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LEGAL PROTECTION FOR VICTIMS OF FAIR TRIAL RIGHTS AS A FORM OF HUMAN RIGHTS PROTECTION IN THE INDONESIAN JUSTICE SYSTEM

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Abstract

In the legal protection of the right of Fair Trial victims in the Indonesian judicial system, the government should refer to and protect the Human Rights that exist in every individual human being even though the person who violates the "Fair Trial right" is a perpetrator of the crime. This study aims to examine the extent of the form of legal protection for victims of Fair Trial rights as a form of human rights protection in the Indonesian Judicial System because cases of violations of Fair Trial rights are often found in various existing cases. The "Fair Trial Rights" violated are the basic value of the criminal justice process covering at least three important components: human dignity, truth, and justice in the process. The first basic value, namely the protection of human dignity refers to the condition that all law enforcement officers at all stages of the judiciary must apply consistently and support the protection of the human dignity of the parties, both suspects, defendants, convicts, victims, and witnesses, the second value is the value of truth, this value requires that law enforcement "must ensure the application of normative provisions before imposing accusations, indictment, or punishing a person", while the third value is fairness or the value of justice in criminal justice proceedings, which requires that law enforcement must work hard to treat the parties by respecting their rights protected by law and applying the limits of their authority.

Keywords: *Fair Trial, Legal Protection, Human Rights, Law Enforcement*

1. INTRODUCTION

In the world of law there is a right that must be protected as a form of guarantee for human rights. This refers to the basic principles of our country, namely "Pancasila" which can be known as *Volkgeist* (Soul of the Nation) where the values are taken from *Folkways* (laws or norms that live in society). The value of Human Rights in Pancasila is contained in the Second Precept "Just and Civilized Humanity", besides being contained in Pancasila Human Rights is also contained in the 1945 Constitution of the Republic of Indonesia contained in article 28 A-J (Hutabarat et al., 2022). If the Human Rights in the 1945 Constitution of the Republic of Indonesia are aimed at the Fair Trial concept it can be seen in Article 27 paragraph 1 which states "All citizens have the same position before the law and government and are obliged to uphold the law and government without exception" and article 28 D paragraph 1 which states "Every person has the right to recognition, guarantees, protection and certainty fair law and equal treatment before the law". This reveals that the Indonesian government recognizes the presence of equal rights for every citizen, without distinction, and that it is not permitted for law enforcement to violate the principle of fair trials.

The concept of equal rights has existed for a long time in the English language literature, it is often argued that rights based on law (legal rights) are distinguished from

rights arising from other norms (Worthington, 2006). According to Paton, legal rights are usually defined as rights that are recognized and protected by law (Wati, 2017). The same thing was stated by Sarah Worthington (2006) which states that legal rights are often contrasted with moral rights. She gave the example that a person can expect to be paid by his employer, loved by his mother, or given gifts on his birthday. Furthermore, she stated that among these expectations there are rights based on law, namely the right of an employee to get paid by his employer, if not paid the employee can use a formal institution to help the employee get his right to that payment from his employer (Worthington, 2006). Similar to Paton's assertion, Worthington confirmed that the rule of law establishes legal rights. Further, Worthington (2006) added that in countries with a civil law system, legal rights are stipulated in the constitution. On the other hand, in countries with a common law system, rights based on law can be identified from the sanctions imposed by courts for violations committed against those rights. Further, Worthington (2006) emphasized that if the court imposes a sanction, it means that it is related to legal rights and obligations.

These norms, principles and standards have grown gradually since 1948, starting from the development of values through intellectual and social processes (enunciative stage), rights to declarations (declaration stage) of human values, interests and rights that have no binding force (non-legally binding), prescriptive stage in the form of institutionalization of more binding principles, norms and standards within the framework of international agreements, then the enforcement stage through various international conventions, procedural mechanisms or a combination of the two and the criminalization stage in the form of formulation of international crimes as a means of trying human rights violations with a certain gravity.

In the theory of natural rights, John Locke argued that all individuals are endowed by nature with inherent rights to life, freedom and property, which are their own and cannot be transferred or revoked by the state. Even so, Locke also highlight that in order to avoid the uncertainty of living in this world, human beings have entered into a social contract, according to which the exercise of their inalienable rights is left up to state authorities (Ashri, 2018).

Article 5 of Law Number 39 of 1999 concerning human rights, states that every person is recognized as an individual human being, and therefore has the right to receive equal treatment and protection in accordance with human dignity before the law. Everyone has the right to receive fair assistance and protection from an objective and impartial court. Furthermore, is the treatment and protection of vulnerable groups of people with respect to specificities, such as: the elderly, children, the poor, pregnant women and people with disabilities (Prinst, 2001).

It is impossible to have a conversation on human rights in regard to the legal system without also examining the connection between human rights, the rule of law, and democracy. Both the quality of protection and promotion of human rights and the rule of law in a country are two of the many democratic indicators which are indicators of the presence or absence of democracy in a country (Muladi, 2005). The right to a fair or balanced trial includes the following:

1) One thing that must still be taken into account in democratic life is an independent judiciary, which guarantees the administration of an honest trial for all persons accused of committing a crime. This guarantee is concretely carried out against individuals who are accused of committing a crime, who claim that

their right to a fair trial has been violated. This is regulated in the Optional Protocol to The ICCPR (1966) (Baldinger, 2015).

2) The main basis for setting up a fair trial is contained in articles 10 and 11 of the 1948 UDHR; Articles 14 and 15 of the ICCPR affirm the existence of a person's right to a fair and public hearing by a competent, independent and impartial established by law.

After the world experienced two wars involving almost the entire world where human rights were trampled on, the desire arose to formulate human rights in an international text. This effort on December 10, 1948 succeeded with the acceptance of the Universal Declaration of Human Rights (UDHR) by the countries that are members of the United Nations.

As a statement or Charter, the Universal Declaration of Human Rights is only morally binding but not yet juridically, but this document has enormous moral, political and educational influence. It symbolizes the moral "commitment" of the international world to norms and human rights. This moral and political influence is evident from the frequent mention of it in the decisions of judges, laws or constitutions of several countries, especially the United Nations (Muladi, 2005).

Everyone without discrimination has the right to obtain justice and to obtain it is carried out by filing requests, complaints and lawsuits, whether in civil, criminal or administrative cases. For this reason, cases are tried through an independent and impartial judicial process, with reference to procedural law which guarantees an objective examination by honest and fair judges. The goal is to obtain a fair and correct decision. According to this principle, selling decisions must be avoided in handling cases (Prinst, 2001).

A fair trial is a series of judicial processes from pre-trial, trial and post-trial. In every stage of the trial there are human rights that must be given to suspects, defendants and convicts. Pre-trial rights, namely: (a) Prohibition of Arbitrary Detention; (b) The right to know the reasons for the arrest and detention; (c) Right to Legal Counsel; (d) The right to test the Legitimacy of Arrest and Detention; (e) the right not to be tortured, as well as the right to be treated humanely during detention; (f) the right to be brought before a judge and trial promptly. The rights during the trial period, namely: (a) The right to a fair and open examination; (b) The right to be immediately notified of criminal charges is granted; (c) the right to be tried by competent courts and judges; (d) The right to adequate time and facilities to prepare a defense; (e) The right to defend himself or through legal counsel; (f) The right to examine witnesses; (g) The right to have free translators; (h) Prohibition to force someone to provide information that will incriminate themselves (self-incrimination); (i) the right to be tried without delay. While the rights at trial are: (a) the right to legal remedies, and (b) the right to receive compensation for an erroneous court decision (S. Marzuki, 2011).

Based on the above, the authors are interested in conducting research related to how the legal protection of victims for the right to a fair trial is a form of human rights protection in the Indonesian justice system.

2. RESEARCH METHODS

The type of research in writing this article was the Normative Law writing method. The Normative Law writing method was a legal research method that describes the condition of norms that conflict with norms (*geschijld van normamen*), vague or unclear norms (*vague van normamen*) or empty norms (*leetmen van normamen*). Normative research, namely library law research or legal research based on data, namely secondary data (Soekanto & Mamudji, 2003).

3. RESULTS AND DISCUSSION

3.1 Research Result

In order to understand the concept of fair trial in the Indonesian criminal justice system, we must first examine the origins of law as a social norm aimed at regulating human behavior. The concept of law as a social norm seen from the existence of law in social life can be translated into the classic expression "*ubi societasi ibi ius*" which means law has existed since society existed. Thus, in living in human society there are two aspects, namely the physical aspect and the existential aspect. The physical aspect refers to human nature as a physically living being. The existential aspect relates to its existence which is different from other living things. As a physical living being, to maintain his life, humans need to eat, drink, protecting oneself from the cruelty of nature by making weapons, and procreation, namely marrying and marrying. However, in order to maintain its existence, humans need not only such physical means. If to continue offspring, humans need sexual activity, to maintain their existence, humans need love. To love is to exist in a framework other than physical survival. Gabriel Marcel states that "As long as death plays no further role than that of providing man with an incentive to evade it, man behaves as mere living being, not as an existing being" (Morrison, 2016). These rules are what people refer to as the law. In this case, there are often mistakes in thinking. A frequent mistake is the view that new laws exist, due to the existence of an organized society. Consequently, the law according to this kind of view is a rule called law according to this kind of view is a rule made by those who are indeed charged with making it albeit in its still simple form. Consequently, if the rule grows and develops but is not implemented by a "formal" power, it cannot be called law. Thus, in a society that does not recognize the "formal" power to enforce those rules in that society it is said that there is no law, but only a rule of conduct.

In the Fair Trial Concept, it can be seen from the definition of law, in this case the theory of legal definitions taken from Gray's concept (Ali, 2009) is "theory on the nature of Laws is what the courts, in deciding cases, are, in truth, applying what has previously existed in the common consciousness of the people". This theory is a theory that views the nature of law as what is decided by the court, is a truth that applies the general awareness of the people that has been before. This theory is a theory adopted by von Savigny, who in the early part of his work entitled "the system *des heutigen roischen rechts"*, Savigny identified law as *Volksrecht* (people's law) as the embodiment of *Volksgeist* (the soul of the nation/people), which is the 'general awareness of the people' and is the 'living intuition' of the people. Legal definition according to Allot (Ali, 2009) is in the matter of defining law unsatisfactory things have appeared before it, because the definition of law is used in various different meanings in legal writings, regarding the meaning of the word 'law' itself. It is impossible for a term to cover all functions without

wrong thinking and analysis. In that regard, Allot suggests three things that distinguish legal typology as:

a) Law as an abstract concept
b) Law that exists in the legal system
c) Law as a rule or special provisions

In analyzing the legal rules and norms in a particular legal system which is a message from the legal communication system, there is a difference between articulatory norms and inarticulate norms. In this case, what Allot meant (Ali, 2009) as 'inarticulate norms' are latent (hidden) norms, which in their nature evoke acts of obedience to the law. This is what distinguishes it from 'phantom norms' (norms that have never been raised by any authority) and from frustrated norms, namely norms that are presented in a valid form, but only have minimal consequences without even being adhered to at all (zero compliance).

In considering Letter (a) of the Criminal Procedure Code or stating that: "The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution which upholds Human Rights and which guarantees that all citizens have the same position before law and government and are obliged to uphold that law and government without any except."

The provisions described above make it very obvious that the state will always uphold its obligation to protect the rights of its citizens. The Criminal Procedure Code, as a guideline for regulating national criminal procedures, must be based on the philosophy/view of life of the nation and the foundation of the state, so the material provisions of the articles or paragraphs should reflect the protection of human rights and the obligations of citizens. The principle governing the protection of the nobility and dignity of human beings has been laid down in Law no. 48 of 2009 concerning Judicial Power. These principles are the principles of the right to a fair trial in the criminal justice system in Indonesia which must be upheld by the Criminal Procedure Code. Examination of cases in court can be carried out using three procedures for examining cases, namely ordinary, brief and fast examinations (Muhammad, 2011). The fair trial principles in question apply to the criminal justice system, including:

1) The presumption of innocence, against everyone who is suspected of being arrested, detained, prosecuted and presented before a court hearing until a court decision has obtained permanent legal force (*inkracht van gewijsde*);

The initial stage in the search for a criminal act is the investigation process. Investigation is to examine carefully or monitor the movements of the enemy so that the investigation can be interpreted as a research examination or surveillance (Hamzah, 1986). In examining suspects, investigators must pay attention to human rights, because in every human being there is dignity that must be upheld. The Criminal Procedure Code regulates the rights possessed by suspects, therefore an examination, especially an investigation, does not allow threats or violence.

To protect these rights, the government issued Law Number 4 of 2004 concerning Judicial Power as amended by Law Number 48 of 2009, one of the contents of which relates to the Presumption of Innocence regulated in Article 8 which reads: "Every person who is suspected, arrested, detained, prosecuted, and/or presented before a court must be

presumed innocent before a court decision states his guilt and has obtained permanent legal force."

The definition of the presumption of innocence according to Nico Keijzer in Mien Rukmini's book is that the suspect is considered innocent in the sense of the actual case. This relates to investigations, arrests and detentions. The definition of the Presumption of Innocence is not related to facts, but related to the main rules and procedures in the criminal justice process. It is said that the suspect/defendant is not or has not been considered guilty and does not have to prove his own innocence, but will be determined by a fair trial, which gives them the opportunity to defend themselves and they must be treated the same as innocent people (Rukmini, 2003).

