PN Tpg which was carried out by the defendant Do Thanh Nhan, a Vietnamese citizen in the Natuna sea, which is the Fisheries Management Area of the Republic of Indonesia by using fishing gear in the form of a trawler drawn. using 1 (one) ship (single trawler). Trawl nets are a type of active fishing gear that is pulled by one ship because there are fishing gear on board in the form of nets, winches, towing ropes whose function is to pull nets.

In principle, nets that form pockets, which are used to catch schools of fish in the middle and at the bottom of the sea, the upper part of the mouth of the net is equipped with buoys

and other ballast, the bottom of the net (Ground Rope) uses an iron chain as a shock and ballast, so that the existing fish at the bottom will be surprised and swim into the mouth of the net when the net is pulled by the ship, the net is lowered into the sea the tow rope is held for a moment while the ship is moving slowly so that both sides of the net wing open, then the main tow rope is slowly stretched to a certain depth. After the appropriate depth the ship moves at full speed which is about 2-3 miles at the time of pulling the trawl net. The role of the defendant is in charge of driving the ship, determining the location of the catch,

The defendant has been indicted by the Public Prosecutor with an alternative indictment, so that the Panel of Judges by taking into account the legal facts mentioned above directly chooses an alternative charge to choose the first indictment as regulated and is threatened with a criminal offense Article 93 paragraph (2) Jo Article 27 paragraph (2) Jo Article 102 of Indonesian Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code, which contains the following elements:

1) Each person
2) Those who own and/or operate foreign-flagged fishing vessels.
3) Doing fishing
4) In the Fisheries Management Area of the Republic of Indonesia
5) Does not have a Fishing Permit (SIPI).
6) Those who commit, order to do, and who participate in committing criminal acts

Based on the facts at the trial, the Panel of Judges decided that the defendant was sentenced to a fine of 200.000.000 IDR (two hundred million rupiah) as referred to in Article 93 paragraph (2) in conjunction with Article 27 paragraph (2) in conjunction with Article 102 of Law No.45 of 2009 concerning Amendments to Law No.31 of 2004 concerning Fisheries. Article 55 paragraph (1) to 1 of the Criminal Code.

The results of the next study are in Decision No. PN No. 11/Pid.Sus-PRK/2019/PN.Bit with the defendant named Warlito Luna Abella, a citizen of the Philippines. The defendant along with the crew (ABK) witnesses ERWIN Bertolme Sumaday and Monching Luna Abella and Matronilio Abella used the M/BCA ship. AIRA departed from Saeg Calumpang Philippines to Indonesian marine areas by traveling for 2 (two) days and 1 (one) night and arriving at FADs on Monday, August 19, 2019 at 10:00 WITA, then the defendant Warlito Luna Abela together with witnesses Erwin Bertolme Sumaday and Monching Luna Abella and Matronilio Abella immediately carried out activities fishery business by catching fish for 2 (two) days using handline fishing gear, and managed to get 1 (one) tuna. In the suspicion of carrying out such fishing or fishing activities, the M/BCA vessel. AIRA does not have a Fisheries Business License (SIUP) a licensing document from the Indonesian government to carry out fishing or fishing activities in Indonesian marine areas, so the ship is escorted to the Bitung PSDKP base dock for further processing. The Panel of Judges will consider the elements of the second indictment in Article 93 paragraph (2), in conjunction with Article 102 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries as follows: so the ship was escorted to the Bitung PSDKP base dock for further processing. The Panel of Judges will consider the elements of the second indictment in Article 93 paragraph (2), in conjunction with Article 102 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries as

follows: so that the ship was escorted to the Bitung PSDKP base dock for further processing. The Panel of Judges will consider the elements of the second indictment in Article 93 paragraph (2), in conjunction with Article 102 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries as follows:

1) The "Everyone" Element
2) The element of "owning and/or operating fishing vessels with foreign flags catching fish in the Indonesian Exclusive Economic Zone (IEEZ)"
3) Element "does not have a Fishing Permit (SIPI)"

Based on the facts in the trial, the Panel of Judges decided the defendant with a fine of 400.000.000 IDR (four hundred million rupiah) Subsidiary of 10 (ten) months in prison as referred to in Article 93 paragraph (2) in conjunction with Article 27 paragraph (2) jo. Article 102 of Law of the Republic of Indonesia No. 45 of 2009 concerning Amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries.

The results of further research are contained in the District Court Decision No. 128/Pid.Sus-PRK/2018/PN.Wno with the defendant Herianto Bin Edi Sujarwanto an Indonesian citizen. The defendant, who is a fisherman, came and looked for fish in the waters using a lobster catching net, and after catching 64 lobsters with a carapace size of under 8 cm and a weight of under 200 grams, the defendant put them in a cardboard box and planned to sell them to collectors at Timang Beach, Gunung Kidul.

On the way to Timang Beach, the defendant who was riding a black Kawazaki Ninja motorbike with a number plat of B-3071-SCD while crossing the road in Banagung Hamlet, Tileng Village, Girisubo District, Gunung Kidul, was stopped by the Yogyakarta Marine Police officer, witness Anton Sujarwo, S.H. and witness Sulismianto who are investigating the crime of illegal fishing and suspect that the defendant is carrying lobsters that weigh less than 200 grams.

The officers then measured the length of the carapace and weighed the lobster's weight, and it was later discovered that the 64 lobsters that were brought by the defendant had a carapace length of under 8 cm and a weight of under 200 grams, so the officers then secured the defendant and the evidence. Article 2 Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 56/PERMEN-KP/2016 concerning the prohibition of catching and/or releasing lobsters (*Panulirus spp*), crabs (*Scylla spp*) and crabs (*portunus spp*) from the territory of the Republic of Indonesia, catching and/or release of Lobster (*Panulirus spp*), in accordance with the Harmonized System Code 0306.21.10.00 or 0306.21.20.00,

The defendant has been indicted by the Public Prosecutor with a single charge of violating Article 100 C Jo Article 7 paragraph (2) letter j of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries in conjunction with Article 2 letter b of the Regulation of the Minister of Marine Affairs and Fisheries RI Number 56/PERMEN-KP/2016 concerning Prohibition of Catching and/or Releasing Lobster (*Panulirus spp*), Crab (*Scylla spp*) and Crab (*portunus spp*) from the Territory of the Republic of Indonesia with the following elements:

1) Everyone's Element
2) Elements conducting business and/or fishery management activities must comply with the provisions as referred to in paragraph (1) regarding the minimum size or weight of fish species that may be caught.
3) The element of catching and/or releasing Lobster (*Panulirus spp*), with the Harmonized System Code 0306.21.10.00 or 0306.21.20.00, from the territory of the Republic of Indonesia can only be carried out with a carapace length of more than 8 cm or a weight of over 200 grams per head.
4) Small-scale Fisherman Element

Based on the facts in the trial, the Panel of Judges sentenced the defendant to a fine of 1.000.000,00 IDR (one million rupiah), Subsidiary 3 (three) months in prison as referred to in Article 100 C in conjunction with Article 7 paragraph (2) letter j of Law Number 45 Year 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries in conjunction with Article 2 letter b of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 56/PERMEN-KP/2016 concerning the Prohibition of Catching and/or Releasing Lobster (*Panulirus spp*), Crab (*Scylla spp*) and crabs (*portunus spp*) from the sea territory of the Republic of Indonesia.

In 3 (three) decisions with 2 defendants foreign nationals and 1 decision with defendants being Indonesian citizens, it was revealed from the results of the study that it was contained in PN Decision No. 12/Pid.Sus-PRK/2020/PN Tpg committed by defendant Do Thanh Nhan, a Vietnamese citizen, was sentenced to a fine of 200.000.000 IDR (two hundred million rupiah) as referred to in Article 93 paragraph (2) in conjunction with Article 27 paragraph (2) in conjunction with Article 102 of Law No.45 of 2009 concerning Amendments to Law No.31 of 2004 concerning Fisheries. Article 55 paragraph (1) to 1 of the Criminal Code.

In the District Court Decision No. 11/Pid.Sus-PRK/2019/PN.Bit with the defendant Warlito Luna Abella, a Filipino citizen, he was sentenced to a fine of 400.000.000 IDR - (four hundred million rupiah). The next case in the District Court Decision No. 128/Pid.Sus-PRK/2018/PN.Wno with the defendant Herianto Bin Edi Sujarwanto, an Indonesian citizen, was sentenced to a fine of 1.000.000,00 IDR (one million rupiah).

From some of the cases mentioned above, it can be analyzed that law enforcement against Illegal Fishing in Indonesia has not firmly regulated the application of criminal sanctions. In this case, only fines (administration) were imposed on the perpetrators, especially foreign fishermen who entered the territory of the Republic of Indonesia, whose actions violated the provisions of the integrity zone in Indonesia and the criminal sanctions should also be heavier than Illegal Fishing with the defendant being an Indonesian citizen.

Associated with the theory of law enforcement by Soerjono Soekanto who asserts that the factors that influence law enforcement include:

1) The legal factor itself

   These factors include the product of legislation which according to Soerjono Soekanto is a disturbance to law enforcement originating from the legislation, there may be three things, namely:

   a) Not following the principles of enactment of the law
   b) There are no implementing regulations that are urgently needed to implement the Law

c) The ambiguity of the meaning of words in the Act results in confusion in their interpretation.

As the author has described above, there are several Articles that have obstacles in their application, namely:

a) As Article 101 of the Fisheries Law, although corporations are recognized as perpetrators of criminal acts, corporations cannot be held criminally responsible. As a result, only the perpetrators of fisheries crimes in the field will be punished. Thus, so that corporations can be convicted of committing a fishery crime, the formulation of this Article 101 must be changed;
b) Article 102 of the Fisheries Law, law enforcers cannot impose corporal punishment for foreign fishermen, who commit fisheries crimes in the Indonesian Exclusive Economic Zone (IEEZ), unless there is an agreement with the State. Of course, as long as there is no agreement with the said State, the implementation of this Article can weaken law enforcement against fisheries crime. While judging from the perpetrators of fishing in the Indonesian Exclusive Economic Zone (IEEZ) of West Kalimantan, the majority are Vietnamese citizens who until this research was carried out there was no MoU with the Government of the Republic of Indonesia in the field of fisheries.
c) Likewise, with the court mechanism in absentia as mandated in Article 72 of the Fisheries Law, clearer regulations are needed to regulate it. Therefore, if there are various problems in the product of legislation, it is better to make changes in the material of the legislation. Or a regulation is made as the implementation of the articles in the law.

2) Law enforcement factors

These factors are the parties that form and apply the law. From the description that the author stated above, the policy of leadership in the Prosecutor's Office as one of the sub-systems in the criminal justice system, so that the fisheries crime case, the plan for which the lawsuit is submitted to the Attorney General's Office, turns out to make case handling becomes less efficient. Moreover, the time limit for resolving fisheries crime cases is only 30 days. Although the policy of conveying the sequence will still be used, an efficient system should be made.

3) Factors of facilities or facilities that support law enforcement

Another obstacle that the author describes based on the results of his research, namely regarding the storage of evidence in the form of ships. The Public Prosecutor did not have the means to store the ship, so the ship was finally entrusted to the navy at the port. The custody of the ship, of course, requires significant maintenance costs so that the ship remains in good condition. So that it can be useful if it is auctioned.

4) Community factors

The factor is the environment in which the law applies or is applied. Communities can influence law enforcement through their opinions about the law. If they do not realize that disobedience to the law affects their lives, their disobedience continues. On the other hand, the community can also react to the

violations committed by their fellow Indonesians. Even so, Indonesian people still lack the level of awareness about the importance of conserving natural resources. They always assume that the fish in the sea will never run out.

5) Cultural factors.

People still lack awareness of nature conservation, lack of awareness to preserve nature is something that is believed by the community so that it is internalized into the community. For this reason, it is necessary to change the opinion that is believed by this community so that it can turn into a culture that loves the environment and has a high awareness of preserving its natural wealth and protecting it from interference from various parties both from within the country and from foreigners.

Regarding the above-described analysis of the development of fisheries crime, the absence of coordination and oversight in law enforcement, as well as the lack of integration between investigators' work mechanisms, would not achieve positive outcomes. Such circumstances have the potential to result in conflict between law enforcers, which could impede or complicate the process of enforcing the legislation against unlawful fishing. Even though there are regulations governing illegal fishing, still other citizens believe that government enforcement against it is relatively weak or ineffective.

4. CONCLUSION

The legal provisions regarding the criminal act of illegal fishing in Indonesian laws and regulations are governed by Law Number 45 of 2009 Amendments to Law Number 31 of 2004 Concerning Fisheries, which states that if a suspected foreign citizen (foreigner) is arrested, but the Indonesian state does not have an agreement with the foreigner's country, the suspect cannot be detained, including during the investigation process and as clarified in Article 73 of Law Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (UNCLOS) concerning the Law of the Sea that it is not permissible for the regulation of the coastal state to carry out prison sentences or corporal punishment to foreign fishermen.

Law enforcement against foreign fishermen who are perpetrators of illegal fishing in Indonesian marine areas is by coordinating with other institutions such as the Navy, Bakamla, KPLP and so on to supervise illegal fishing crimes committed by foreign fishermen in Indonesian territory. POLAIRUD carries out joint patrols (PATKOR), implementation of the Letter of Operation Eligibility (SLO) for ships, inspects fishing vessel licensing documents, optimizes the implementation of MCS (Monitoring, Controlling, Surveillancea) in supervision by improving supervision facilities and infrastructure, as well as carrying out data collection on marine resources.

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COVERS OF MUSIC AND SONGS WITHOUT NO LICENSE AGREEMENT OF THE CREATOR AND COPYRIGHT HOLDER CARRIED OUT BY CORPORATE AND INDIVIDUAL BLACK YOUTUBERS ON THE YOUTUBE CHANNEL

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Abstract

Criminal acts such piracy, copying, covering, distributing, and arranging musical works that belong to copyright holders, associated rights holders, and performers without a license or permission cannot be dealt with solely by illegal law enforcement under the Copyright Law. Furthermore, violators of piracy, song covers, music rearrangements without the consent of the copyright owners, associated rights, and performers shall face criminal penalties under Copyright Law No. 28 of 2014. This socio-legal research method study is a study that "integrates" doctrinal studies with social studies. In this study, using the postpositivism paradigm as the foundation of reality based on experience. To provide a sense of justice and legal certainty for copyright holders, connected rights, and future performers, the author's conclusions and recommendations are that the criminal provisions in Law No. 28 of 2014 respecting Copyrights that face juridical challenges should be reformulated. Besides, in the transition phase to the application of criminal sanctions provisions in the copyright law, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Corruption as a legal subject in terms of Non-Tax State Revenue (PNBP) and Law No. 28 of 2007 concerning General Provisions on Tax Procedures, the legal subject can be seen from the non-payment of license taxes to the state treasury as state income.

Keywords: *Music and Song Cover, License, Copyright, Piracy*

1. INTRODUCTION

Copyright is an intangible movable object, where copyright can be transferred economic rights through a written license agreement (Prabowo & Inayah, 2020). Since copyright is a form of intangible movable object and can be used as an object of fiduciary guarantee, hence legally copyright is an intangible movable object that is the property of the creator privately or personally and the copyright holder (Cahayani & Magna, 2021; Lelomali & Irianto, 2020). Therefore, it can be said that if someone else uses the creation belonging to the creator and the copyright holder is used by a third party for commercial or non-commercial purposes that is announced and communicated to the public through electronic systems without permission, it can be said to be a criminal act of copyright infringement or theft of "theft". "Intangible movable objects belonging to the creator violate religious norms, moral norms, norms of courtesy and positive legal norms (Ulinnuha, 2017).

Article 55 Paragraphs (1,2,3 and 4) of Law No. 28 of 2014 concerning Copyright, where based on the results of the verification of the Minister of Law and Human Rights of the Republic of Indonesia, the Directorate General of Intellectual Property (refers to DJKI), and

the Ministry of Communication and Information Technology of the Republic of Indonesia may impose sanctions on the closure of all copyright content infringement so that the electronic system cannot be accessed. The act of theft or "theft" intentionally or unintentionally is still punishable by a criminal offence. It cannot be used as an excuse for third parties not to know copyright law, because society is bound by the fictional principle of presumption *iures de iure* law (everyone knows the law) as regulated in Article 81 of Law No. 12 of 2011 concerning the Establishment of Legislation (Hamzah, 1986). Criminal law enforcement in the Copyright Law cannot stand alone in dealing with criminal acts of criminal offenses covering songs and music, distributing, arranging music products and songs belonging to creators, copyright holders, related rights and performers without a license/permission will get four criminal sanctions, namely copyright crimes, corruption crimes, tax crimes and/or civil compensation penalties (Eddy, 2009). The author gives the name of the stigma against the perpetrators of the criminal act of violating the cover of songs and music that there is no license (does not have a license agreement) as corporate and individual black youtubers (corporate and individual black youtubers).

In addition, offenders of piracy, song covers, and music rearrangements without the consent of the copyright holder, associated rights, and performers shall face criminal penalties as outlined in Article 113 of Law No. 28 of 2014 on Copyright. Paragraph (1) "Whoever illegally infringes the economic rights specified in Article 9 is liable. Paragraph (2) Anyone who violates the economic rights of the creator as outlined in Article 9 paragraph (1) letter c; translation of creation, letter d; adapting, arranging, or transforming the work, letter f; creation show, and/or letter h; communication of creation for commercial use without the rights and/or permission of the creator or copyright holder shall be punished with imprisonment for a maximum of 3 (three) years and/or a maximum fine of Rp500 (five hundred million rupiah). Any person who violates the economic rights of the Author as outlined in Article 9 paragraph (1) letter a: publishing of work, letter b: duplication of creation in all its forms, letter e: distribution of works or copies thereof, and/or letter g: announcement of a work for Commercial Use shall be punished with a maximum prison term of four years and/or a maximum fine of one million rupiah (one billion rupiah). Paragraph (4), "Anyone who satisfies the components as referred to in paragraph (3) which is committed in the form of piracy, will be penalized with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp. 4.000.000.000.00 (four billion rupiah).