It is not uncommon for suspects during their examinations to be subjected to pressure and intimidation to admit mistakes that they did not necessarily commit, even in some cases there were wrongful arrests committed by previous officials, the suspect was treated not in accordance with juridical rights under the Criminal Procedure Code, thus the act was not in accordance with embodiment of the Presumption of Innocence. The rights of suspects stated above are guaranteed and protected by law in the process of handling criminal cases, this shows that the Criminal Procedure Code respects and upholds human dignity by providing protection and guarantees for human rights (suspects). Specifically regulating the rights of suspects in the Criminal Procedure Code means that in the process of handling cases, these rights can provide clear or firm boundaries for the authority of law enforcement officials so that they avoid arbitrary actions. From the point of view of criminal procedural law, learning about guarantees and protection for suspects is primarily intended so that law enforcement can truly be based on material truth. As such, the guarantee is obtained that the ultimate goal of the Criminal Procedure Code is to affirm concrete truth and justice in a criminal case (Susanto, 2004).

Apart from having the rights regulated by the Criminal Procedure Code, a suspect or defendant also has obligations that must be obeyed and carried out in accordance with the law. The obligations of a suspect or defendant contained in the Criminal Procedure Code include: 1) Obligation for the suspect or defendant to report himself at the specified time in the event that the person concerned is undergoing city detention (Article 22 paragraph 3 of the Criminal Procedure Code); 2) Obligation to request permission to leave the house or city from investigators, public prosecutors or judges who give detention orders, for suspects or defendants who are undergoing house arrest or city detention (Article 22 paragraphs 2 and 3 of the Criminal Procedure Code); 3) Obligation to comply with the conditions set for suspects or defendants who are undergoing mass suspension, for example, the obligation to report not leaving the house or city (explanation of Article 31 of the Criminal Procedure Code); 4) Must keep the contents of the minutes (derivatives of the minutes of examination) for the benefit of his defense (Article 72 of the Criminal Procedure Code and its explanation); 5) Obligation to state the reasons when submitting a request regarding the lawfulness of an arrest or detention as well as a request for compensation and or rehabilitation (Articles 79 and 81 of the Criminal Procedure Code); 6) If summoned legally and mentioning clear reasons, it is obligatory to come to the investigator unless giving proper and reasonable reasons (Articles 112 and 113 of the Criminal Procedure Code); 7) It is obligatory to be present on the appointed court day. The presence of the accused at trial is an obligation, not a right, the accused must be present at the trial court (explanation of Article 154 paragraph 4 of the Criminal Procedure Code). Even if the accused, after making serious efforts, cannot be presented properly, then the accused can be forced to appear (Article 154 paragraph 6 of the Criminal

Procedure Code); 8). Even though it is not expressly stated as an obligation, the defense of the accused or legal adviser is certainly a must (Article 182); 9) Obligation to respect and comply with court order; 10) Obligation to pay court costs that have been criminally decided (Article 22 paragraph 1); 11) Even though it is not strictly required, it is very logical that a memorandum of appeal needs to be made by the defendant who submitted the request for appeal. Article 237 of the Criminal Procedure Code says that as long as the high court has not examined a case at the appeal level, either the defendant or his attorney or the public prosecutor can submit a memorandum of appeal or counter memorandum of appeal to the high court; 12) If as a cassation applicant, the defendant is obliged to submit his memorandum of cassation, and within 14 days after submitting the application, it must have submitted it to the clerk (Article 248 paragraph 1 of the Criminal Procedure Code); 13) If the defendant submits a request for Judicial Review (PK) then it must clearly state the reasons (Article 264 paragraph 1 of the Criminal Procedure Code) (Waluyo, 2000).

In order to realize an examination and trial in accordance with the law, an obligation is imposed which aims to counterbalance the rights of the suspect or defendant. These obligations must be fulfilled by the suspect or defendant in carrying out his status as a suspected person or person charged with committing a certain criminal act. Application of the Principle of Presumption of Innocence is related to the objective basis and subjective basis above, the suspect is given full rights by law in the detention process where the suspect is not detained beyond the period prescribed by law and during detention the suspect is treated appropriately and reasonably and is not subjected to violence as an innocent person by the investigator, Because even though he is in detention, the suspect is still considered innocent as long as there is no permanent verdict that finds him guilty.

2) Equality before the law, there is equal treatment of everyone before the law/judge with different treatment;

The principles of Indonesian criminal justice, such as equality before the law, presumption of innocence, promptness, simplicity, efficiency and effectiveness, and a fair legal process, must always be preserved. This is necessary for the proper operation of the criminal justice system and the realization of the rule of law.

These principles will greatly affect the criminal justice system in enforcing criminal law in Indonesia. Because these principles are the main foundation and guideline for those in the criminal justice system and in law enforcement. Nonetheless, if these principles are not used as a basis, it will be difficult for the criminal justice system to run well.

All elements in the criminal justice system must oversee these principles. Both elements in the sub-system of legal substance, legal structure, and legal culture must adhere to these principles. The sub-system of substance must be made in such a way as to be in line with the principle, as well as the sub-system of legal structure that must be controlled to adhere to that principle and the principle of the sub-system of legal culture must continue to be realized and guided to maintain the principles in the criminal justice system to support the enforcement of criminal law in Indonesia.

The legal principle of equality before the law originates from the recognition of individual freedom in connection with this. Thomas Jefferson stated that “all men are created equal”, especially in relation to basic human rights (Mansfield, 2017). Article 27 paragraph (1) of the 1945 Constitution states that all citizens have the same status in law

and government and are obliged to uphold that law and government without exception. In other words, everyone is treated equally before the law.

The concept of Equality before the Law has been introduced in the constitution, a highest recognition in the system of laws and regulations in the country, this principle means that the meaning of equality before the law is for the same case (crime). In reality, there is no equal treatment, and that causes individual rights to obtain justice (access to justice) to be neglected. Different treatment in corruption causes neglect of individual freedom. In other words, legal certainty is neglected.

In the concept of equality before the law, judges must act in a balanced way in presiding over court hearings, commonly referred to as the principle of *audi et alteram partem*. If indeed the Indonesian state is truly a rule of law (*rechtstaat*) country that exalts and prioritizes the value of equality before the law, everyone is equal before the law, it has no basis in criminal cases, especially corruption cases, the defendants receive special treatment when compared to other defendants, such as not subject to detention.

According to what has been learned up until this point, the concept of equality before the law is not given the serious consideration it deserves; rather, this value is treated as little more than empty rhetoric or empty platitudes (lip services). If this value is applied seriously, discretion will not be given arbitrarily. Discretion has so far been given to certain groups who generally have power, be it in a political, social or economic sense.

Everyone has the same position before the law, equality before the law, has been analogized as an ironic form by society to "only ordinary people have the same position before the law". Sadly, that sums up the general public's perspective on the issue of law enforcement.

Understanding of the concept of equality before the law is still not fully implemented or properly understood. Indeed, if we read the terms of this anti-corruption law, we will see that both laws employ the word "everyone" in each of their articles. Thus all citizens who commit acts as stipulated in the Act will automatically be bound by these provisions. The law clearly enforces the principle of equality before the law in its provisions, so if anyone argues for differences in treatment on the basis of social status and legal status of a person who commits a crime including corruptors, then there is no legitimacy other than it must be stated that the perpetrators of criminal acts or the corruptor is crazy or underage. Argumentum lainnya adalah mengutip pernyataan Romly Atmasasmita yang menyatakan bahwa jika masih ada Undang-Undang yang memberikan keistimewaan perlakuan maka Undang-Undang tersebut bertentangan secara diametral dengan Undang-Undang Dasar 1945 dan perubahannya yang menyatakan secara eksplisit, hak setiap orang untuk diperlakukan semua di muka hukum (*equality before the law*) dalam posisi apapun juga selama dalam status tersangka/terdakwa/terpidana (Atmasasmita, 2010).

3) The principle of legality, to someone who is arrested, detained and prosecuted or tried without reason based on law and or due to a mistake either regarding the person or the application of the law, must be given compensation and rehabilitation from the level of investigation and law enforcement officials, who intentionally or negligence, causing the legal principle to be violated will be prosecuted, punished and or subject to administrative punishment;

The term principle of legality comes from the Latin which reads, "*Nullum Delictum Nulla Poena Sine Praevia Lege Poenali*", which means no offense, no crime, without

prior regulations. The formulation of *Nullum Delictum Nulla Poena Sine Praevia Lege Poenali* was first put forward by the famous German criminal law scholar Von Feuerbach, who formulated it in a Latin proverb in his book "*Lehrbuch des pemlichen Recht*" (Rusyadi, 2016).

Ansen Von Feuerbach formulated this principle in connection with his famous theory "*vom psychologischen zwang*". According to this theory, criminal threats are intended to frighten, so that the inner urge to commit criminal acts can be prevented. In order for people to know that there is a criminal threat, it needs to be formulated in law, so there is a relationship between the theory of vom psychologischen zwang and the principle of legality.

The principle of legality is the realization of the theory of vom psychologischen zwang, this principle requires that the existence of a crime must be stated first in criminal legislation. How evil an act is viewed by society, is not a criminal offense, and the perpetrator cannot be convicted as long as the law does not regulate it. In other words, the act is first included in the laws and regulations along with the punishment.

The principle of legality determines what acts are seen as criminal acts, because what makes our laws is that the government together with the House of Representatives, as representatives of the people, it is the duty of the government together with the House of Representatives to wisely determine what acts are seen as criminal acts.

The principle of legality in Indonesian criminal law is stated in Article 1 paragraph (1) of the Criminal Code which reads: "No act can be punished except for the strength of criminal rules in existing legislation, before the act is committed."

The principle of legality requires that an act can be declared as a crime if there is a law that first states that the act is a crime. Therefore, the principle of legality prohibits retroactive application of criminal law. As such, Article 1 paragraph (1) of the Criminal Code is the basis for criminal law enforcement in Indonesia, especially in relation to legal certainty.

This principle of legality is also regulated in Article 6 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that: "No one can be brought before a court other than what is determined by law".

The sound of this article reaffirms the desire for the principle of legality for criminal law to be made in writing. Likewise in the 1945 Constitution Amendment II Article 281 paragraph (1) which states that: "The right to life ..... and the right not to be prosecuted on the basis of a law that applies retroactively are human rights that cannot be reduced under any circumstances."

In Amendment IV, it is stated that: "To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in legislation".

It should be realized that WetBoek van Strafrecht (WvS) is a Dutch colonial heritage, hence its implementation requires some adjustments in the Indonesian context. In this case, there are articles that are not enforced and amended by adding articles that are considered lacking. In its development, the policy of amending the articles of the Criminal Code was abandoned by forming a new law, so that what is called a criminal act outside the Criminal Code emerged. Still, it turns out that the regulation of criminal acts outside the Criminal Code forms a separate system that deviates from the general provisions of criminal law as regulated in book I of the Criminal Code. Both in terms of legal principles and criminal provisions.

As a rule inherited from the Netherlands, according to Mudzakkir "The principle of legality then becomes a problem in its application". The principle of legality is faced with the reality of a heterogeneous Indonesian society. The Criminal Code and criminal provisions beyond it still leave areas of action that are considered by society to be prohibited acts, while written laws do not stipulate such prohibitions (Mudzakir, 2005).

In the history of Indonesian criminal law, the existence of customary courts has made it possible for customary crimes and living laws to be applied even though these customary crimes are not regulated in the Criminal Code. Hence, the principle of legality in practice in Indonesia is not purely applied as required by Article 1 of the Criminal Code.

3.2. Discussion

The concept of Fair Trial in the criminal justice system is the regulation of Human Rights which consists of basic values from the criminal justice process which at least include three important components, namely human dignity, truth and fairness in the process (Lippke, 2019). The first basic value, namely the protection of human dignity, refers to the condition that all law enforcement officials at all stages of the trial must apply consistently and support the protection of human dignity of the parties, including suspects, defendants, convicts, victims and witnesses. The dignity of a person is a fundamental moral right that must be respected by all law enforcement officials at the levels of investigation, prosecution and examination in court. The stipulated rules must be able to limit behavior that has an impact on violations of human dignity. In terms of the area it regulates, the law regulates human behavior outwardly. Ulpianus declared (P. M. Marzuki, 2016) "*cogitatiois poenam nemo patitur*", which means "no one is punished for thinking". In Dutch, there is expression "*gedachten zijn tolvrij*" (P. M. Marzuki, 2016) which means that people are free to think as long as they don't say it. The target of legal regulation is human birth behavior, the law will not act if a person's actions do not violate the rule of law even though the person's mind actually wants to do something that violates the law. As can be stated, in a person's mind he wants to kill someone who occupies the position he wants in an institution but he knows that killing is subject to severe punishment. Nevertheless, it cannot be denied that the law also sometimes enters a person's inner realm. Provisions regarding intent in criminal law and good faith in civil law, for example, are provisions that enter a person's inner realm. Even in trials, the defendant's mental attitude is often taken into consideration in imposing sanctions as a mitigating or burdensome factor for imposing sanctions.

The second value is the truth value, this value requires that law enforcers must ensure the application of normative provisions before imposing accusations, indictments, or convicting someone. The first aspect of the value of truth is integrity, namely law enforcers authorized to carry out arrests, investigations, prosecutions and examinations in court must respect and consistently comply with existing procedures and act based on evidence (evidence driven). The second aspect is the implementation of strict procedures (rigor), namely law enforcement must always carry out checks and balances to ensure that decisions taken in the criminal justice process are tested repeatedly, which leads for example in courts where law enforcement must build arguments for the defendant's guilt based on strong evidence (Abidin, 2022). Furthermore, in terms of the origin of its binding power, law has binding power because it is stipulated by the authorities or develops from practices that have been accepted by society. Once again, it can be seen here that the law focuses more on the human aspect as a social being as well as the outward aspect of the

human being. The binding power of law is not created internally within human beings, but is imposed from outside human beings, even customary laws that are not made by the authorities but grow from practices even though they require acceptance by society (opinion *necessitatis*). In opinion *necessitatis* there is an acknowledgment regarding the existence of authority that makes customary law binding. Such aggregation is only permitted by law, because the law stipulates rights in addition to individual obligations in interacting with others in society. Rights cannot be found in other social norms. One thing that needs to be stated here is that the Latin word *ius*, Dutch *recht*, French *droit*, and German *recht* can mean right and law (Sugiarto, 2021). This shows that rights can only be found in legal norms.

While the third value is fairness or the value of justice in the criminal justice process, which requires that law enforcers must work hard to treat parties with respect for their rights protected by law and apply the limits of their authority. This value must be exercised by the police in the early stages of the investigative process and by prosecutors and judges who make decisions about whether to charge someone or convict someone. This fairness value also covers efforts to modify or find alternative justice processes such as restorative justice models or special forms of courts (Abidin, 2022). This shows that the law does not belong to the authorities and people who have power as contained in Pancasila contained in the Second Precept "Just and Civilized Humanity", besides contained in Pancasila Human Rights are also contained in the 1945 Constitution of the Republic of Indonesia which contained in article 28 A-J. if the Human Rights in the 1945 Constitution of the Republic of Indonesia are aimed at the Fair Trial concept it can be seen in Article 27 paragraph 1 which states "All citizens have the same position before the law and government and are obliged to uphold the law and government without exception" and article 28 D paragraph 1 which states "Every person has the right to recognition, guarantees, protection and certainty fair law and equal treatment before the law", according to Bertrand Russell said that (P. M. Marzuki, 2016) "Power constitutes the fundamental concept in social science in the same way that energy is the fundamental concept in physics". He further emphasized that the love of power is a main motive that causes change (P. M. Marzuki, 2016), hence in the criminal justice system of countries adhering to the rule of law (*Rechstaat*) principle of Equality Before The Law so that everyone must be treated equally before the law (*Gelijkheid van ieder voor de wet*).

4. CONCLUSION

From the three basic values of the criminal justice process, we are able to understand that the concept of fair trial used to protect human rights has not been fully implemented properly by law enforcement in Indonesia so that the concept of equal rights in Pancasila and the 1945 Constitution of the Republic of Indonesia does not seem to provide certainty and protection as a guarantee of equal rights.

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WATER AND AIR POLICE CORPS (POLAIRUD) AUTHORITY IN PREVENTING THEFT ON LEGO ANCHORS SHIPS IN THE TANJUNG PRIOK PORT AREA

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Abstract

The aim of the research is to analyze the authority of Water and Air Police Corps (Korpolairud) in preventing the crime of theft on ships with Lego anchors in the Tanjung Priok port area as well as analyzing the legal protection of ships anchored in the Tanjung Priok port area. The type of research used is normative juridical. The approaches used in legal research are the statute approach, the case approach and the comparative approach. The results of the analysis show that Polairud's Authority in preventing criminal acts of theft, Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is a state based on law. The rule of law is a constitutional construction. As such, all actions of law enforcement officials including the police in carrying out investigations must be based on the law and obey the law. Legal protection for Lego Anchor Ships in the Tanjung Priok Port Area, it can be understood that police institutions, especially the Sub-Directorate of Gakkum Ditpolair Korpolairud Baharkam Polri as an organization carry out administrative and management functions in carrying out their functions or duties as investigators of criminal acts of theft onboard Lego Anchors in the Region Tanjung Priok Port which has been determined by laws and regulations.

Keywords: *Korpolairud Authority, Lego Anchor Ship, Theft Crime*

1. INTRODUCTION

Indonesia is an archipelagic country and has a strategic geographical position which makes Indonesian seas pass by ships from various countries, both merchant ships and naval vessels from various countries in the world. According to the United Nations Conference on Trade and Development (UNCTAD), Indonesia is ranked 13th out of 30 in Cargo and ship handling performance for dry bulk carriers. Top 30 economies by ship arrivals, average value for 2018 to first halfa 2021.However, Indonesia's maritime territory also plays a role as a site for threats to maritime security, such as piracy and armed attacks on operating vessels. The results of data reports from the International Maritime Organization (IMO) state that two areas that are vulnerable to piracy are the territorial sea area and state ports.

The important function of the sea in societal life often creates various threats, including piracy, sea and armed robbery, weapons and ammunition smuggling, illegal fishing, pollution of the marine environment, disposal of hazardous and toxic wastes (B3), and so on (Susanto & Dicky, 2015). Besides that the enforcement for law violations at sea is very difficult because one has to understand territorial/territorial boundaries, in contrast to law enforcement on land which can actually be made and seen (Leden, 2005). This should be a problem because crimes that occur in the Indonesian maritime territory are not regulated in the Criminal Code (KUHP) so that a law enforcement agency is needed that specifically enforces the law in the Indonesian maritime territory.

Security is a matter of law enforcement, based on the Presidential Regulation of the Republic of Indonesia No. 5 of 2017 concerning Amendments to Presidential Regulation Number 52 of 2010 concerning the Organizational Structure and Work Procedures of the Indonesian National Police, the Water and Air Police Corps Security Maintenance Agency of the Republic of Indonesia Police (hereinafter referred to as *Korpolairud Baharkam Polri*) is the main implementing element under *Kabaharkam Polri* led by *Kakorpolairud* and responsible to Kabaharkam Polri, where *Korpolairud Baharkam Polri* in charge of the Directorate of Water Police and the Directorate of Air Police (Mukhsalmina et al., 2021).

The high incidence of theft on ships at port has made some Indonesian waters unsafe for shipping (Saraswati & Pinatih, 2020). This initiated the *Korpolairud Baharkam Polri* to innovate the Quick Response program to prevent theft on ships in the berthing area (Yoriadi, 2019). This is one of *Korpolairud Baharkam Polri*'s responses to security and safety issues in the berthing area for ships that are anchoring, because *Korpolairud Baharkam Polri* obtains data from the International Maritime Bureau (IMB), which has one of its functions to provide information to countries in world for incidents that disrupt security in the waters. If the security of Indonesian waters is deemed unsafe, it will have an impact on Indonesia's reputation, which can reduce investment and of course disrupt the economy, especially in competing with other countries. In its implementation, there are ten most vulnerable points (hotspots) in Indonesian waters, especially in the area where ships are anchored, which are the targets of the implementation of the *Korpolairud Baharkam Polri* services to be given fast assistance in securing and preventing theft on these ships. The hotspot areas are Belawan: 03:55.00N-098:45.30E, Dumai: 01:42.00N-101:28.00E, Nipah: 01:07.30N-103:37.00E, Tanjung Berakit/Bintan: 01:00AM 23.30N-104:42.30E, Tanjung Priok: 06:00.30S-106:54.00E, Gresik: 07:09.00S-112:40.00E, Taboneo: 03:41.30S-114:28.00E, Tanjung Butan: 01:00 11.30N-104:12.30E, Muara Berau: 00:17.00S-117:36.00E, Balikpapan: 01:22.00S-116:53.00E.

During 2019, it turns out that overseas waters are rife with lanun (pirates). According to the records of the Regional Cooperation Agreement to Combat Piracy and Armed Robbery Against Ships in Asia (ReCAAP ISC), until last year there were 31 piracy against ships crossing the Singapore Strait. This figure is relatively high compared to 2018 records. The Singapore-based agency revealed that only seven incidents of lanun were recorded during 2018. So, in 2019 crime at sea experienced a significant increase, namely more than 400 percent. On 7 February 2020, an act of piracy hit a tug boat and barge with the Malaysian flag (Sung Fatt 27 and Sung Fatt 32 respectively) which were sailing in the waters of the Riau Archipelago, to be precise around Karimun Besar Island.

The Tanjung Priok Port Police arrested a gang of thieves specialists on foreign ships, the mode used by the perpetrators was by wearing vests and helmets that resembled the equipment used by port officers. This method is used so that the perpetrators freely enter the ship and commit theft on board.

Through the decisions in the Directory of Decisions of the Supreme Court of the Republic of Indonesia, the authors found about cases of the crime of theft on ships, which included:

1) Decision of the Central Jakarta court which has permanent legal force Number: 1079/Pid.B/2017/PN.JKT.PST dated November 15 2016 in the case of an Awaludin alias Syahwal using the MT. Matahari ship owned by Bank Jabar which was rented and used to commit the crime of sea piracy, the court through its verdict sentenced the defendant to imprisonment for 7 (seven) years and 6 (six) months.

2) The decision of the Pangkal Pinang District Court Number: 267/Pid.B/2018/PN.Pgp dated October 1 2018 stated that Tion bin Kodin was legally and convincingly proven to have committed the crime of piracy in the territorial sea in the waters of Mespari Island, Bangka Belitung Regency, together and imprisonment for 1 (one) year.
3) The number of disclosures of criminal acts during 2021 was quite a lot, *Korpolairud Baharkam Polri* handled 655 criminal cases, 655 of which were divided into 519 disclosures by Ditpolair *Korpolairud Baharkam Polri* and 136 disclosures by Ditpolair Polda ranks throughout Indonesia. From disclosing this case, the ranks of the *Korpolairud Baharkam Polri* were able to save state assets of up to Rp. 1 trillion. There are 4 (four) cases that stand out the most throughout 2021. The first is the arrest of fishing boats with foreign flags, then the disclosure of smuggling of explosives in East Java. There were 9 foreign fishing boats with Vietnamese and Malaysian flags that were caught, which is a prominent case because it occurred in the North Natuna Sea region. The next prominent case is the disclosure of large quantities of drugs and the smuggling of lobster seeds. The smuggling of lobster seeds or baby lobsters is a crime which is an enemy of the state. The *Korpolairud Baharkam Polri* succeeded in thwarting the smuggling of 122.100 lobster seeds or fry worth around Rp33,6 billion.

Based on the facts and problems, the aim of current research is to analyze the authority of Korpolairud in preventing the crime of theft on ships with Lego anchors in the Tanjung Priok port area. Besides, current research also analyzing the legal protection of ships anchored in the Tanjung Priok port area.

2. LITERATURE REVIEW

2.1. Maritime Security Theory

Feldt, Roell, & Thiele (2013) argues that "Maritime Security is the combination of preventive and responsive measures to protect the maritime domain against threats and intentional unlawful acts (a combination of preventive and responsive measures to protect the maritime from threats and illegal acts)". The key words of understanding are preventive, responsive steps, directed at both civil and military law enforcement as well as security operations such as those carried out by law enforcement at sea. Maritime security is primarily concerned with navigational safety issues, eradicating transnational crimes including maritime piracy and maritime terrorism as well as conflict prevention and resolution. In that context, non-traditional issues, such as environmental security and search and rescue operations are included.

2.2. Crime Prevention Theory

Referring to opinion Bergs (1988) that crime prevention as an effort to require actions designed to reduce the actual level of crime and/or things that can be considered as crimes according to their development. Prevention of crime is the implementation of police functions at the pre-emptive and preventive stages, with the presence of uniformed police both individually and as a unit as a form of protection, and provides protection and services to the community. Crime prevention is an action to eliminate crime before it occurs and before the crime develops further.

2.3. Authority Theory

Power is often equated with authority, and power is often interchanged with the term authority, and vice versa. In fact, authority is often equated with authority. Power usually takes the form of a relationship in the sense that "there is one party who rules and another party is governed" (the rule and the ruled).

Authority is often equated with the term authority. The term authority is used in the noun form and is often equated with the term "*bevoegheid*" in Dutch legal terms. According to Hadjon (1997), "if one looks closely there is a slight difference between the term authority and the term *bevoegheid*. The difference lies in the legal character. The term *bevoegheid* is used in the concept of public law as well as in private law". In our legal concept the term authority or authority should be used in the concept of public law.

2.4. Theft Crime

Theft in its main form is regulated in Article 362 of the Criminal Code (KUHP), which reads: "Anyone who takes something that wholly or partly belongs to another person, with the intention of taking possession of said object against his rights, then he is convicted of committing theft with a maximum imprisonment of five years or a maximum fine of sixty rupiahs".

3. RESEARCH METHODS

The type of research used was normative juridical. The approaches used in legal research were statutory approaches. The statutory approach carried out by examining all laws and regulations that related to the legal issues being handled. While the case approach is carried out by examining cases related to the issue at hand, and had become a decision that had permanent legal force (Marzuki, 2017). The case approach also studied the application of legal norms or rules in legal practice, taking into account their normative nature (Taufani, 2018). A comparative approach was a type of approach that compared an event that occurred in a country (Marzuki, 2017).

a. Primary Legal Materials, namely binding legal materials consisting of:
    1) The 1945 Constitution of the Unitary State of the Republic of Indonesia, Article 30 Paragraph (2) regarding state defense and security is carried out through the defense and security system of the entire people by the Indonesian National Armed Forces and the Indonesian National Police as the main force.
    2) Law Number 1 of 1946 concerning Criminal Law Regulations, the Criminal Code (KUHP).
    3) Law Number 8 of 1981 concerning Criminal Procedure Code, the Criminal Procedure Code (KUHAP).
    4) The United Nations Convention on the United Nations Convention on The law of the sea (UNCLOS 1982) which ratifies the Law of the Sea.
    5) Law No. 17 of 1985 concerning ratification of the ratification of UNCLOS, the United Nations convention on the Law of the Sea.
    6) Law Number 2 of 2002 concerning the Indonesian National Police.
    7) Law Number 17 of 2008 concerning Shipping
    8) Law Number 43 of 2008 concerning State Territory.
    9) Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries.
    10) Law Number 32 of 2014 concerning Maritime Affairs.