In this research, there are two primary issues: First, there is a deficiency in the execution of the imposition of criminal punishments in the copyright legislation due to a lack of attention to legal difficulties in the drafting of criminal law provisions (penal policy). The second problem is that there must be an understanding among copyright holders, related rights holders, and performers regarding the operation of law enforcement using other laws outside of relevant copyright laws, such as corruption and tax crime laws, in an effort to protect law and legal certainty. This socio-legal research method study "integrates" doctrinal studies with social studies, based on the assumption that the rule of law never operates in a vacuum against future criminal actions of song and music copyright infringement in Indonesia.

In this study, in accordance with the postpositivism paradigm, which is the experiential foundation of reality, the researchers' observations of the object of study are neutral. To provide a feeling of justice and legal certainty for copyright holders, associated rights, and

future performers, according to the author's findings and recommendations, it is important to reformulate the problematic criminal provisions in Law No. 28 of 2014 concerning Copyrights. In addition to referring to Article 94 of Law No. 28 of 2014 concerning Copyright as the execution of Article 94, the author concludes that Law No. 31 of 1999 is very significant to the transitional period leading to the application of the criminal penalties provisions in the copyright law. Law No. 20 of 2001 concerning Corruption as a legal subject from the side of the Non-Tax State Revenue (hereafter referred to as PNBP) Law on PNBP, and Law No. 28 of 2007 concerning General Provisions on Tax Procedures, the legal object from the side of not paying the registration fee license agreement as Non-Tax. State Revenue to the state treasury according to Article 94, by perpetrators of criminal acts of copyright infringement across the globe pursuant to Article 2 letters b and c, numbers 1 and 2, of Law No. 28 of 2014 concerning Copyright and Compensation for Unlawful Acts Civil (PMH).

2. RESEARCH METHOD

This research method study utilizing a socio-legal strategy is a study that "combines" doctrinal studies with social studies. This integration is founded on the assumption that the rule of law never operates in a vacuum against the future criminal actions of song and music copyright theft in Indonesia. In the current investigation, the postpositivism paradigm, which is the foundation of reality that is founded on experience, ensures that the researchers' observations are objective with regard to the topic of the investigation.

3. RESULT AND DISCUSSION

3.1. State Loss Value

The potential royalty value of songs from Indonesia that are played at entertainment venues abroad could reach Rp 3-4 trillion starting from August 2021. The Office of the Ministry of Law and Human Rights of the Directorate General of Intellectual Property of Indonesia Freddy Harris said Indonesia had not been able to withdraw it. because it collided with song and music data. The management of the collection of royalties based in Hong Kong refused to disburse because it did not want to fall to parties who were not entitled to it, since our Indonesian musicians have no data. Therefore, the Ministry of Law and Human Rights issued Government Regulation Number 56 of 2021, one of which emphasized the obligation to create a music data center. The credibility of the management of the National Collective Management Institute is questioned by Indonesian performers and by the government. As a result, Indonesian musicians do not have music data through the National Collective Management Institute. Thus, the state finally tried to step in to help them by preparing a budget of Rp 100 - 200 billion. In order to avoid mutual tug of war between LMKN institutions, for the next few years the government will control such in Singapore. The economic calculation is that the state spent Rp. 200 billion to attract foreign exchange of Rp. 3 trillion, and perhaps the current value is Rp 4 trillion. However, the state does not take any profit from this case.

The implementation of the digital service system at the Directorate General of Intellectual Property has succeeded in reducing the chance of corruption by up to 99%. Therefore, during the pandemic, the performance of the institution he leads is actually more

productive, so that the achievement of Non-Tax State Income is actually higher than the target. In 2017, the Indonesian Recording Industry Association released the loss of performers and the state due to copyright piracy related to royalties reaching Rp 17,5 trillion. The loss of the music industry as a result of physical piracy of songs and music is Rp 3,5 trillion, digital piracy is Rp 14 trillion. Meanwhile, state losses in the non-tax state revenue sector in physical piracy, state losses of Rp 450 billion and digital piracy of Rp 1,4 billion.

3.2. CL Regulations in Indonesia

Illegal law enforcement under the Copyright Law cannot stand alone in dealing with criminal conduct such as piracy, copying, covering, distributing, and arranging music items and songs belonging to copyright holders, associated rights, and performers without a license/permission. Article 99 describes the civil punishments that may be imposed. (1) Authors, Copyright Holders, or Related Rights owners may submit a claim for compensation with the Commercial Court for infringement of Copyright or Related Rights items. (2) The demand for compensation referred to in paragraph (1) may take the form of a request to relinquish all or a portion of the money earned by hosting lectures, scientific meetings, performances, or exhibits of works resulting from copyright infringement or Related Rights goods. In addition to the litigation referred to in paragraph (1), the Author, Copyright Holder, or Related Rights owner may seek a provisional decision or an interlocutory decision to the Commercial Court to: (a) request the seizure of the Works for which an Announcement or Reproduction is made, and/or the Reproduction tool used to make Works resulting from Copyright infringement and Related Rights goods; and/or (b) cease Announcement, Distribution, Censorship, or Censorship (a) request the confiscation of the Works by Announcement or Reproduction, as well as the Reproduction tools used to create the Works as a result of Copyright infringement and Related Rights products; and/or (b) cease Announcement, Distribution, Communication, and/or Reproduction activities as a result of Copyright infringement and Related Rights products (Makawimbang, 2014).

Furthermore, criminal consequences will be imposed on offenders of piracy, song covers, music re-arrangements without the authorization of the copyright holder, associated rights, and performers, as specified in Article 113. (1) Paragraph "Every individual who infringes economic rights as referred to in Article 113 paragraph (1) for Commercial Use will be condemned to a maximum imprisonment of one year and/or a maximum fine of Rp. 100.000.000 (one hundred million rupiah). (2) Any person who violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use without rights and/or without permission of the Author or Copyright holder shall be sentenced to a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500.000.000.00 (five hundred million rupiah). (3) Any person who violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use without rights and/or without permission of the Author or Copyright holder is sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1.000.000.000.00 (one billion rupiah). paragraph four, "Anyone who satisfies the requirements referred to in paragraph (3) and commits piracy will be penalized with imprisonment for a maximum of 10 (ten) years and/or a fine of Rp. 4.000.000.000.00 (four billion rupiah). However, the basis of civil and criminal law as a legal foundation for copyright proprietors, associated rights holders, and performers seeking legal justice in the

case of a copyright infringement is still challenged with patterns and legal systems that are judged complicated and difficult to apply.

In the implementation of copyright law, sometimes investigators, prosecutors and judges do not share one view in interpreting the regulation of criminal and civil sanctions from the objective of the copyright law, which always ends in disappointment experienced by copyright holders, related rights and rights of performers (Islamic, 2002). Perpetrators of piracy and perpetrators of music and song covers walk free as if they feel innocent. Currently, what is in the sharp spotlight by copyright inmates, related rights and performers is dealing with wild song covers on YouTube and other social media facilities, which take place so freely, that it seems that the copyright law is unable to stem the activity of covering songs and music wildly and immorally. As a result, many singers, musicians, songwriters convey their complaints to the government and law enforcement officials, however, their complaints are only heard without concrete follow-up. In particular, the police institution does not have the legal right to conduct free investigations into the perpetrators of the crime of piracy or the perpetrators of song covers without permission because the regulation of copyright laws, copyright criminal cases are no longer a general offense but a complaint offense. Hence, by changing the status of a general offense to a complaint offense, limiting the scope of the police in carrying out legal processes, without any mediation efforts between the complainant and the reported party at the agency facilities of the Directorate General of Intellectual Property (hereinafter rferred to as DJKI) of the Ministry of Law and Human Rights of the Republic of Indonesia or the Intellectual Property Rights mediator team, cannot take criminal action. This is an obstacle for copyright holders, related rights and performers to carry out criminal law efforts in Indonesia, without any mediation effort between the complainant and the reported party at the facilities of the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights of the Republic of Indonesia or the Intellectual Property Rights mediator team, no criminal action can be taken.

Economically, the perpetrators of the large-scale criminal act of piracy were carried out by companies with strong financial strength, making it very easy for them to play immoral and immoral strategies to deal with problems, minimize the rights of copyright holders (songwriters), binding rights (phonogram producers-broadcasters), and performers (singers-musicians-songwriters). Moreover, Indonesian YouTubers who create content for their own music songs without revealing the names of the songwriters and music composers are infringing on their moral rights and committing a license violation that is punishable because it harms them economically.

One of the things that YouTubers are passionate about is making music covers and songs sung by non-original singers and musicians, so that they gain support and get millions of subcribes, likes and is watched by millions of people around the world. From the results of making content covering songs and music, many YouTubers earn a lot of rupiah from YouTube, the results of which are transferred directly from YouTube to the account of the account owner who creates song and music cover content.