11) RI Presidential Regulation Number 5 of 2017 concerning amendments to Presidential Regulation Number 52 of 2010 concerning the Organizational Structure and Work Procedure of the Indonesian National Police.
12) Republic of Indonesia Presidential Regulation Number 16 of 2017 concerning Indonesian Maritime Policy 2016-2019
13) Republic of Indonesia Presidential Regulation Number 34 of 2022 concerning the 2021-2025 Indonesian Maritime Policy Action Plan.
14) Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2017 concerning the Organizational Structure and Work Procedures of the Indonesian National Police at the Headquarters level.
15) Other laws and regulations related to this research.

b. Secondary Legal Materials, namely legal materials that provide explanations and instructions for primary legal materials, which consist of:
   1) Various literature/books related to research material.
   2) Various results of seminars, workshops, symposiums, and research scientific papers and other articles related to research material.
c. Tertiary Legal Materials, namely legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, consisting of: Legal Dictionary, English-Indonesian Dictionary, Indonesian General Dictionary, and Encyclopedia.

Legal materials obtained from research activities were analyzed appropriately to solve a legal problem that had been studied. The analysis of legal material used in this study was an analysis of teleological interpretation and systematic interpretation. Through teleological interpretation, the author sought to analyze the existence of laws and regulations related to this matter by analyzing legal material that had been collected through a legal inventory process, analyzed in depth by exploring the basic principles, values and norms contained in there. Furthermore, cross-checking carried out with other laws and regulations.

4. RESULTS AND DISCUSSION

4.1. Analysis of Polairud Authority in Theft Preventing Crime

The high incidence of theft on ships at port has made some Indonesian waters unsafe for shipping. This initiated the Indonesian National Police's Air and Water Police Corps (hereinafter referred to as *Korpolairud*) Security Maintenance Agency (hereinafter referred to as *Baharkam*) to innovate the “Quick Response” or Theft Prevention program on board ships in the berthing area.

Polairud's authority in preventing criminal acts of theft through the investigation stage is an important part in a series of stages that must be passed by a case to reveal whether or not a crime has been alleged to have occurred. Therefore, the existence of the investigation stage cannot be separated from the existence of statutory provisions governing criminal acts.

The crime of theft regulated in Article 362 of the Criminal Code. Therefore, the state feels the need to protect the rights of its citizens in relation to property. Protection of property rights in the form of property is emphasized in the 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (4) which reads “Every person has the right

to have private property rights and these property rights may not be taken over arbitrarily by anybody". The crime of theft is one of the most common crimes in society.

Through the framework of the criminal justice system, the role of law enforcement officials, especially investigators is very strategic. Investigators are the main gate for starting the task of finding material truth, because it is through the investigative process that law enforcement efforts begin to be carried out (Arif & Priono, 2019). The Law Enforecement (Gakkum) Sub-Directorate is an element of the Police task force in charge of carrying out investigations and prosecutions in the framework of law enforcement in water areas and safeguarding detainees and evidence as well as administrative supervision, investigation materials and criminal investigations carried out by investigators.

In carrying out its duties, the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* carries out an investigative function in Indonesian territorial waters in order to seek and obtain information or data related to violations of the law on maritime crimes (Fadli et al., 2019), conducting investigations into criminal acts or violations of law in Indonesian territorial waters, treating and maintaining detainees and evidence (Matompo, 2018), administrative supervision and criminal investigation materials carried out by investigators according to steps to improve public services in law enforcement that are just in accordance with the program of the Head of the Indonesian National Police (Kapolri) Listyo Sigit Prabowo, namely towards PRESISI POLRI (Predictive, Responsive and Fair Transparency).

The crime of theft that occurred in Indonesian waters, especially on the Lego Anchor Ship in the Tanjung Priok Port Area, must be handled seriously by law enforcement officials, especially the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* by taking repressive measures to prevent and deal with the crime that occurred. This is because Indonesia's interests need to be protected and secured from possible exploitation that is detrimental to the nation and state of Indonesia. Likewise, threats and disturbances that may arise need to be anticipated so that efforts to make the most of the sea for the sake of security at sea and prosperity for the Indonesian people can be maintained and guaranteed (Setiawan, 2016).

In carrying out its functions, investigators from the Sub Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* must really understand their duties and responsibilities, that: investigators generally have the authority, namely:

1) Receive a report or complaint from someone about a crime.
2) Summon and examine suspects and/or witnesses to hear their statements.
3) Bring and appear before someone as a suspect and/or witness to hear their statement.
4) Searching facilities and infrastructure that are suspected of being used in or being a place of committing a crime.
5) Stopping, examining, arresting, bringing and/or detaining ships and/or people suspected of committing criminal acts.
6) Check the completeness and validity of documents.
7) Taking pictures of suspects and/or evidence.
8) Bring in the necessary experts in relation to criminal acts.
9) Make and sign inspection minutes.
10) Confiscate the evidence used and/or proceeds of crime.
11) Carrying out an investigation termination, and
12) Take other actions according to law that can be accounted for.

Based on the results of the research that the author did, it was explained that the application of the principle of locus delicti in the investigation of criminal acts by the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* was carried out with the mechanism for handling water crimes as follows:

1. Ship Detection, carried out by:
   a. Carry out surveillance activities in water areas prone to criminal acts based on the information obtained.
   b. Target recognition using available means (Radar, sonar, binoculars, radio communication, or signals).
   c. Target assessment is intended to assess and determine the target of the suspected object.
2. Ship Investigation
   a. Ship Termination
      If the ship is suspected of having committed an offense/crime based on sufficient initial evidence, a termination will be made on the grounds that the ship has committed an offense/crime as regulated by law.
   b. Ship Inspection
      After the ship is stopped, the next action is carried out: inspection on the Commander's order, the ship docks to the patrol boat or vice versa. The things that need to be considered in the inspection process at sea:
      1) Inspection at sea using legal/official means with clear and identifiable identities/characteristics as patrol/government ships authorized to carry out such actions.
      2) The team of examiners wore full uniforms and were equipped with warrants.
      3) The inspection is witnessed by the Master or Crew of the Ship (ABK) being examined.
      4) The inspection is carried out in an orderly, firm, thorough, fast manner, without loss, damage and does not violate inspection procedures.

According to Law Number 2 of 2002, the National Police is given a mandate to carry out their duties properly so that elements of society can really feel them, so that the National Police are required to always improve their capabilities in the field of police science. That science consists of natural sciences, the science of studying culture (humanities) and social sciences. The social sciences are the sciences that examine human behavior which has beliefs, ideology, knowledge, values, rules, motivations and much more that make it a cultured being and has the ability to make decisions about what actions should be taken.

One of the main focuses of the Indonesian National Police Regulation Number 14 of 2012 concerning the Management of Criminal Investigation is regarding effective and efficient supervision and control of the criminal investigation process. Investigative supervision internally within the Police, must proceed in accordance with the applicable provisions, the implementation of which begins when there is a public report regarding an alleged crime, then the next monitoring process is carried out by ensuring that each stage of the investigation goes according to the provisions.

According to the author, Polairud's authority in preventing criminal acts of theft through the effectiveness of investigations into criminal acts of theft/fishery crimes carried out by the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* cannot be separated from the management of criminal investigations. Investigation management is the management of criminal investigations in a planned, organized and controlled manner in accordance with management functions so that the investigation process is carried out in accordance with laws and regulations, effectively and efficiently. This includes the application of predictive concepts, responsibility, transparency, fairness (precision). This concept is very appropriate in improving the performance of the Police as a servant, protector and protector of the community. If the concept of Precision can be explored optimally in the ranks of the National Police down to the Sector Police (hereinafter referred to as Polsek) level, of course it will bring about major changes in the system of order for the life of the nation and state for the better.

Given the strategic nature of the investigation stage in the criminal justice process, the National Police issued the Chief of Police Regulation Number 14 of 2012 concerning Management of Investigations of Criminal Acts, while the main objective and rules are that this regulation provides an overview of the process of case handling, case handling management, the role of superior investigators as well as case control mechanisms.

In general, the world of management uses the POAC principle (Planning, Organizing, Actuating, and Controlling). This management principle is widely used by organizations today to promote and manage organizations. Besides that, investigators are also required not to violate human rights in carrying out investigations against someone who is suspected of committing a crime. Another challenge faced by Polri investigators is not only the success of forwarding a case to court through the prosecutor's office, but also the possibility of being prosecuted by the suspect and his family through a pre-trial lawsuit due to an investigation error. Criminal investigation management with POAC principles, namely:

1. Planning

   Planning includes setting goals and figuring out how to achieve those goals. There are several uses of making an investigation plan, namely:

   a. Provide an overview of the investigation to be carried out so that corrections can be made if the actions to be carried out by the investigator are not in accordance with the tactics and techniques in the investigation.
   b. Is a process of control by superior investigators on the investigation to be carried out by investigators.
   c. Prevent bias and abuse of authority by investigators during investigations.

   In planning, there are several factors to consider. Namely SMART with the following meanings:

   a. Specific means planning must have a clear purpose and scope. Not too broad and too idealistic.
   b. Measurable means that the work program or plan must be measurable.
   c. Achievable means it can be achieved. So it's not wishful thinking.
   d. Realistic means in accordance with existing capabilities and resources. Not too easy and not too difficult. But there are still challenges.
   e. Time means there is a clear time limit. Weekly, monthly, quarterly, semi-annually or annually. So it is easy to assess and evaluate.

2. Organizing

Organizing is the process of ensuring the human and physical needs of every resource available to carry out plans and achieve goals related to the organization. Investigation organization consists of:

a. Establish Investigation Team and Investigation Team (with a warrant).
b. Determine the division of labor / tasks.
c. Goals/targets to be achieved.
d. Determine the time allocation for task accomplishment.
e. Budget support.
f. Equipment support.
g. Technical Assistance and Experts.

3. Actuating

Good planning and organization is meaningless if it is not followed by work execution. The principles and principles in the management of criminal acts are as follows:

a. Accountable, that is, each activity of the Investigative Supervisor can be accounted for for its actions juridically, administratively and technically;
b. Professional, that is, every activity of the Investigative Supervisor carried out in accordance with the duties, functions and authority of the Investigative Supervisor based on the competence they have;
c. Transparent, that is, every activity of the Investigative Supervisor is carried out in an open manner in which the progress of its handling can be seen by the people who are in litigation or filing a complaint;
d. Effective, that is, every activity of the Investigative Supervisor is carried out quickly, on time and on target;
e. Efficient, that is, every activity of the Investigative Supervisor is carried out at a low cost.

The implementation of the investigation is the realization of the investigation plan, namely the embodiment in the form of real investigative actions in the field from what has been prepared/planned beforehand. The stages of conducting an investigation are:

a. Investigation.
b. Send Notice of Commencement of Investigation (SPDP).
c. Forced Attempt.
d. Inspection.
e. Case Degree.
f. File completion.
g. Submission of case files to the Public Prosecutor.
h. Submission of suspects and evidence.
i. Termination of investigation.

4. Controlling

The Investigative Supervisor or the Investigative Supervisor's superior officer against an investigator or assistant investigator who is suspected of having committed irregularities or abuse of authority in the investigation and/or investigation process to determine whether or not there was a violation of discipline,

or the Police professional code of ethics and/or a criminal act. The discretionary authority possessed by members of the police, makes police individuals have a very important and central role in law enforcement. The police are one of the pillars in realizing the rule of law. However, if the Police do not have high and strong moral integrity, then this functional discretionary power actually gives them the opportunity to use that power for their own personal interests and not for upholding the law.

Supervision is required by a superior to a subordinate in the form of *waskat* (inherent supervision) categorized as supervision through an internal mechanism. It can also be through an external oversight mechanism, carried out by organs with a supervisory function whose position is independent of the members or organization being supervised. Such as public complaints submitted to National Police Commission (hereinafter referred to as Kompolnas), The National Human Rights Commission of the Republic of Indonesia (hereinafter referred to as Komnas HAM), Ombudsman Commission, NGOs (non-governmental organizations) and the Indonesian Child Protection Commission (KPAI).

4.2. Analysis of Legal Protection for Lego Anchor Ships in the Tanjung Priok Port Area

Based on the Regulation of the Head of the Criminal Investigation Agency of the Republic of Indonesia Police Number 4 of 2014 concerning Standard Operational Procedures for Oversight of Criminal Investigation that the duties and powers of investigators of the Indonesian National Police in the process of investigation and investigation of criminal acts must be carried out in a professional, proportional, procedural, transparent manner and uphold human rights in order to realize legal certainty.