3.3. AdSense YouTube

Requirements Before Registering for YouTube Adsense YouTube Adsense is one of the most promising sources of income, it's no wonder that almost all Youtubers activate Adsense ads on their videos. The author is of the opinion that YouTube is a forum and a means and a

place to provide digital means to publish the works of YouTubers for the purpose that the work is watched by many people through digital means, where from the results of the broadcast of the products of YouTubers to YouTube, advertisements will be included as commercial for accounts that get millions of subscribers from all over the world.

Adsence is a Google-organized advertising cooperation program through internet media in which the owner of a website or blog would get money in the form of profit sharing from Google for each advertisement clicked by site visitors, also known as the pay per click (PPC) system or pay per click (Aquar, 2018; Chandra, 2022). Whatever the type and form of youtube regulation, it is clear from a legal point of view, youtubers who create music and song cover content can be said to be a crime against the economic rights of copyright holders, related rights and performers as regulated in Article 113 Paragraph (2) letter c, d, f, and h, which threatens the perpetrators of translating works, adapting, arranging or transforming works or copies, performances of works and communication of works without permission from the holder of the copyright, related rights and performers, can be subject to imprisonment for as long as a maximum of three years and a maximum fine of Rp500 million rupiah.

It is clear that criminal sanctions against music and song cover actors without permission can be carried out through criminal and civil efforts, because YouTubers are clear in creating song cover content intentionally and with the intention to seek commercial profit, not just for fun. Because, youtube regulations are clear, that any youtuber will get economic value for accounts that meet the requirements, because the price of 1000 youtube subscribers is worth R13 thousand rupiah. As we can see on the Sosil Blate youtube channel, YouTuber Atta Hahallintar with 20 thousand subscribers will earn USD $ 16.2 thousand to USD $ 258.6 thousand or equivalent to Rp3.6 billion more per month from the results of creating content on the YouTube channel. This shows that Indonesian YouTubers actually benefit economically from the creation of content uploaded on the YouTube channel, therefore there are economic rights of copyright holders, related rights and performers who must pay license rights to them in accordance with with the agreed value and amount of money given.

Reformulation of the legal system, in structuring the formulation, application and execution of Law No. 28 of 2014 concerning Copyright is very necessary to ensure legal certainty to avoid juridical problems in the implementation of UUHC. Because, the application of criminal provisions in UUHC is the final step in seeking justice for performers to get legal justice to defend their economic and moral rights against copyrighted works of songs and music in Indonesia. UUHC reformulation, as a means to provide clear legal protection through criminal provisions, in addition to being able to use and function the involvement of other laws to help enforce the criminal law of Copyright Law in Indonesia. Execution can be interpreted as the implementation of a decision from the final implementation of the enforcement of the criminal provisions in UUHC or the final result. Because, in its application, there is space outside the UUHC that can be included in the context of enforcing criminal law. The economic impact of copyright infringement is not only detrimental to performers in Indonesia, but also to the state's finances. In the future, it is hoped that criminal law enforcement will not be solely focused on the implementation of the UUHC, but will also utilize the Corruption Crime Act, which can involve law enforcement agencies such as the police, prosecutors, and the Corruption Eradication Commission (KPK) in combating piracy in Indonesia. According to data issued by ASIRI in

2017, state damages due to criminal acts of piracy in Indonesia were Rp 1,75 trillion, while economic losses reached Rp 17,5 trillion. In order to improve criminal law enforcement in the context of implementing the UUHC, the Anti-Corruption Law must be supplemented by the Anti-Corruption Law as a method of supporting criminal law enforcement. In the General Provisions of Article 1 Number (1) of Law No. 17 of 2003 concerning State Finance, it is stated that "State Finance" refers to all monetary-valuable rights and liabilities of the state, as well as everything in the form of money or goods that may be acquired, which made state property for the purpose of carrying out these rights and obligations.

Article 1 point-1 of Law No. 17 of 2003 on State Finance defines "State Finance" as "all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be made state property in connection with the implementation of these rights and obligations." Basically, the Corruption Law emphasizes that corruption is not only identical and attached to the positions of civil servants and state administrators, it is also attached to the receipts and expenditures of State budget (APBN) or Regionl Budget (APBD) funds and Non-Tax State Revenues (PNBP).

Article 1 point-22 of Law No. 1 of 2004 concerning the State Treasury defines state financial losses as "lack of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, either intentionally or negligently". In criminal law theory, this definition includes "material offenses" according to the Constitutional Court's decision above because it requires state losses "which are really real and definite in amount" as a result of an act that is prohibited and must be proven before a court hearing. This means that in relation to the potential loss of state finances on PPN and PNBP receipts of Rp. 1.75 trillion rupiah, the Corruption Law can be used to make efforts to shape law enforcement on the implementation of UUHC. With a clear explanation and definition of the meaning of "state finances: in the provisions of the State Treasury Law and the State Finance Law, it means that the evasion and or non-payment of VAT and PNBP taxes by Yuser and/or officials of the Ministry of Justice and Human Rights Director General of the Indonesian Ministry of Law and Human Rights can be carried out using the Anti-Corruption Law approach.

In addition, the strategy for implementing the concept of "state financial losses" in accordance with the terminology of Law No. 17 of 2003 is as follows: Loss or diminution of state rights and obligations that are quantifiable in monetary terms or in the form of goods that can be used as state property in relation to the execution of rights and obligations as a result of illegal acts that result in the loss or reduction of state rights and obligations. Meanwhile, "state financial losses" refers to the loss or reduction of state financial revenues and/or expenditures. For instance, the decrease in the state or regional revenue sector, Non-Tax State Revenue (PNBP), levies, and state business revenues. In this case, the state lost Rp. 1,75 trillion in the VAT and PNBP tax sectors due to the criminal act of copyright infringement in music and songs.

Article 6 paragraph (a) of the Republic of Indonesia Government Regulation No. 28 of 2019 on Non-Tax State Revenue Types and Rates Applicable to the Ministry of Law and Human Rights is based on the following: (4) Changes in data and changes in the name and/or address of the creator, copyright holder, owner of the related rights product, and/or recipient of rights are subject to a tariff of Rp. 0.00 if they are submitted without the applicant's fault. Paragraph (5) Additional provisions regarding the requirements and procedures for imposing

tariffs, as outlined in paragraphs (1) to (4), shall be outlined in a regulation issued by the Minister of Law and Human Rights, with the approval of the Minister of Finance. In summary, with respect to all licensing agreements relating to intellectual property rights, as outlined in Article 83, Paragraph 1 of Law No. 28 of 2014, it is evident that there are lost state rights, as perpetrators of criminal acts of copyright infringement are averse to registering use licenses. The copyright belongs to the minister. This is what causes potential state losses to emerge.

Article 18 Paragraph (1) letter-b of the Corruption Crime Law stipulates an additional penalty in the form of "payment of replacement money" in the amount of the property obtained from perpetrators of corruption, copyright piracy, in order to recover state financial losses (asset recovery) totaling Rp 1,75 trillion rupiah. Include the convict's company where the corruption occurred as well as the cost of replacing the stolen goods. If the copyright infringement convict fails to pay restitution within one month of the judge's decision becoming final, the prosecutor may seize and sell his property to cover the payment of restitution. This is also consistent with the decision of the Constitutional Court, as the judge will only issue a "reimbursement payment" decision if the public prosecutor demonstrates a state financial loss at a court hearing based on a BPK audit.

Real state financial losses are not required so long as evidence points to "potential state losses." The Constitutional Court (MK) Case Number: 25/PUU-XIV/2016 dated January 26, 2017 against Article 2 Paragraph (1) and Article 3 of the Corruption Law regarding the word "can" is declared to be contrary to the Constitution of 1945 and has no legal force. The decision of the Constitutional Court reclassifies corruption offenses from "formal offenses" to "material offenses" that must be proven to have caused state financial losses or damage to the state's economy as a result of acts prohibited by Article 2 Paragraph (1) and Article 3 of the Corruption Law. In its legal considerations, the Constitutional Court changed the constitutional assessment in the previous Constitutional Court Decision Number Case: 003/PUU-IV/2006, which stated that "the meaning of state financial loss or the state's economy is not an actual consequence that must occur." There is a fundamental reason for the Court "to changing the constitutional assessment because the previous assessment has repeatedly proven to create legal uncertainty and iii. In particular, the Supreme Court of the Republic of Indonesia established transitional rules for corporate corruption crimes. Since there is a legal void in the Criminal Code, a temporary regulation is required while the RKUHP is awaiting ratification. If the UUHC provisions involve corporations, this rule may be used as a supporting rule in legal proceedings against corporate criminals.

Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016. Regarding Procedures for Handling Corporate Crime Cases; Corporate Crime;

1) Perma is still transitional to fill the legal vacuum. Further arrangements should be in the Criminal Code. However, the draft Criminal Code is still being discussed.
2) the contents of the Perma are considered to be in conflict with similar internal rules in other institutions. For example, the Indonesian Attorney General's Office already has the Attorney General's Regulation Number 28 of 2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects.
3) Perma only manages the problemformal-procedural, has not set up substantial matters. Such as withdrawing corporate criminal liability, when an act can be charged to the corporation, and when an act cannot be charged to the corporation.

4) Perma has not touched corporations in the form of non-legal entities. The Perma is also said to not explain what corporations are legal entities and what corporations are not legal entities and how to regulate one another.
5) limits in determining the actions of someone who does not have the authority to make decisions but can control or influence corporate policy or in the Perma is called the "Management". This limit is considered still not clear.
6) there is no explanation about the difference between corporate group liability and the participation of criminal acts.
7) penalty given is still limited to fines. Sanctions should be added to the revocation of business licenses, legal entity status, deprivation of profits, partial or complete closure of the company, correction of the consequences of a criminal act or placing the company under custody for a maximum of three years.
8) The Perma does not regulate significant differences in establishing a corporation or management as a suspect/defendant.

3.4. BPK Audit

State financial losses in the VAT and Non-Tax State Revenue (PNBP) sector of Rp1,76 trillion in the goods and services sector for physical and digital music and song art products by ASIRI constitute corruption. Hence, we are not required to use UUHC to suppress illegal acts of music and song copyright piracy. This is one of the effects of the Constitutional Court (MK) Case Number: 25/PUU-XIV/2016 dated January 26, 2017 against Article 2 Paragraph (1) and Article 3 of the Corruption Law pertaining to the word "can" being declared contrary to the Constitution of 1945 and having no legal force. The decision of the Constitutional Court reclassifies corruption offenses from "formal offenses" to "material offenses" that must be proven to have caused state financial losses or damage to the state's economy as a result of acts prohibited by Article 2 Paragraph (1) and Article 3 of the Corruption Law. In its legal considerations, the Constitutional Court changed the constitutional assessment in the previous Constitutional Court Decision Number Case: 003/PUU-IV/2006, which stated that "the meaning of state financial loss or the state's economy is not an actual consequence that must occur," so that there is a fundamental reason for the Court "to changing the constitutional assessment because the previous assessment has repeatedly created legal uncertainty." Before legal action can be taken against those responsible for the theft of music and song copyrights, an audit of the Indonesian Supreme Audit Agency (BPK) must be conducted. Before a case is upgraded to the investigation phase, there must be an audit of state financial losses conducted by the Supreme Audit Agency, for every Circular Letter of the Supreme Court (SEMA) No. 4 of 2016. (BPK). This anticipates that the audit of state financial losses attributable to the BPK will serve as the basis for a suspect's pretrial determination.

Table 1 List of Music Industry Losses and State Losses in 2017

No	Income Name	LossIndustry	State Losses
1	Physical Forms of Piracy	Rp. 3,5 trillion	Rp. 350 billion
2	Digital Forms of Piracy	Rp. 14 trillion	Rp. 1,4 billion
	Total	**Rp. 17,5 trillion**	**Rp. 1,75 trillion**

As can be seen on the data above that the number of state losses is quite high, therefore if UUHC fails to make headway in the context of carrying out criminal legal actions, another law must accompany UUHC to help limit the number of criminal acts of piracy and to impose severe penalties on users who refuse to pay PNBP to the state treasury. The embezzlement of Non-Tax State Revenue funds that should have been deposited into the state treasury but not paid by the yusers can be categorized as a criminal act of corruption, because it has harmed the state economy and state finances. This PNPB corruption crime is one of the criminal acts and acts against the law committed by a person or corporation of criminal violators of piracy, copying and licensing with the aim of benefiting themselves or the corporation, by abusing the authority, opportunity or means attached to their position and impact on state financial losses.

Efforts to enforce criminal law related to the crime of piracy of song and music copyrights clearly have an impact on performers and the state, therefore the new UUHC has not been able to give a good influence on the rise of criminal acts of piracy of song and music copyrighted works. Therefore, in order to support UUHC, when it has not been able to answer the problem of the crime of piracy, then other laws that have room to participate in helping to eradicate the crime of piracy, the Anti-Corruption Law is a solution in order to reduce the number of piracy crimes in Indonesia. Through the police, prosecutors and the KPK, can carry out investigations and investigations into criminal acts of corruption committed by yusers who do not want to pay taxes on CD and DVD products and other digital means do not have to wait for complaints from victims. Because, in UUHC, the crime of piracy can be processed by criminal law, after mediating first and making a complaint. The perpetrators of criminal acts, of course, will not lose their minds, and they will certainly resolve the dispute at the mediation stage, and the scope of criminal law enforcement will be smaller.

Traditionally, the theories of punishment can generally be divided into two groups of theories, namely:

1) Absolute theory or retaliation theory(relative/vergeldings theory),
2) Relative theory or goal theory(utilitarian/doelheorieen).

According to this absolute theory, people are punished solely for committing a crime or criminal act (*quia peccatum est*). Criminal is an absolute consequence that must exist as retribution against the perpetrator of the crime (Usman, 2011). In this regard, the new UUHC should be the end result of efforts to enforce criminal law, and be able to resolve existing criminal problems. If, at this time, the new UUHC has not been able to solve the crime of piracy, doubling and related licensing and criminal issues in protecting the rights of performers, it means that the new UUHC has not been able to realize the wishes of performers in Indonesia. While the main goal (primary) of the criminal according to this theory is "to satisfy the demands of justice" (Rumadan, 2013). Meanwhile, currently the criminal act of piracy continues to dominate the market freely, meaning that here there have been legal omissions in the aspect of criminal law. Mediators in Indonesia have a hard time getting the cooperation of artists since they cannot offer them any effective means of preventing the piracy of their work. The government only focuses on mediation efforts more on the civil aspect, while the violation of the crime of piracy is not touched at all, because the crime of piracy is a complaint offense.

Timur Priyono is one of the speakers as a musician in Indonesia, who has dozens of hizt songs in Indonesia, including the song "Yang Penting Hepy" which was popularized by Jamal Mirdad. Arrange for users to pay royalties correctly and honestly. When LMKN and LMK and other tools as partners work, economically there is an increase in income for the performers, but not significant. Further, he stated that the problem of criminal acts of piracy in Indonesia is that if only the civility aspect is highlighted, then piracy will never be completed. Because the hijackers will have a sense of deterrence if they have been sentenced to physical prison, and fined. If only mediation is facilitated by the Director General of Intellectual Property Rights, PPNS investigators will not complete it and the sanctions are still too soft, there are many reasons and arguments, if the negotiating hijackers also argue a lot, they always argue with efforts to pay the cheapest possible compensation to the victim. His party often experiences things like that, negotiations that have no conclusion, while economically the hijackers have paid off. Timur Priyono admits that once upon a time, one of the National Television Stations, used his song with the lyrics changed without his permission. When summoned by a legal advisor, the television only stopped the program, but they also did not want to pay royalties, even though they have often used my songs for commercial activities in the program.

The next step that must be taken by the government is that the elements of complaint offenses in Law No. 28 of 2014 concerning Copyright should be changed to ordinary offenses, so that the National Police can work optimally in handling the crime of piracy. At the very least, it can relieve the performers of the show, without any complaints from us, the police can arrest, confiscate and search the pirates of song and music copyrights in Indonesia.

Currently, in Indonesia in various regions, pirated CD and DVD products dominate the market and there is no legal action by law enforcement officials in Indonesia. This is very ironic, when the new UUHC was enacted and took effect at the beginning of 2017, only improvements to the administration of economic rights and moral rights were to collect royalties, but piracy, copying, licensing violations and song mutilations everywhere due to acts of piracy were not touched equally. This is what causes the performers to be reluctant to take legal action, because the new UUHC leads us to civil law, namely mediation, while we want to mediate with whom the hijackers are hidden in the office warehouse, while the products produced are quite large and generate considerable profits. Therefore, this has implications for the performers directly, in addition to not being considered for our dignity, the pirated CD and DVD products also do not mention and write the songwriters. In fact, in digital karaoke houses, there are also many songs that are not written by the author, this is morally detrimental and is a copyright crime. Therefore, his party agrees, in many legal practitioners, asking that the offense element in the newly revised UUHC, be returned to the original offense, so that the police have the flexibility to take criminal legal action. Only this criminal punishment can provide a deterrent effect to the perpetrators of the crime of piracy in Indonesia. The new UUHC will not be able to help provide solutions to performers, because they are not able to create the value of legal justice and economic welfare.

In Nigel Walker's view it is reductive (thereductive point of law) because the basis for criminal justification according to this theory is to reduce the frequency of crimes (Fartini, 2017). Consequently, if the new UUHC is more dominated by civil law, it is feared that the fate of performers in Indonesia will still be difficult to obtain legal justice from the aspect of criminal law, because the new UUHC does limit the space for resolving criminal acts of

piracy towards civil mediation (Suharti, 2005). Furthermore, who will mediate when the perpetrators of piracy carry out their activities covertly? It is impossible for performers in Indonesia to judge individually and must oversee the perpetrators of piracy, therefore there must have been riots with the collaborators of the hijacking companies. Because of the shift in elements of ordinary offenses into complaint offenses as a significant indicator of legal weakening criminal law in the new UUHC, the author is afraid that, in the future, the existing and future UUHC in terms of criminal law will be sterile and suspended, harming major performers.