The structure of the legal system consists of the following elements, the number and size of courts, their jurisdiction (including the types of cases examined), and procedures for appeals from one court to another. Structure also means how the legislature is organized, what can and cannot be done, what procedures are followed by the police and so on. So the structure (legal structure) consists of existing legal institutions intended to carry out existing legal instruments. Structure is a pattern that shows how the law is implemented according to its formal provisions. This structure shows how the courts, legislators and legal bodies and processes work and are carried out. In Indonesia, for example, if we talk about the structure of the Indonesian legal system, this includes the structure of law enforcement institutions such as the police, prosecutors and courts.

As with the latest regulations relating to the Investigation of Criminal Acts within the scope of the National Police, these regulations are contained in the Regulation of the Chief of Police Number 6 of 2019 Concerning the Investigation of Criminal Acts which was issued on October 4 2019, this regulation serves as a reference for implementation regarding criminal investigations so that Police Investigators can carry out duties, functions and authorities in a professional, transparent and accountable manner. This Police Chief Regulation (Perkap) is a refinement and adjustment to legal developments, replacing Perkap 14 of 2012 concerning Management of Criminal Investigation, which has been revoked by Police Regulation (perpol) Number 06 of 2019 concerning Revocation of Kapolri Regulation Number 14 of 2012 Concerning Criminal Investigation Management.

Supervision of investigations into criminal acts of theft in the Tanjung Priok waters area, North Jakarta, at the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* can be said to be effective when it comes to handling investigations, following procedures including:

1. In accordance with Article 9 of Case 6 of 2019 concerning Investigation of Criminal Acts, it is obligatory that the investigation results that have been reported by the team of investigators carry out a case title to determine whether the event is suspected of being a crime or not. The results of the case that decided:
   a. constitutes a criminal act, proceed to the investigation stage;
   b. is not a criminal act, the investigation is terminated; and
   c. criminal cases are not under the authority of the Police Investigator, reports are delegated to the competent authority.
2. In accordance with Article 12 of Perkap 6 of 2019 that in the investigation process restorative justice can be carried out, if material and formal conditions are met. Restorative Justice is the settlement of criminal acts involving perpetrators, victims, perpetrators' families, victims' families, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair solution through peace by emphasizing re-election to its original state.
3. Notification of the Commencement of Investigation (SPDP) is made, which is a notification to the Head of the Prosecutor's Office regarding the start of an investigation, made after the issuance of an Investigation Order sent to the public prosecutor, reporter/victim, and the reported party no later than 7 (seven) days after the issuance of the Investigation Order.

The functioning of the criminal justice process is highly dependent on decisions to determine choices of action taken by law enforcers such as the police, which sometimes decisions are not made objectively. The existence of personal motives, certain considerations and uncertain situations often influence decision making, so that it can change the direction of investigation and further away from the material truth of the case. The investigation process must be in accordance with the expectations of the wider community which must be able to guarantee certainty, order, enforcement and protection of the law as well as to strengthen the implementation of fostering public security and public tranquility in the system of public security and order.

Various aspects that influence the success of the National Police in disclosing criminal acts scientifically (scientific crime investigation) are of course very interesting to study and research. One of the interesting aspects is the use of science and technology, namely in the form of equipment support, both equipment for inquiries and investigations.

Knowledge about the effectiveness of investigative supervision carried out by investigator supervisors on the investigation of criminal acts of theft at the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri*. From a technological point of view, it is necessary to add support for IT equipment facilities and infrastructure in the framework of disclosing and settling cases handled by the Sub-Directorate of Legal Affairs Ditpolair *Korpolairud* Baharkam Polri.

One effort that is usually done so that people comply with the rule of law is to include the sanctions. The imposition of criminal sanctions for Police Investigators who unlawfully do not carry out their duties and obligations, shows that law enforcement is applied not only to perpetrators of fisheries crimes, but also to law enforcers who neglect their responsibilities and abuse the authority regulated in the law. These sanctions can be

in the form of negative sanctions or positive sanctions, the purpose of which is to create stimulation so that humans do not take disgraceful actions or take commendable actions.

According to Marwan Efendi to realize the principles of a rule of law, both legal norms and laws and regulations are needed, as well as professional, integrity and disciplined law enforcement and carrying apparatus which are supported by legal facilities and infrastructure as well as the legal behavior of society. Therefore, ideally every rule of law state, including the State of Indonesia, must have law enforcement agencies/institutions/apparatuses with such qualifications.

The oversight function in the management of criminal investigations is to carry out inherent oversight of the supervised unit and to carry out other activities such as assisting, supervising and preliminary examination before other agencies/units carry out inspections.

Assistance, supervision and preliminary examination according to the Regulation of the Head of the Criminal Investigation Agency of the Indonesian National Police Number 4 of 2014 concerning Standard Operational Procedures for Oversight of Criminal Investigations, namely the activities of superior investigators and Investigative Supervisors which include guidance, consultation, instructions or directions to investigators in order to prevent and overcoming obstacles in the criminal investigation process (Twyman-Ghoshal & Pierce, 2014).

Supervision is the activities of the Investigative Supervisor which includes examining and researching the investigative administration, providing corrections and technical guidance, and Preliminary Examination is an examination carried out by superior investigators, Investigative Supervisors or superior officials of Investigative Supervisors against investigators or supporting investigators who are suspected of having committed irregularities or abuse of authority in the process of investigation and/or investigation to determine whether or not there was a violation of discipline, or the police professional code of ethics and/or a criminal act (Ubwarin, 2018).

The very difficult criterion in the Chief of Police Regulation Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases within the National Police determines the maximum time limit for completing the handling of cases, namely 120 work while the criteria for difficult the maximum time limit for completing the handling of cases is 90 working days, for moderate cases the maximum limit The time for completion of case handling is 60 working days and for easy cases the maximum time for completing handling of cases is 30 working days.

If there are obstacles in handling cases so that the time criteria given is not sufficient, investigators can apply for an extension of the investigation time to the official who gives orders through the Investigative Supervisor in accordance with Article 32 of the Chief of Police Regulation Number 12 of 2009 concerning Supervision and Control of Handling of Criminal Cases within the National Police.

The results of the analysis show that there are several factors that cause weak oversight in the investigation process at the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri*, namely the integrity of the investigators/assisting investigators and officials carrying out the oversight function in the investigative process, legal factors set forth in written regulations which form the legal basis for officials carrying the supervisory function in the investigative process, the factor is the lack of officials carrying the supervisory function in the investigation process and the factor of applying sanctions that have not been able to provide a deterrent effect and deterrence against irregularities in the investigation process.

An analysis of the legal protection of the Lego Anchor Ship in the Tanjung Priok Port Area at the Gakkum Sub-Directorate of the Ditpolair *Korpolairud* Baharkam Polri for the management of investigations and investigations into criminal acts of theft, namely:

1. Internal Factors
   a. Strength
      In terms of organization, namely:
      1) Sufficient investigation budget support.
         a) The number of cases handled by the Gakkum Sub-Directorate for the TW I FY 2021 period is 17 LP and 6 Community complaints (Dumas). this figure has increased by 13% compared to the handling of LP for the TW I FY 2020 period; so that for the absorption of the TW I FY 2021 budget of Rp403.695.448 (4 prisons and 2 prisoners);
         b) For the absorption of the budget for Activity 8 of the Polri Priority Program, the handling of Ditpolairud is still in the synchronization process and will soon be realized.
      2) Facilities and infrastructure that support personnel in carrying out investigations such as laptops, printers, internet networks, operational cars, ships/patrol boats, radar, sonar, binoculars, radio communications, or signals.
   b. Weaknesses
      In terms of planning
      1) Planning for investigation and investigation of criminal acts has not been well designed so that it affects steps or ways of acting that are not yet appropriate, it is necessary to add personnel both in quality and quantity so that it is more optimal in carrying out tasks;
      2) Lack of understanding of personnel in terms of budget planning for criminal investigations so that the investigation budget cannot be optimally absorbed, it is necessary to change the mechanism for using the criminal investigation/investigation budget so that the case handling process, especially in investigative activities can run effectively and optimally;

      In terms of Organizing
      1) The position of Kanit which should be held by an officer is held by a non-commissioned officer due to the low number of officers. The need for additional personnel both in quality and quantity so that it is more optimal in carrying out tasks.
      2) There are still only a small number of personnel with law degree qualifications in the criminal justice unit. Propose additional personnel for the Gakkum Sub-Directorate to complement and fill the vacant positions, so as to increase the effectiveness and performance of the Gakkum Sub-Directorate.

      In terms of Implementation
      1) Investigators and assistant investigators have never attended training or vocational education (hereinafter referred to as dikjur) for corruption crimes so that investigations are hampered. It is hoped that there will be additional personnel at the Gakkum Sub-Directorate to fill vacant positions or positions as previously stated.

2) There is no relationship between facilities and infrastructure. There is a need for additional support for IT equipment facilities and infrastructure in the context of disclosing and settling cases handled by the Sub-Directorate of Legal Affairs Ditpolair *Korpolairud* Baharkam Polri.

In terms of Supervision and Control

1) There is no special team that is experienced in handling cases in the context of supervising investigations at the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri*.

2) External Factors

a. Opportunities

In terms of implementation

1) There is an Electronic Procurement Service (LPSE) portal that assists investigators in gathering supporting evidence for the Sub-directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri*.
2) There is an official website that displays budget transparency in the form of a report on budget realization, making it easier for investigators to monitor the distribution and use of the budget for the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri*.

b. Threats

In terms of implementation

1) The bureaucracy of the relevant agencies is so complicated that it hinders the implementation of investigations.
2) There is a possibility that there is no synergy in the commitment to eradicating corruption between the components of the Criminal Justice System resulting in delays in resolving cases.
3) Intervention from outside parties who have interests and have power that goes beyond the investigator or over the investigator.

Based on the description above, it can be understood that the police institution, especially the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* as an organization carries out administrative and management functions in carrying out its functions or duties as an investigator of criminal acts of theft aboard the Lego Anchor Ship in the Tanjung Priok Port Area which has been determined by regulations legislation.

One of the main management functions carried out within the police organization is planning, the implementation of which is regulated according to statutory provisions, one of which is as referred to in the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigations of Criminal Acts, so that through this series the aim of the effectiveness of the supervision of investigations of fisheries crimes with precision at the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* can be realized. Effectiveness is generally related to the success of achieving goals and objectives in accordance with the National Police Chief Listyo Sigit Prabowo's program, namely towards PRESISI POLRI (Predictive, Responsible and Fair Transparency).

5. CONCLUSION

5.1. Conclusion

Based on the results research and discussion on previous chapters, then the authors draw conclusions as following:

1) *Polairud's* authority in preventing criminal acts of theft, Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is a state based on law. The rule of law is a constitutional construction. Based on this, all actions of law enforcement officials, including the police, in carrying out investigations must be based on the law and obey the law. Article 2 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, states "The function of the Police is one of the functions of the State Government in the field of maintaining public security and order, law enforcement, protection, protection and service to the community". The implementation of Article 1 of the 1945 Constitution must be realized in law enforcement by *Polairud*. The importance of monitoring the investigation carried out by *Polairud* as an effort to protect suspects, evidence that is currently undergoing a legal process. One of the institutions to carry out law enforcement is the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri*. The crime of theft regulated in Article 362 of the Criminal Code. Therefore, the state feels the need to protect the rights of its citizens in relation to property. Protection of property rights in the form of property is emphasized in the 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (4) which reads "Every person has the right to have private property rights and these property rights may not be taken over arbitrarily by anybody". The crime of theft is one of the most common crimes in society.
2) Legal protection for the Lego Anchor Ship in the Tanjung Priok Port Area, it can be understood that the police institution, especially the Sub Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* as an organization carries out administrative and management functions in carrying out their functions or duties as investigators of criminal acts of theft aboard the Lego Anchor Ship in the Tanjung Priok Port Area as determined by laws and regulations. The investigation into the crime of theft by the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* is guided by the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts. Referring to the importance of maritime security aspects in the context of realizing Indonesia as a world maritime axis, the Sub-Directorate of *Gakkum Ditpolair Korpolairud Baharkam Polri* as the executor of duties as a whole in Indonesian waters, is required to be able to take strategic steps to ensure security in Indonesian waters. The *Gakkum* Sub-Directorate is tasked with carrying out investigations and investigations into criminal acts and/or violations that occur in Indonesian territorial waters. In carrying out its duties, the *Gakkum* Sub-Directorate carries out the functions of: Early detection and investigation of criminal acts and/or violations of the law; Investigation of criminal acts and/or law violations; Coordinating and supervising the criminal investigation process within the *Ditpolairud*, as well as following up on public complaints related to the investigation process in the territorial waters; and Security, escorting, guarding, treating detainees, evidence, which includes detainee health services, detainee development, securing, storing evidence and its administration.

5.2. Suggestion

As for suggestions that can be the author convey is as following :

1) The need for cooperation between the Buak Kapal Boy, the community and security forces (both the Port Guard, TNI and Polri) to participate in securing and safeguarding so that the crime of theft aboard the Lego Anchor Ship in the Tanjung Priok Port Area does not happen again. Besides that, it is necessary to carry out continuous outreach and counseling regarding security and order related to theft on the Lego Anchor ship in the Tanjung Priok Port Area.
2) The need for clear regulations governing the accountability of who is responsible for the occurrence of the crime of theft on the Lego Anchor ship in the Tanjung Priok Port Area, whether carried out individually or in groups and settlement of criminal cases of theft on ships must be carried out strictly so as to provide a deterrent effect for perpetrators.