The phenomenon of rampant criminal acts of piracy, copying, licensing violations, etc., will be the starting point for a shock to the performers in the future, if this is not addressed by the government and professional organizations that oversee the performers in Indonesia. As Emile Durkheim said, that the function of the crime is to create the possibility for the release of the emotions that are aroused or shaken by the existence of crime. While the currents in criminal law are not looking for a legal basis or justification for the crime, but trying to obtain a criminal law system that is practical and useful. As in the new UUHC, it must provide the maximum benefit for present and future performers in Indonesia.

Therefore, the implication of this new UUHC is that the policy of the formulation of criminal law must be interpreted as an effort to make and formulate a criminal law that is good and appropriate and fair for the present and the future. This means, according to the author, criminal sanctions should not be hampered by other wills, with civil mediation facilities, criminal efforts do not affect the victim's process of taking legal action in a civil manner, because civil and criminal aspects are two separate things, both mechanisms and legal procedures for the process to civil and criminal justice processes. The use of legal remedies, including criminal law as an effort to overcome social problems, including in the field of law enforcement policies in order to suppress the crime of piracy, duplication and licensing violations must be a priority in the new UUHC. Because the law works in the social sphere, the use of legal remedies is included in the part of social protection and welfare policies. According to Roeslan Saleh, the need to use criminal means and criminal law is based on the following reasons:

1) Whether or not criminal law is necessary does not lie in the question of the goals to be achieved, but lies in the question of how far to achieve that goal it is permissible to use coercion;
2) There are attempts at repair or maintenance which have no meaning at all for the condemned; and besides that there must be a reaction to the violation of norms that he has committed and cannot be left by it self;
3) The influence of criminal or criminal law is not solely aimed at the criminal, but also to influence people who are not evil, namely citizens who obey the norms of society;

Criminal law policy can be interpreted as acts or policies from the state (government) to use criminal law in achieving certain goals, especially in combating crime, it is important to recognize that there are numerous methods and efforts that can be made by each nation (government) in combating crime. Among the measures taken to combat crime is the implementation of a criminal law policy or criminal law politics. According to Sudarto, implementing the politics of criminal law entails holding elections to achieve the most effective criminal legislation in terms of achieving justice and efficiency. The politics of

criminal law entails efforts to implement criminal laws and regulations that are consistent with the current and future circumstances and situations. Marc Ancel argues that the concept of penal policy is both a science and an art whose ultimate purpose is to improve the formulation of positive legal regulations and to offer guidance not only to legislators but also to courts that apply the law.

The formulation stage (legislative policy), the application stage (judicial and judicial policies), and the execution stage (execution/administrative policy) are involved in the operationalization of the criminal law policy (penal policy). The formulation phase is the most strategic of the three phases of crime prevention and control through criminal law policies. Legislative policy errors and weaknesses are strategic errors that can impede efforts to prevent and combat crime during the application and implementation phases (Firdaus, n.d.). The new Copyright Law, Law No. 28 of 2014, regulates the pattern of settlement of penal mediation in piracy cases through the formulation and regulation of criminal law policies.

The third theory is the Legal System Components theory (CCC) as stated by Lawrence M. Friedman. In his book, "American Law, An Introdaction", Friedman said, there are three components of the legal system, namely, legal structure, legal substance, and legal culture (Lawrence Meir Friedman & Hayden, 2017). First, the legal structure is a legal framework or series, the components that give the whole its form and boundaries. The structure of the legal system is analogous to a photograph that freezes motion. The legal structure is associated with the forum, organization, or institutions that create and enforce the law. Second, the system's legal substance, which includes rules, norms, and actual human behavior patterns. Legal substance also refers to the decisions and new rules produced by those in the legal system, i.e., the decisions they make and the new rules they create. Therefore, the legal substance is not limited to formal norms alone, but also includes social behavior patterns that will form distinct formal norms. The focus here is on living law, not just on the rules found in law books. Human attitudes toward the law and the legal system, including beliefs, values, thoughts, and expectations. In other words, legal culture is the disposition of social thought and the social forces that determine how the law is utilized, avoided, and abused, Has copyright law demonstrated its role as a tool for community revitalization, and whether copyright law has been "pro-people and pro-justice law" in practice.

Based on Friedman's theory, the protection of the creator's economic rights will be reviewed and assessed based on the institutions or institutions that play a role in implementing or enforcing the UUHC, the norms related to the protection of the creator's economic rights, as well as the attitudes, feelings, and thoughts of the community towards the rights of the economic rights of creators, especially song and music composers in Indonesia. The various economic rights of creators have been discussed above is different from the division of economic rights according to various literatures.

According to Friedman (1975), the legal system consists of three components: legal structure, legal substance, and legal culture. First, the legal structure is a legal framework or series, the components that give the whole its form and boundaries. The structure of the legal system is analogous to a photograph that freezes motion. The legal structure is associated with the forum, organization, or institutions that create and enforce the law. Second, the system's legal substance, which includes rules, norms, and actual human behavior patterns.

Legal substance also refers to the decisions and new rules produced by those in the legal system, i.e., the decisions they make and the new rules they create. Therefore, the legal substance is not limited to formal norms alone, but also includes social behavior patterns that will form distinct formal norms. The focus here is on living law, not just on the rules found in law books. Human attitudes toward the law and the legal system, including beliefs, values, thoughts, and expectations. To combat piracy in Indonesia, it is crucial to emphasize criminal law, along with other pertinent legal assistance and related regulations.

Friedmand further said that there are three components in the legal system, namely, namely, legal structure, legal substance, and legal culture. In the legal structure of the new UUHC, it is explained that legal remedies that can be taken by victims of copyright crimes can be taken through mediation by the Director General of Intellectual Property Rights, file a civil lawsuit to the Commercial Court, and take criminal legal remedies through a complaint process to the Police, the Attorney General's Office and the Attorney General's Office. General Court. In the new UUHC it is also possible, other laws can be used in order to assist the enforcement of criminal law, against the crime of piracy of song and music copyrights in Indonesia by means of the Anti-Corruption Law. In the legal substance of the new UUHC, There is also room for other laws to be used to help enforce UUHC laws relating to criminal acts of tax evasion and/or not paying taxes on physical CD and DVD products or other digital media in the PNBP sector. As stated in Article 83 Paragraph (1), Law No. 20 of 2014 concerning Copyright, "The license agreement must be registered by the Minister in the general register of Copyright license agreements with a fee". Here, when the pirates enter into a licensing agreement with the performers, they should be charged a fee that is included in the PNBP at the ministry. However, because the perpetrators of criminal acts have never asked for a license from songwriters and other performers, the licensing fees that should go into the state treasury in the PNBP sector include physical and digital products that produce, must be taxed with Value Added Tax (VAT), that is, a tax imposed on every value added of goods or services in circulation from producers to consumers.

Ideally, every perpetrator of criminal acts of corruption, both individually and corporately in the crime of piracy of song and music creations in the non-tax revenue sector, should be punished to the maximum extent as stipulated in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, namely "every person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of a position or position that can harm state financial or economy, shall be sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50.000.000,00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah)".

Corruption crimes result in state financial losses and impede national development; therefore, they must be eradicated to establish a just and prosperous society based on Pancasila and the Constitution of 1945. national development requiring high levels of efficiency. Corruption left unchecked will be disastrous not only for the national economy but also for the nation and state as a whole. The pervasive and systematic crime of corruption is also a violation of the social and economic rights of the community; as a result, corruption can no longer be classified as an ordinary crime and has become an extraordinary crime.

Consequently, comprehensive law enforcement is essential. In order to realize the rule of law in supporting the creation of a good and optimal UUHC in eradicating the crime of piracy, the Indonesian government must establish a solid policy foundation to combat corruption in the PNBP and VAT revenue sectors.

These various policies are outlined in the laws and regulations, including the Decree of the Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 regarding Clean and Corrupt-Free State Organizers, Collusion, and Nepotism. As in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 regarding the eradication of Corruption Crimes. Efforts must be made to ensure law enforcement in the UUHC is conducted correctly, fairly, without arbitrariness, and without power abuse. Several principles must always be present in law enforcement, including the principle of impartiality, the principle of fairness in examining and deciding (fairness), the principle of proper proceedings (procedural due process), and the principle of correctly applying the law, which safeguards and protects the rights of individuals. To eradicate the crime of piracy in Indonesia, the principle of guaranteeing freedom from all pressures and violence in the judicial process relating to the enforcement of criminal law must be upheld.