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INTERNATIONAL LEGAL STUDY OF THE INDONESIA-MALAYSIA REGIONAL DISPUTE ABOUT SIPADAN AND LIGITAN ISLANDS IN THE SULAWESI SEA

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Abstract
The goal of this paper is to look into the background of the island disputes between Indonesia and Malaysia over Sipadan and Ligitan from the perspective of international law. In addition to the reasons, the purpose of this study is to determine the settlement process between the two countries to resolve the dispute between Sipadan and Ligitan and its implications for international law. It also aims to find out the reasons for the International Court of Justice in determining the winner of the dispute between the islands of Sipadan and Ligitan. This study uses descriptive methods, normative methods based on international law, and data collection techniques to analyze the data obtained through online search techniques and comparative research approaches. The results of this study show that the cause of the dispute between the islands of Sipadan and Ligitan originated from the absence of the two islands on the national maps of Malaysia and Indonesia, which then the two countries took steps to negotiate in international forums in resolving the dispute. It is also known that the main factor considered in determining the winner by the International Court of Justice is the comparison of the effectiveness of the management of the disputed area.

Keywords: *Dispute, International Law, Islands, Territory Dispute*

1. INTRODUCTION

Since long ago, Indonesia and Malaysia have had an ups and downs relationship as neighboring countries. Starting from mutual accusations regarding cultural struggles to disputes over national boundaries, namely regarding the status of the Sipadan-Ligitan region (Zukri et al., 2019). The seizure of the two islands originated from the actions of Malaysia Malaysia claimed that the territory of the two islands (Sipadan and Ligitan) should be part of its territory, which was divided due to the convention agreement between the Dutch and British colonial governments in 1891 which became the forerunner of the territory of Indonesia and Malaysia. Nevertheless, the British colonial government (at that time North Borneo) was ultimately responsible for the management and development of the islands of Sipadan and Ligitan which were then passed on by Malaysia after North Borneo resonated with Malaysia. On this basis, Malaysia stated that the two islands should be within Malaysian territory, while Indonesia, which protested this, was indifferent to the two islands (Mauna, 2005).

Indonesia initially raised this dispute case to the ASEAN High Council, but through a special agreement in 1997 in Kuala Lumpur, the case was brought to the International Court of Justice, because it requires a political system that can manage relations between these neighboring countries so that they remain conducive. The dispute over the ownership of these two islands is also related to geopolitical competition between countries. In Indonesia, based on the conception of nationality based on Pancasila and the 1945 Constitution, the Indonesian nation's geopolitical view of itself and its environment

is to achieve Indonesia's national ideals of maintaining independence, sovereignty, dignity and social order in order to achieve the goals of the nation and state (Armawi, 2020).

In this study, the first thing to examine is the law that will be discussed, what title is attached by the parties in the disputed area, and how the International Court of Justice evaluates that title. In international law there are several territorial gains that can be used by parties, namely: discovery, prescription, submission and adjudication (Kurnia & Darumurti, 2015). Second, how the International Court of Justice concluded that Malaysia has exercised its sovereign rights over the islands. This study is different from previous studies because it describes facts including case procedures, then legal arguments from the point of view of international law, decisions and legal considerations of the legal entities involved and finally conclusions.

Based on the background above, this study aims to reveal important points in the case of disputes over the ownership status of the islands of Sipadan and Ligitan and also to analyze how these cases are resolved from an international legal perspective.

2. RESEARCH METHODS

In this study the authors use the normative method. According to Benuf & Azhar (2020) normative method is research examining document studies, namely using various secondary data such as laws and regulations, court decisions and legal theory. The several approaches used in this research are the case approach, the historical approach and the comparative approach which in this study includes an in-depth study of the cases discussed, examines the background and development of the regulation of the legal issues being faced and compares legal arrangements or court decisions against parties – disputing parties.

3. RESULTS AND DISCUSSION

3.1. Settlement of the Sipadan and Ligitan Cases According to International Law

From various negotiations over the past few years, the two countries have concluded that this dispute is difficult to agree on diplomatically (Arifin, 2022). Therefore, the two countries have agreed to submit this resolution to the International Court of Justice to sign “Special Negotiations to be submitted to the International Court of Justice in disputes between the two countries. regarding the status of the islands of Sipadan and Ligitan,” on May 31, 1997 in Malaysia. By mutual agreement, the dispute case was submitted to the International Court of Justice on November 2, 1998 in The Hague, Netherlands. Both countries believe that the outcome of the International Court of Justice is a fair decision regarding the status of the two islands. In the course of the debate, Indonesia based on an 1891 agreement between the Dutch and British colonial administrations that defined the border between the Dutch East Indies and North Borneo (Sumardiman, 2003).

Meanwhile, Malaysia in this case holds its foundation over the islands with the fact that Britain has been continuously managing the two islands since 1878. To the International Court of Justice, the parties must fulfill the procedure until entering the stage of submitting verbal submissions to prove the claim for the dispute. The verbal submission in the court process was divided into two sessions, namely the first session

which was held on 3 to 4 June 2002, where the Indonesian side presented the defense of its claim to sovereignty, then followed by the Malaysian side which was held on 6 to 7 June which presented the claim for ownership of the second island. While the second session was held the next few days, namely June 10 for Indonesia and Malaysia on June 12 (Valencia, 1991). The International Court of Justice ruled on 17 December 2002 that, based on the fact that Britain and Malaysia were deemed to be managing the two islands more effectively. Indonesia respects its decision, especially because of the 1997 special agreement which stated that both parties to the dispute agree to accept the final decision of the international court regardless of the outcome.

Table 1. Detail Chronology of the Sipadan and Ligitan Cases from Year to Year

Year	Case Incident
1969	On September 9, 1969, the Sipadan and Ligitan territorial dispute case was first mentioned during negotiations on the contingent boundaries between Indonesia and Malaysia which were held in Kuala Lumpur. The agreed outcome of the negotiations was that the two countries decided to refrain from occupying the two islands until the dispute could be resolved.
1970	Malaysia made a map that included the two disputed islands in its territory, this led to protests from Indonesia, which considered it an act of provocation. Later in the same year, the Malaysian government began to accelerate projects for the construction and management of facilities on the two islands without Indonesian approval.
1989	Prime Minister of Malaysia, Mahathir Mohamad visited Indonesia and then had a meeting with President Soeharto in Yogyakarta. In this meeting, both parties concluded that the dispute between the two islands is difficult to resolve bilaterally.
1997	Indonesia and Malaysia submitted the dispute case to the International Court of Justice, and signed the “Special Agreement Concerning Submission of Disputes Concerning the Sovereignty of the Sipadan and Ligitan Islands to the International Court of Justice” On 31 May in Kuala Lumpur, Malaysia.
1998	On November 2, Indonesia and Malaysia signed a special agreement formally submitting the dispute case to the International Court of Justice through a joint letter or notification.
2000	The written debate procedure ("written complaint") between the parties is believed to have been completed at the International Court of Justice at the end of March 2000. The written debate includes the submission of "complaints", "counterclaims" and "reply" in the course of proceedings of the International Court of Justice
2002	In the final determination, the dispute case was won by Malaysia so that the International Court of Justice established the islands of Sipadan and Ligitan as official territory from Malaysia on December 17, on the basis of Malaysia's effectiveness in developing and managing the two islands better than Indonesia.

3.2. Causes of Indonesia Losing in International Law Disputes

The International Court of Justice began voting to make a decision on the dispute over the status of the Sipadan Ligitan Islands. Through voting held by international courts, out of 17 judges, Malaysia won with 16 judges while only one judge sided with Indonesia. There were 17 judges involved in the court process, 15 of whom were permanent judges at the International Court of Justice, while the other 2 judges were the choice of each country. Malaysia's victory was based on evidence of administrative effectiveness and development by Malaysia on the islands of Sipadan and Ligitan. Meanwhile, from the

Indonesian side, the lack of presence and attention from the government was a hard slap for Indonesia.

a. Rejecting Indonesia's argument that according to the interpretation of Article 4 of the 1891 Dutch-British agreement, the disputed islands were Dutch-controlled territory. Indonesia interprets the 4°10'N boundary with the island of Sebatik as a distribution line and touches the second disputed island to the east, which is unacceptable to the courts.
b. The ownership status of these islands is also not clearly stated in Memory van Toelichting. Memory Map van Toelichting gave Indonesia's explanation regarding Article IV which was considered unenforceable because it was not part of the 1891 agreement.
c. The court rejected alternative suggestions from Indonesia because the contract agreements submitted by the Dutch colonial government to the Bulungan Sultanate in 1850 and 1878 did not mention the two islands (Djalal, 2017).

The peaceful means used in resolving these disputes have had a significant impact on Southeast Asian countries. Settlement of these disputes through the International Court of Justice can be a role model in resolving disputes in the Southeast Asia Region. This is because other ASEAN countries also have many disputes, such as the conflict between Thailand and Cambodia. Regarding the conflict resolution mechanism in Sipadan and Ligitan, one thing that is regrettable is that the ASEAN regional mechanism was not adopted. The Association of Southeast Asian Nations (ASEAN), which serves as a forum for regional cooperation, has a very limited role in the resolution of border disputes. This is because border disputes are regarded as a local issue, and ASEAN countries do not wish to become involved.

Taking into account subsequent negotiations, the government needs to evaluate in depth the negotiating position in a dispute. The government must have a strong legal basis but must also be equipped with good negotiating skills to convince the international community. An important thing to note is that the option of war should not be used for any reason because it is an ancient method in modern times.

3.3. The Attitude that Indonesia Must Take in the Future in Similar Cases

As it is the obligation of the government to safeguard the country's territorial integrity, the release of Sipadan and Ligitan from Indonesian territory is a valuable lesson for the future. In this case, we must admit that the government has not utilized the assistance of international lawyers or legal experts from abroad, instead relying on legal experts from Indonesia itself. Yet in the opinion of some legal observers, out of the thousands of lawyers in Indonesia, not one of them has the necessary skills to compete in the International Court of Justice. So, in this case, in the future the government is expected to improve the quality of education in order to produce qualified legal experts who are able to compete in the international arena. So that if a similar case occurs in the future, Indonesia will be more established in competing in international courts.

The Malaysian government takes advantage of the absence of the Indonesian government on the two islands by intensifying the development and management of tourism, while the Indonesian side chooses to ignore the two islands until the issue of ownership of these two islands is resolved. The Indonesian government should take a more serious attitude in paying attention to underdeveloped and border areas so that similar cases do not occur. In this case, it is hoped that the Indonesian government will

intensify development in its territory and pay more attention to underdeveloped areas so that if a similar case occurs, Indonesia will have more legitimacy to defend its territory.

4. CONCLUSION

The dispute between Indonesia and Malaysia in determining the sovereign status of the islands of Sipadan and Ligitan can be resolved peacefully. In 1997, through a special agreement in Kuala Lumpur, Indonesia and Malaysia decided to bring the case to the International Court of Justice in The Hague, Netherlands to resolve the dispute. This dispute originated from the border between the Dutch East Indies and North Borneo (England) on the east coast of Kalimantan which was not clear, the dispute resulted in a polemic between Indonesia and Malaysia which inherited the boundaries of the region. The two sides also fought over the ownership status of the islands of Sipadan and Ligitan. Indonesia and Malaysia then exchanged arguments and legal evidence to defend the claims of the two countries at the International Court of Justice. The dispute case was ultimately won by Malaysia. This is based on evidence that Malaysia is more active in managing its territory than Indonesia, which is indifferent. As such in 2002, the International Court of Justice established the status of the islands of Sipadan and Ligitan as the territory of Malaysian sovereignty.

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POLICY, LAW, NOTARY AND REGULATORY ISSUES (POLRI)
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RESPONSIBILITY OF BUSINESS ACTORS FOR THE TRANSFER OF CONSUMER CHANGE FORMS

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Abstract

This article aims to provide an understanding of the legal arrangements for the transfer of consumer change forms by business actors and examine the responsibility of business actors for the transfer of consumer change forms that can result in losses to consumers. The writing of this article uses a normative legal research method through a statutory approach, conceptual approach, case approach and use primary and secondary legal materials. The characteristics of this research are categorized as descriptive research. The results of the study show that the regulation regarding the transfer of consumer change is regulated in Law no. 8 of 1999 concerning Consumer Protection, Law no. 23 of 1999 and Law no. 7 of 2011 which basically stipulates that rupiah currency is a legal tender in the territory of the Republic of Indonesia so that consumer change must be in the form of rupiah currency without being transferred in any form. This will certainly cause deviations in terms of legal rules because consumers feel disadvantaged and violated their rights. Therefore, a legal review is needed based on related regulations, especially regarding the responsibility of business actors for the transfer of consumer change.

Keywords: *Business Actor, Money Change, Responsibility*

1. INTRODUCTION

Nowadays, buying and selling activities cannot be separated from social life. Every human being basically needs goods or services to meet their needs (Dwisana & Wiryawan, 2018). Buying and selling activities can be said to be carried out almost every day by the community to fulfill their daily needs. In his life, every human being certainly has needs that must be met in his life, where one human being with another has different needs. In order to maintain the needs and also the needs of each, we need a rule that can regulate the needs between humans so that humans do not arbitrarily and take other people's rights by force. These community needs include snacks, drinks, toiletries and so on. The mushrooming of minimarkets in every area that can provide people's daily needs is one solution to be able to meet these needs because they are usually strategically located and sell a complete range of products (Wiranatha & Purwanto, 2019). The existence of minimarkets that are easy to find makes people dependent on the presence of minimarkets to buy groceries and daily necessities. With the dependence of the community as consumers on minimarkets, they inevitably have to pay according to the price that is stated on each product. In consumer protection, the main pillar in its regulation is the equality of position between consumers and business actors.