The criminal justice system as the implementation and execution of law enforcement consists of several interconnected bodies, including the police, prosecutors, courts, and correctional institutions. In Indonesia, criminal acts of corruption can be committed by parties who hold important positions in the government, such as civil servants in local government. In relation to the criminal act of corruption over the embezzlement of PNBP and VAT funds by pata yuser in corporate companies, it is necessary to promote socialization of the implementation of the Anti-Corruption Law in participating in guarding UUHC in enforcing criminal law on the rise of criminal acts of song and music piracy in Indonesia. This is an implementation of the enactment of UUHC whose implications can interact with other laws as a means of supporting and supplementing the weak enforcement of criminal law against criminal acts of piracy in the new UUHC. Since early 2017, UUHC has been operationally implemented, after Law No. 28 of 2014 began to be ratified and it took two years for the socialization stage of the new law.

From an economic and moral perspective, economically there has been an increase in the income of performers, since the emergence of the LMKN and LMK institutions as royalty collecting institutions in Indonesia. On the other hand, the new UUHC has not yet had a significant impact on the enforcement of its criminal law, this is manifested by the phenomenon of the criminal act of piracy in Indonesia still existing and rampantly controlling the domestic market for pirated CD and DVD products with a product percentage of almost 90% products pirated illegal. This is what the government should be paying attention to, because of the implementation of the new UUHC, it turns out to be more dominant in the civil aspect and leads all copyright issues to be resolved civilly through mediation, so that it hinders the enforcement of copyright criminal law today. Consequently, the Anti-Corruption Law on the embezzlement of PNBP must be acted upon firmly, because it will assist the new UUHC in enforcing its criminal law.

The Corruption Crime of embezzling PNBP and VAT receipts from the music and song sector, as outlined in UUHC, is a special crime outside of the Criminal Code, as expressly stated in Article 25 of Government Regulation Number 24 of 1960, which went into effect

on June 9, 1960, pertaining to investigations, prosecutions, and prosecutions. criminal investigation. According to the provisions of the law, every perpetrator who has been proven to have committed a corrupt act must be held accountable for his actions. Every citizen is obligated to uphold the law; however, in everyday life, there are citizens who disregard/deliberately disobey their obligations to the detriment of society; these citizens are said to violate the law because their obligations were established by law. The rule of law requires that those who break the law be held accountable for their actions.

Rational efforts to control or tackle the crime of piracy as regulated in the new UUHC are part of (criminal politics) of course not only by using penal means (criminal law), but can also use non-penal means. These non-penal efforts include sponsorship and social education in the context of developing social responsibility for citizens related to the understanding of UUHC as the main pillar of legal protection to achieve prosperity and justice for performers in Indonesia; cultivation of public mental health through moral education, religion and so on; improvement of child and adolescent welfare efforts; patrol activities and supervision of the physical and non-physical distribution of the product of song and music creations on the market continuously, all components of the performance actors, the government, police and other security forces, are an effort to prevent the crime of piracy. These efforts can cover a very broad field covering all sectors of national life. The main purpose of the non-penal effort is to improve certain social conditions, to make the perpetrators of piracy and other copyright crimes aware, because they indirectly have a preventive effect on crime. Thus, from the point of view of criminal politics, all non-penal preventive activities actually have a very strategic position, holding key positions that must be made effective and intensified.

Failure to work on this strategic position will actually have fatal consequences for efforts to combat crime, the crime of piracy of song and music creations. Therefore, a criminal policy must be able to integrate and harmonize all state activities that are organized and integrated. Thus, the main problem is to integrate and harmonize non-penal and penal political activities or policies towards suppressing or reducing potential factors that foster the crime of piracy. With this integral political approach, it is hoped that social defense planning can truly succeed and thus it is expected that the nature of the social political objectives contained in the national development plan, namely the quality of a healthy and meaningful living environment, will help performers of the arts and performers in the country. Indonesia has become a dignified human being and has experienced an increase in the degree of good and decent economic life in general and the new UUHC as a guardian angel in order to achieve a sense of justice and legal order towards prosperity and peace for performers in Indonesia.

4. CONCLUSION

It is essential to reformulate the provisions of the criminal provisions in Law No. 28 of 2014 concerning Copyrights, which have juridical problems, in order to ensure a sense of justice and legal certainty for owners of copyrights, related rights, and performers of future performances. This will help ensure that future performances will not infringe on anyone's rights. Further, in the transition phase towards the application of criminal sanctions provisions in the copyright law, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Corruption as a legal subject in terms of Non-Tax State Revenue (PNBP) and Law No. 28 of 2007 concerning General Provisions on Tax Procedures, the legal subject can be seen from the non-payment of license taxes to the state treasury as state income.

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ANALYSIS OF JUDGE'S DECISION RELATED TO THE TRANSFER OF LAND RIGHTS FOR FOREIGN NATIONALS BASED ON TESTAMENT
(Literature Review of Supreme Court Decision Number 1134K/PDT/2009)

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Abstract

This study aims to analyze the judge's decision related to the transfer of Land Rights for Foreign Nationals based on testament of Supreme Court Decision Number 1134K/Pdt/2009. Research questions on this study are based on problematical publishing freehold title based on testament, incidentally between Testator and Testament Recipient at that time both of them is Foreign Nationals has broken the Law Number 5 of 1960 on Basic Agrarian Law Act. This research is normative-descriptive using library research to collect relevant source, such as books, magazines, scientific writing, and others to support the writer's argument on the issue. The findings revealed that someone can acquire basic consideration of Supreme Court Decision and legal analysis about giving a decision of Supreme Court Decision number 1134K/Pdt/2009. Thus, in the case of Decision No. 1134K/Pdt/2009, the process of transferring ownership of Freehold Title is due to sporadic land registration beginning with the approval of the Head of the Environment, Lurah, and Camat, as well as land owners who are on the right, left, front, and back of the disputed object, so Freehold Title against the object of dispute may be issued on behalf of the Defendant, which is issued by the Land Office. Hence, the parties involved in the intermittent registration, including the Land Office, should be sued, not the Defendant.

Keywords: *Testament, Foreign Nationals, Supreme Court Decision, Land Right Transfer*

1. INTRODUCTION

The homeland of Indonesia is an agrarian country, which has a very wide expanse of territory and is spread from the west to the east, in the form of land and sea, so that in principle everything is used for the welfare of the people. The role of the State to regulate, one of which is implemented through the Law of the Republic of Indonesia Number 5 of 1960 (hereinafter referred to as LoGA), which in essence the State has the authority to regulate and administer the earth, water, and space, both in terms of regulation to the rules of legal relations in society, as contained in Article 2 paragraph (2) of the LoGA (Indrawan et al., 2021).

Based on this, it can be realized by giving various rights, one of which is the right in ownership of the land, such as property rights, building rights, and so on. Rights that are limited in nature, and are not given freely because they are limited by the public interest are the recognition of land rights by the state. Therefore, it is in line with land politics as

regulated in the 1945 Constitution of the Republic of Indonesia, which is contained in Article 33 paragraph (3) (Sumanto, 2017).

It is undeniable that the population in Indonesia is inhabited or inhabited by citizens of other countries, which is the impact of openness between international countries accompanied by advances in science and technology (Ardani, 2017). This fact shows the effect of globalization which frees anyone to travel or live in any country in the world.

One of the LoGA's provisions stipulates that only Indonesian residents are eligible for ownership rights, in this case property rights. In actuality, issues occur when someone gives or wants to give ownership to non-natives (foreigners), in this case a foreigner, based on a will (testament), where the will is tied to the last wish wanted before death. world. The author analyzes the Supreme Court's decision with case registration number 1134K/Pdt/2009, which is related to the problem of foreign ownership status of land rights based on a will by the will grantor to the foreigner, in which the decision the *inkracht*.

The existence of a will can be motivated by the desire of someone who owns property so that the property he will leave behind when he dies, his heirs can use it, and it is not prohibited by law even if the owner of the property is free to give property to anyone even if the action is contrary to inheritance law. As a result, there are many disagreements on how to distribute inheritance after the owner of the property dies (Agustin, 2017).

In this study, the problem that must be solved is how the position case in the case of the Supreme Court Decision Number 1134K/Pdt/2009, and what legal basis is used by the Panel of Judges in the Supreme Court's Decision Number 1134K/Pdt/2009, and how to analyze the Supreme Court's Decision Number Is 1134K/Pdt/2009 related to positive law in Indonesia?

The objectives to be achieved in this research are divided into two, namely general objectives and specific objectives. The general purpose is as an implementation of the Tri Dharma of Higher Education in the field of law and as a complement to the requirements for obtaining a law degree. Its specific purpose is to study and understand the legal considerations of the judges who examine and hear cases number 1134K/Pdt/2009 and to be able to analyze Decision Number 1134K/Pdt/2019 which will be correlated with positive law in Indonesia.

2. RESEARCH METHOD

This is a normative research, which is evaluated using statutory rules and positive law from diverse paradigms (Muhammad, 2004). The author used numerous methodologies in this work, including conceptual, legal, analytical, case, comparative, and historical approaches (Marzuki, 2013). As a result, this research focuses on the administration or inventory of positive laws that apply in Indonesia, as well as their synchronization (Marzuki, 2013).