In consumer buying and selling transactions that are carried out at minimarkets and/or supermarkets today, it is not uncommon to encounter losses for consumers, one of which is the return of remaining payments made by business actors, especially in the use of candy as a substitute for refunds and transfers through forms of donations sometimes the legality is not clear. This will certainly lead to deviations from the rule of law and can

become a problem if the consumer feels disadvantaged in this matter, because there is no agreement/agreement from the consumer and is only concerned with the decision of the business actor, unless the provision of change which is replaced with candy as a substitute has been agreed by both parties (seller and buyer), then this is legal and acceptable, but still, this cannot be ignored by sellers (business actors) just because the nominal amount of money that becomes the rest of the change is small, because no matter what the nominal amount the consumer still has the right to receive the remaining money back according to his rights (Ariestya et al., 2015).

Default is an act of not doing things that must be done or breaking a promise. According to KBBI, refund can be defined as overpaid money that must be returned to the payer, in this case the consumer. As it is known that one of the requirements in buying and selling transactions is the existence of a "legal" medium of exchange: This refers to Law no. 23 of 1999 concerning Bank Indonesia, hereinafter referred to as UU BI article 2 paragraph (2) which stipulates that rupiah currency is legal tender in the territory of the Republic of Indonesia. Small things that are often carried out by business actors are certainly contrary to laws and regulations, especially Law no. 8 of 1999 concerning Consumer Protection (Consumer Protection Law), hereinafter referred to as UUPK. In buying and selling transaction activities, the actors involved in it are business actors or sellers and buyers who have positions as consumers where their positions have unequal rights and obligations. If it is related to the transfer of refunds made by business actors to consumers, there are several violations of the law regulated in the UUPK provisions, one of which is regarding consumer rights in Article 4 of the UUPK.

Legal remedies that can be taken to protect or protect consumers from unfair actions by business actors are to enforce the Consumer Protection Law. The consumer protection law is a concrete effort made by the state and government to protect consumers as mandated by the constitution of the constitutional state contained in the 1945 Constitution (Mansyur & Rahman, 2016). Consumer protection is considered very important because of the influence of very fast developments in the field of technology and science. Protection as a legal remedy aimed at consumers in order to ensure certainty and protection in the legal field from various obstacles or consumer disputes for losses incurred by business actors (Andika & Priyanto, 2021). Consumer protection is a very important thing to carry out today, because it is related to efforts for the welfare of society in relation to the development of buying and selling transactions which are growing rapidly in this era.

There are several articles that have similar themes to this paper but are different in terms of discussion and focus of the problem. These writings include writings composed by "Luh Made Pradnya Narapatni" and "I Made Dedy Priyanto" in 2022 entitled "*Perlindungan Hukum Konsumen Dalam Penggunaan Permen Sebagai Pengganti Uang Kembalian*" This article is related to consumer protection, while in this paper it is more focused on discussing the responsibility of business actors in the form of transferring consumer refunds based on the Consumer Protection Act (hereinafter referred to as UUPK). Next is the article compiled by "I Nyoman Oka Wiranatha" and "I Wayan Novy Purwanto" in 2019 entitled "Perlindungan Hukum Terhadap Konsumen Terkait Pemberian Uang Kembali Yang Tidak Sesuai di Alfamart". This article discusses legal protection for consumers who experience losses due to a lack of change at Alfamart, while this paper discusses how to regulate the transfer of consumer refunds in buying and selling transactions based on UUPK. These writings are related to the transfer of money received by consumers from business actors. However, all of them have different goals and results.

The author conducted research on the responsibilities of business actors for transferring forms of consumer refunds based on the UUPK, so that consumers can find out what regulations can become their legal basis in protecting their rights, as well as provide benefits to business actors' knowledge regarding their responsibilities for these actions based on the UUPK.

This study aims to analyze, know, and examine related to the legal arrangements for the transfer of forms of consumer change by business actors. Besides that, this paper also aims to analyze, know, and examine the responsibility of business actors for diverting forms of consumer refunds that can cause harm to consumers.

2. RESEARCH METHODS

The type of research method used by the author in writing this article was to use normative legal research methods which were also carried out using a statutory approach or what is called the Statue Approach which carried out by analyzing related laws and regulations. And also analyze the rules relating to provisions related to legal issues, and regulations that interrelated with what was happening today (Marzuki, 2013).

3. RESULTS AND DISCUSSION

3.1. Legal Arrangements related to the Forms Transfer of Consumer Money Change by Business Actors

According to Indonesian Dictionary, the definition of “money change” can be interpreted as an overpaid money that must be returned to the payer, in this case the consumer. The frequent act of diverting consumer money back by business actors can be viewed from a legal perspective or applicable legal rules. In a sale and purchase transaction process contains an element of agreement, which is related to the Civil Code. Article 1457 of the Civil Code regulates that what is meant by a sale and purchase agreement is an agreement in which one party binds himself to give an object and the other party must pay according to the price that has been promised. In the process of buying and selling transactions, consumers will enter the first stage, namely the pre-transaction stage, where business actors as much as possible give confidence to consumers that the products they sell are guaranteed of quality, or usually consumers come alone with the excuse that the goods and/or services they sell need is not available elsewhere. Next is the agreement stage where when the consumer pays the price for the product being sold, the product transfers its ownership status. This means that consumers can be said to have entered the transaction stage, where at that stage problems are often found regarding consumer rights that are ignored by business actors (Narapatni, 2022). The act of a business actor by diverting the form of consumer return money either in the form of candy or diverting it to donations is one of the actions of the business actor's own will.

One of the requirements for conducting buying and selling transactions between consumers and business actors is the existence of a valid medium of exchange, namely rupiah currency. This is emphasized by referring to the provisions of the legislation, namely Law no. 23 of 1999 concerning Bank Indonesia in article 2 paragraph (2) which stipulates that “rupiah money is legal tender within the territory of the Unitary State of the Republic of Indonesia (NKRI)”. Referring to these regulations, nothing can replace

rupiah currency because it is not included in the legal provisions as well as refunds which cannot be replaced using candy or transferred through donations without an agreement. Article 2 paragraph (2) of Law no. 7 of 2011 concerning Currency (UUMU) which stipulates that the Kinds of Money issued by Bank Indonesia consist of Banknotes and also Coins. Based on this, it can be said that other than banknotes and coins are not included as legal tender. Further details regarding this matter can be seen in Article 21 paragraph (1) UUMU which stipulates that "rupiah must be used in every transaction that has the purpose of payment, settlement of other obligations that must be fulfilled with money, and other financial transactions carried out in the territory of the Republic of Indonesia". So, it is very clear in this article that it requires all payment transactions made within the territory of the Republic of Indonesia to use rupiah in financial transactions. The emphasis on the word "mandatory" in the article, has consequences for sanctions for every violator. This can be seen in "Article 33 paragraph (1) UUMU which states that, everyone who does not use Rupiah in every transaction that has the purpose of payment, settlement of other obligations that must be fulfilled with money or other financial transactions, as stated in Article 21 paragraph (1) can be punished with a maximum imprisonment of one year and also a maximum fine of Rp200.000.000".

Apart from being related to the Currency Law (UUMU), the rules related to this issue are Law no. 23 of 1999 concerning Bank Indonesia as the central bank which has one of the duties to "regulate and also maintain the smooth running of the payment system". As for one of BI's tasks in carrying out these tasks is "by determining the use of legal tender, which has been mentioned in Article 2 paragraph (2) UUBI namely, "Rupiah money is legal tender in the territory of the Republic of Indonesia." The small amount of change or the lack of availability of coins is often considered trivial by some business actors, the reason why business actors who run out of stock of coin denominations cannot be used as an excuse to replace the remaining change with candy. Furthermore, the Currency Law has provided an explanation of rupiah currency exchange facilities to meet all needs in society. This has been regulated in article 22 of the Currency Law which "stipulates that in order to meet the need for Rupiah in the community in sufficient nominal amounts, appropriate types of denominations, and in conditions suitable for circulation, Rupiah circulating in the community can be exchanged under the following conditions:

a. Rupiah exchange can be done in the same denomination or in another denomination.
b. Rupiah exchange that is worn out or partially damaged due to fire or other reasons shall be replaced with the same nominal value.

Strictly regulate the currency, which is currently contrary to what is happening in society because there are still many misuses of the money itself, one of which is by carrying out acts of giving change in the form of candy. The dominant consumers do not take legal action to get their rights because they think it will be useless and will not be followed up by law enforcement. The lack of legal protection for consumers is due to the weak position of consumers or it could also be caused by the tendency of business actors, in addition to legal instruments that cannot guarantee a sense of security, or do not provide direct protection for the interests of consumers. Consumers who are not given the remaining change in rupiah currency, but with candy or transfers in the form of donations as a substitute, are also contrary to the Consumer Protection Law, which states that consumers cannot be harmed and are entitled to the remaining purchase money in rupiah

currency and the seller or business actor must behave and behave well with buyers/consumers by giving rupiah money for the remaining change in payment transactions, no matter how small the nominal value that must be returned by the seller to the consumer (Muchsin, 2003).

One of the important components that must also be considered regarding the replacement of the form of refund in payment transactions that occur between business actors and consumers is regarding the agreement regulated in the third book of Our Civil Code (hereinafter referred to as the Civil Code). Syahrani (2002) explain that "engagement is a legal relationship between two parties in the field of assets, where one party (creditor) has the right to achievement and the other party (debtor) is obliged to fulfill that achievement". The engagement that occurs between supermarkets and consumers is a sale-purchase agreement. Based on Article 1313 of the Civil Code, it stipulates that "an agreement is an act by which one or more people bind themselves to one or more people". Meanwhile, the definition according to Article 1457 of the Civil Code, "buying and selling is an agreement, by which the party who binds himself to surrender an object, and the other party to pay the price that has been agreed upon". The price must be in the form of an amount of money even though this is not regulated in an article of statutory regulations, but by itself, namely in the sense of buying and selling, because if the price is in the form of goods then it will change the agreement to become an exchange. Therefore, in the context of efforts to create legal certainty and legal protection in society, especially for consumer rights, supermarkets/supermarkets should have good faith in carrying out their business in accordance with applicable laws and regulations and understand the agreements that bind them, that is a sale and purchase agreement bond, not an exchange agreement.

3.2. Business Actors Responsibilities for Forms of Consumer Money Change that Can Result in Losses to Consumers

The 1945 Constitution and Law No. 8 of 1999 Concerning Consumer Protection are the two (two) significant legal documents that serve as the foundation for Indonesia's consumer protection policies (UUPK). The passage of this Law raises hopes among Indonesians that they will be able to obtain protection from losses incurred during the exchange of goods and services. UUPK was formed to guarantee legal certainty for consumers (Yani, 2000). In carrying out its business activities, a business actor is expected to have a sense of responsibility to fulfill consumer rights to this information and it is reasonable not to deceive consumers through misleading submissions because the resulting impact is not only detrimental to consumers, but can also damage the image of business actors in the long run and can eliminate consumer trust and loyalty to products produced by business actors. The actions of business actors that often harm consumers but are rarely realized by the consumers themselves are diverting the form of money back, such as in the form of pergen, deducting charitable funds with various kinds of donations unilaterally (Sulistyowati, 2022).

With regard to consumer protection, consumer rights as stipulated in the UUPK provisions, precisely article 4, are as follows (Bustomi, 2018):

a. The right to comfort, safety and overall in consuming goods and or services
b. The right to choose and obtain goods and or services in accordance with the exchange rate and the conditions and guarantees promised
c. The right to correct, clear and honest information regarding the conditions and

warranties of goods and or services
d. The right to be heard opinions and complaints about the goods and services used.
e. The right to obtain proper advocacy, protection and efforts to resolve consumer protection disputes
f. The right to obtain consumer guidance and education.
g. The right to be treated or served properly and honestly and not discriminatory.
h. The right to receive compensation, compensation and/or reimbursement, if the goods and or services received are not in accordance with the agreement or are not as they should be.
i. The rights regulated in the provisions of other laws and regulations.

Based on the consumer rights mentioned above, if consumers feel aggrieved by the actions of business actors in transferring the form of money change, either in the form of candy or donations/donations, then business actors can mean violating consumer rights, especially regarding the right to comfort and to obtain goods/ services at exchange rates. Therefore, the government has regulated efforts to protect consumers through UUPK, especially regarding the responsibilities of business actors when they can harm or violate consumer rights.