3. RESULT AND DISCUSSION

3.1. Case of Decision Position Number 1134K/Pdt/2009

The Plaintiff (HANNA) is the younger brother of the Defendant (TAN SAN HONG a.k.a M. SIDIK) from a mother named LE RAMIDJAH and a father named TAN SUN NEN who died in 1959 with the status of a Chinese citizen, so the house is the legacy of TAN

SUN NEN occupied and controlled by LE RAMIDJAH as the mother of the Plaintiff. Before the Plaintiff's mother died, in 1994 the Plaintiff's mother had donated a plot of customary land located in Banjar Paken Village, Gubuk Dayen Peken, Ampenan Barat Djangkok III District, West Lombok, Pipil No. 763, Persil No. 59, Class I covering an area of 195m2 based on the registration of land owned by Indonesia dated June 29, 1964 No. 763 on behalf of LE RUMIDJAH, in which the grant was based on the Grant Binding Letter No. 6 dated November 1, 1994 made by Notary Petra Mariawati Ambrosius Imam.

However, the land that had been granted was actually processed for the issuance of a certificate of ownership on behalf of the Defendant even though until 1994 he was still a foreigner (Foreign Citizen) with Chinese citizenship so that SHM No. 2958 covering an area of 195m2 on 27 June 2002, however the address of the land has changed which was originally located in Banjar Paken Village, Gubuk Dayen Peken, Ampenan Barat Djangkok III District, West Lombok, Pipil No. 763, Persil No. 59, Class I with an area of 195m2, now registered at Jalan Saleh Sungkar No. 18, North Ampenan, Mataram City.

Based on the above, the Plaintiff filed a lawsuit against the Law for the actions of the Defendant.

3.2. Legal Basis for Decision Number 1134K/Pdt/2009

This civil case with case register number 1134K/Pdt/2019 is a cassation case filed by HANNA (as the Cassation Petitioner, previously the Plaintiff) against the Mataram District Court Decision register number 58/Pdt.G/2007/PN Mtr, which was read out on March 25, 2006 and decided:

In Exception:

- The Defendant's exception is rejected;

In the Main Case:

1. Reject the Plaintiff's whole claim;
2. Punish the Plaintiff Rp. 169.000,00 (one hundred and sixty-nine thousand rupiah) for the costs of this litigation.

Based on the decision of the Mataram District Court, the Plaintiff filed an appeal, and after being heard, the Panel of Judges at the appellate level, namely the Mataram High Court, upheld the decision of the first instance court in decision no. 97/Pdt/2008/PT Mtr dated December 18, 2008, and thus the Plaintiff filed an appeal.

The filing of a cassation can be observed in the memorandum of cassation, which is as follows:

That the Panel of Judges is flawed or careless in its consideration of the evidence in light of the facts as they exist in fact, because these facts dictate the direction or essential directions for this matter; and

a. Whereas the Judex Facti Panel of Judges misinterpreted/applied the law in relation to the trial facts.

The arguments for bringing the petition for cassation above, according to the Panel of Judges at the cassation level, cannot be supported, such that Judex Facti (High Court and District Court) did not misapply the law, because:

1) According to the evidence, Tan Soe Nen (father of the Plaintiff and Defendant with mother/second wife Tan Soe Nen) owns the property at Jalan Saleh Sungkar No. 18 Ampenan Utara, Mataram;
2) That on April 14, 1956, the object of dispute and its contents were inherited by Tan Soe Nen to his first wife named Tjo A Jin, and with a will made by Notary Abdurrahman, S.H. (Evidence T.1) was handed over to Tan San Kauw as the executor of the testament, and then on July 12, 1990, according to evidence T.2, Tan San Kauw handed over power to the Defendant to carry out the will from Tan Sie Nen:
3) Whereas therefore the disputed object land is legally owned by the Defendant on the basis of Freehold Title No. 2958, June 27, 2002;
4) That the evidence submitted by the Plaintiff cannot cripple the authentic evidence submitted by the Defendant

As a result, a judgement was issued at the level of cassation with the following ruling:

JUDGE

1) Reject the Cassation Petitioner's plea for cassation; the HANNA;
2) Ordering the Cassation Petitioner/Plaintiff to pay Rp. 500,000.00 in court fees at this stage of cassation (five hundred thousand rupiah).

3.3. An Examination of Decision Number 1134K/Pdt/2009 Concerning Applicable Laws and Regulations

Before analyzing or responding to Decision No. 1134K/Pdt/2009, the author, in my opinion, will explain the provisions of wills for foreigners in Indonesia.

A state in which a person may request that subsequent legal action be taken for himself before death, which act can only be carried out after death, and such action is known as a will (Sanjaya, 2018). According to Article 930 of the Civil Code, the will is a unilateral act that can only be performed by 1 (one) person (Wijaya, 2014).

Many issues arise during its implementation, such as which is stronger between wills and inheritance law (Abubakar, 2011), the transfer of rights through wills to foreign citizens, and so on. Wills are classified into two types: wills connected to the appointment of inheritance (*erfstelling*) and will grants (*legaat*) (Suryadini & Widiyanti, 2020). In general, the Civil Code controls wills through the consideration of numerous topics, including general provisions, abilities, will limits, and the form/form of the will itself (Wijaya, 2014).

Therefore, carrying out a will cannot be divorced from the job of a Notary, which is in this case tied to the making of a will. The notary's function is to explain the procedure or process until the will is enacted, so that the notary can afterwards provide legal directions to avoid future conflicts (Cahyaning et al., 2018). As a result, a Notary who has prepared a will at the request of a person must promptly register it with the Property and Heritage Agency to ensure that it is correctly recorded in compliance with the applicable laws and regulations (Lay, 2019).

In principle, all Indonesian citizens have the right to obtain ownership rights to land without regard to ethnicity or ethnicity, so that the existence of Freehold Title can later be used as proof of ownership, which in fact is strong and perfect unless the validity of the Freehold Title can be proven otherwise.

Furthermore, it is mentioned in the terms of Article 21 of the LoGA that only Indonesian citizens can enjoy property rights without discriminating against other Indonesian residents. If this is breached, the land rights will be declared null and void, and the land will be handed to the state, as specified in Article 26 of the UUPA. In terms of the situation of foreigners themselves, the LoGA has granted them a part in the form of rental rights and usufructuary rights, as stated in Article 41 of the LoGA (Sutrisna & Gunarto, 2017). The rise of foreigners acquiring land rights in Indonesia is inextricably linked to the impact of globalization, which increases national investment, despite the fact that the acquisition of land rights is restricted by the UUPA and its implementing rules (Sumanto, 2017). In other words, if a foreigner changes citizenship to become an Indonesian citizen and obtains it through their interest, the foreigner can control and/or utilize land in ownership, Right to Cultivate, and Right to Build (Rokilah, 2018).

The Defendant secured proof of ownership in the form of a certificate through a sporadic registration process, according to Decision No. 1134K/Pdt/2009. Furthermore, it is known and signed by the land owner who is adjacent to the land object to whom the certificate will be provided (north, south, east, west), indicating that the Defendant has openly submitted a procedural land registration process that must be passed on a sporadic basis. However, in this situation, the process of transferring rights occurred without a strong foundation, relying solely on a will. The willful transfer of property rights is addressed to foreigners and even foreigners; in other words, both have not changed citizenship at the time of the transfer, thus the transfer is null and void (Nurlaila et al., 2018). As a result, the lawsuit should be directed not against the Defendant but against the parties involved in the sporadic process, namely the land office, and a lawsuit can also be filed against the Head of the Environment, *Lurah*, or *Camat* who have signed the sporadic signing, where it should be argued that the sporadic signing was illegal. Because the transfer of rights is based on the parties' inheritance relationship, a certificate of inheritance from the Defendant is required in advance.

The legal repercussions of the ruling concern the legal status of the Defendant's Freehold Title, which has been registered in his or her name through sporadic and open registration on behalf of the Defendant and is nonetheless recognized as belonging to the Defendant even at the time of transfer. The beneficiary was still a foreigner, but the Defendant had changed his nationality to become an Indonesian citizen prior to the granting of the Freehold Title on his behalf.

4. CONCLUSION

In this study, we can conclude that the first, legal considerations in Decision No. 1134K/Pdt/2009, namely Judex Facti from the Mataram District Court and the Mataram High Court, is appropriate for the application of the law, because the object of the dispute is Freehold Title No. 2958 is correct as the Defendant's property based on the will made before Notary Abdurrahman, S.H., in which Tan San Kauw has handed over the power.

Second, in the case of Decision No. 1134K/Pdt/2009, the process of transferring ownership of Freehold Title is due to sporadic land registration beginning with the approval of the Head of the Environment, *Lurah*, and *Camat*, as well as land owners who are on the right, left, front, and back of the disputed object, so Freehold Title against the object of dispute may be issued on behalf of the Defendant, which is issued by the Land Office. Thus,

the parties involved in the intermittent registration, including the Land Office, should be sued, not the Defendant.

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Title
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Author(s) and Affiliation(s)

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Abstract
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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 on ..... There 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.

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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).

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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.

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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.

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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).

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