The responsibilities contained in consumer protection law include several principles in general, namely (Kristiyanti, 2011):

a. Fault Liability/Liability Based on Fault
   A fairly general principle applies in both criminal and civil law. This is held firmly, especially in Articles 1365, 1366, 1367 which mean that a person can only be legally held accountable if there is an element of error committed. This requires the fulfillment of four main elements, namely:
   a) There are actions
   b) There is an element of error
   c) There are losses suffered
   d) There is a causal relationship between errors and losses
b. Presumption of Liability
   In the perspective of transportation law, there are four variations related to the presumption of always being responsible, namely:
   a) The carrier can free himself from responsibility if he can prove that the loss was caused by things beyond his control
   b) The carrier can release himself from responsibility if he can prove, he took an action that is necessary to avoid the occurrence of losses
   c) The carrier can release himself from responsibility if he can prove that the loss incurred was not due to his fault
   d) The carrier is not responsible if the loss is caused by mistake/negligence
c. Presumption of Nonliability
   This principle is not always responsible only known in a very limited scope of consumer transactions and such restrictions are usually justified in common sense.
d. Strict Liability
   The principle of absolute responsibility is synonymous with the principle of absolute responsibility. There is also the role of experts who differentiate the two terminologies
e. Limitation of Liability
   This principle is a liability with limitations that are usually listed as exoneration

clauses in the standard agreements they make.

As for the process of determining accountability must pay attention to several things, including the following (Rahmawati et al., 2019):

a. There are consumer rights that are violated by business actors in diverting consumer money back in the form of candies or donations
b. There are obligations of business actors who are not fulfilled on this information

If these two things are able to be fulfilled in full, then the business actor can be held responsible for the transfer of the refund, even though the sale and purchase transaction that occurs between the parties does not explain how the responsibility of the business actor is, but this is reinforced by Article 1494 of the Civil Code which stipulates that "Even though it has been agreed that the seller will not bear anything, he is still responsible for what is the result of an act committed by him, any agreement that is contrary to this is void." Based on this, business actors who transfer consumer money back to the knowledge of consumers, can be said to be an unlawful act. Which form of violation, among others (Rahmawati et al., 2019):

1) Violation of the obligation to provide refunds, this is regulated in Article 1360 of the Civil Code and Article 4 letter b of the UUPK, which emphasizes that consumers are entitled to the goods or services they buy must be in accordance with the exchange rate and the conditions and guarantees agreed upon.
2) Violation of proper and honest service to the activities of procedures for collecting donations whose funds come from the results of consumer returns. If the business actor violates this, the business actor may be subject to the provisions of Article 4 letter g of the UUPK regarding rights owned by consumers, Article 7 letter a of the UUPK regarding the obligations of business actors and Article 7 letter c of the UUPK regarding the obligations of business actors to serve consumers properly and honestly.

If the business actor transfers the money back, either voluntarily or not, this is a form of negligence by the business actor which must be borne by the business actor self. Then the responsibility of business actors is in accordance with the mandate of Article 19 UUPK, namely (Susanto, 2008):

(1) Business actors must compensate consumers for losses, damage, and/or pollution brought on by consuming the goods and/or services produced or traded.
(2) Such compensation may take the form of health care services, a refund, a replacement of goods and/or services of equal or greater value, or compensation in accordance with the terms of the relevant laws and regulations.
(3) The payment of compensation takes place within 7 (seven) days of the transaction date.
(4) The possibility of criminal prosecution based on additional evidence demonstrating the existence of a guilt element remains open even after compensation has been granted.
(5) If the business actor can demonstrate that the customer was at fault for the error, the provisions of paragraphs (1) and (2) do not apply.

Furthermore, regarding the truth of business actors who have caused consumer losses, it is regulated in Article 28 of the UUPK which essentially states the burden and

responsibility of business actors in providing compensation, namely it can be in the form of:

1) Money refund
2) Replacement of goods and/or services of equivalent/similar value
3) Health care
4) Compensation

Diversion of the form of consumer change can trigger violations of consumer rights. The true responsibility of business actors is moral responsibility in the form of good trading ethics, where the honesty of business actors in running their business is demanded by consumers. Liability for negligence or mistakes of employees of business actors who are found to cause harm to consumers for the transfer of the form of return money, namely social responsibility based on the responsibility of a company stated in Law Number 40 of 2007 which discusses the responsibility of a company. In Article 74 paragraph (1) of Law Number 40 of 2007 it is explained that "Companies that carry out their business activities in the field of and/or related to natural resources are obliged to carry out Social and Environmental Responsibility". Hence, business actors can be held accountable in the form of moral responsibility in the form of good trading ethics. The responsibility of business actors for this matter can also refer to the UUPK as described, namely by making compensation according to the UUPK mandate. This is also to avoid the occurrence of legal disputes that can have an impact on the image of business actors.

4. CONCLUSION

Arrangements regarding the transfer of consumer refunds are regulated in Article 21 paragraph (1) of the Currency Law which stipulates that the rupiah must be used in every transaction that has the purpose of payment, as well as settlement of other obligations that must be fulfilled with money and other financial transactions carried out within the Unitary State of the Republic of Indonesia. Furthermore, Article 2 paragraph (2) of the BI Law stipulates that rupiah currency is legal tender in the territory of the Republic of Indonesia. Furthermore, in the Consumer Protection Law where consumers cannot be harmed and consumers are entitled to the remaining change in rupiah currency and the business actor must be kind to consumers by giving rupiah money for the remaining change in payment transactions, no matter how small the nominal value must be returned. The actions of business actors who divert the remaining consumer change through candies or donations can have an impact on consumer losses. The true responsibility of business actors is moral responsibility in the form of good trading ethics, where the honesty of business actors in running their business is demanded by consumers. Liability for negligence or mistakes of employees of business actors who are found to cause harm to consumers for transferring the form of change, namely social responsibility in the form of morals in the form of good trading ethics. The responsibility of business actors for this matter can also refer to the UUPK, namely by making compensation according to the mandate of Article 19 UUPK.

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LEGAL IMPLICATIONS ON THE ISSUANCE OF GOVERNMENT REGULATION NO. 36 OF 2021 ON THE WORKER WAGE SYSTEM IN INDONESIA

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Abstract

Wages are something that plays an important role in employment, because wages are a form of appreciation to workers/laborers given by employers for the work that has been done. The purpose of this study is to find out changes in the legal rules regarding the wage system in Indonesia so that workers know how the composition of the calculation used in calculating wages is based on the current legal rules. This research uses normative legal research methods and document study techniques for data collection, as well as legislation and descriptive approaches. The results of this study indicate that this new regulation is aimed at boosting the country's economy and increasing Indonesia's competitiveness in the world by changing the composition of the wage calculation variables and changing the type of wages.

Keywords: *Legal Change, Remuneration, Worker*

1. INTRODUCTION

Indonesia is a constitutional state, this is clearly regulated in the Indonesian constitution, the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3). As a country governed by the rule of law, everything in Indonesia must adhere to the law. The nation's actions are intended to realize the state's ideals, as outlined in the fourth paragraph of the Preamble to the Republic of Indonesia's 1945 Constitution. One of the ideals of the state is to advance the general welfare of all citizens. One of the parameters of general welfare is the fulfillment of a decent life for all Indonesian people. Providing all Indonesians with a fair standard of living is a criterion of general welfare. To provide a decent life for all Indonesians, every year will present a new challenge that will never cease. This is because the population and labor force continue to increase each year. These two growth variables become tough to overcome since their total growth is not accompanied by employment growth. As a result, the unemployment rate rose and the position of workers, particularly in terms of wages, weakened.

Remuneration are a tangible expression of gratitude to employees for their efforts, hence they play a significant role in employment relations (Soepomo, 1995). Employment relations hinge heavily on wages, which are governed by legally enforceable norms agreed upon by both employees and their respective employers (Husni, 2010). It is common to discover that employees work with the intention of earning money so they can support their families and themselves. This demonstrates that wages and welfare are two things that impact each other, and that within each of these things, there are complicated elements that relate them together (Sudja'i & Mardikaningsih, 2021). Welfare has a dynamic nature, this is because welfare measures are influenced by the necessities of life and one's purchasing power (Gani, 2017).

In Indonesia, the current regulations governing wages are Government Regulation (PP) No. 36 of 2021 concerning Wages. Government Regulation (PP) 36/2021 is a derivative regulation from Law 11 of 2020 concerning Job Creation or also known as the "Omnibus law". Based on Government Regulation (PP) 36/2021 wages are the rights of workers or workers given by employers as compensation in the form of money, which is determined and paid based on work contacts, agreements or statutory regulations which also include benefits for workers and their families.

The regulation regarding remuneration that is currently in effect, namely Government Regulation (PP) 36/2021, is a replacement rule for Government Regulation (PP) 78/2015. These two Government Regulations have quite significant differences where previously in Government Regulation (PP) 78/2015 the minimum wage was set based on decent living needs, taking into account productivity and economic growth. Whereas in Government Regulation (PP) 36/2021 the minimum wage is set based on economic and employment conditions and the district/city minimum wage refers to regional economic growth (Hamdani, 2021). Because of these differences, friction has arisen among the community, especially in a city that has a high Provincial Minimum Wage (UMP) because this regulation allows for a decrease in wages because the minimum wage for a city/regency must refer to regional/provincial economic growth.

In Indonesia, wages for workers will always be a matter of debate since, on the one hand, workers seek wage increases every year and, on the other, employers want to keep employee pay as low as possible to improve their own profit margins. In addition to these issues, there are frequently problems with companies paying salaries that are not in compliance with the relevant legislation. One such instance occurred in Surabaya, when Tjioe Christine Chandra paid wages below the Provincial Minimum Wage (UMP) (Kompas, 2013).

This study aims to analyze the application of workers' wage processes in Indonesia. In this writing, we critically examine what changes have occurred since the enactment of Government Regulation (PP) 36/2021. It is also hoped that current result able to explain critically and in a structured manner regarding the legal implications of Government Regulation (PP) 36/2021 for the workers' wage system in Indonesia?

2. RESEARCH METHODS

This paper was written using normative legal research methodologies. Normative legal research was a research based on an interpretive rational concept map which includes elements of rationalism, legal positivism, aprioi analysis, reasoning, coherence, interpretation, literature research, secondary and qualitative data (Barus, 2013). The goal of employing normative research is to emphasize issues that exist during the study of literature and solutions using literary studies connected to these problems in writing (Sarjana, 2020). The approach method used includes the statutory approach, with this method we could analyzes the laws and regulations related to the wage system in Indonesia. Practically and academically the application of the statutory approach in legal research was indeed very useful (Marzuki, 2013). Likewise, we also used the analytical approach to analyze the legal protection of workers in terms of wages in Indonesia. The legal material used was primary legal material, namely Government Regulation Number (PP) 36 of 2021 concerning Wages. This research also uses secondary laws such as; scientific journals, books and theses that have a correlation with current investigation.

This study uses document research techniques by analyzing primary and secondary sources of legal materials. Data management and analysis was carried out in a qualitative descriptive manner. All data was analyzed and then arranged systematically so that it could be described descriptively.

3. RESULTS AND DISCUSSION

3.1. Changes to the Wage System based on Government Regulation (PP) 36/2021

Since the enactment of Government Regulation (PP) 36/2021, the previous regulation regarding wages, namely Government Regulation (PP) 78/2015, has been declared no longer valid. In this new rule, there are many things that have been updated, some of which have been updated, namely; components of wages, types of wages and minimum wages. Wage components are the parts in the worker's wages which are the workers' rights that must be given (Yetniwati, 2017). the wage component in Government Regulation (PP) 36/2021 consists of 4 (four) items, namely:

- Wages without allowances;
- Basic wages along with fixed allowances;
- Basic wages, fixed allowances and non-fixed allowances;
- Basic wages plus non-fixed allowances

In the previous regulation, namely Government Regulation (PP) 78/2015 point 4 (four) in the wage component in Government Regulation (PP) 36/2021 it is not regulated while in 78/2015 it only regulates the first to third points in Government Regulation (PP) 36/2021. Non-fixed allowance is a payment that can be given directly or indirectly to workers, this allowance can be given to the workers themselves and their families. The emphasis on this allowance is when the allowance itself is given, this allowance is given separately from the basic wage (Fitri, 2019). Non-fixed allowance can be in the form of a transportation allowance or a food allowance, both of which are provided based on the presence of the worker (Fitri, 2019). Furthermore, apart from regulating this matter Government Regulation (PP) 36/2021 also stipulates that workers have the right to receive non-wage income. The non-wage income referred to in Government Regulation (PP) 36/2021 is holiday allowances or what is commonly referred to as THR. Religious Holiday Allowance is non-wage income which is the right of workers to be paid by employers (Vijayantera, 2016). In Article 8 paragraph (1) and Article 9 Government Regulation (PP) 36/2021 it is also explained that the holiday allowance or THR must be given by employers to workers no later than seven days before the holiday. In addition to holiday allowances, employers can also provide workers with other optional non-wage income, namely:

1) Incentive
   Incentive grants to workers as non-wage income can be given when workers occupy a certain position or do a certain job. Matters regarding incentive care are further regulated in accordance with company policy.
2) Bonus
   Giving bonuses to workers is given by employers if the company or employer gets a certain advantage. Matters regarding the awarding of bonuses will be further regulated in more detail in company regulations or collective work agreements or work agreements
3) Money for work facilities

Compensation for work facilities is given to workers if the employer is unable to provide or provide a work facility for the worker. This is further regulated in company regulations or collective labor agreements or work agreements

4) Service fees for certain businesses
The provision of this type of non-wage income originates from funds collected and managed by employers and then distributed to workers after deducting savings funds that will be used in case of loss or damage and will also be used to improve the company's human resources.
Regulations regarding these three matters are actually not all new things in Government Regulation (PP) 36/2021 because in the previous regulation namely Government Regulation (PP) 78/2015 it also regulates this however, Government Regulation (PP) 78/2015 does not regulate intensive as a form of non-wage income.

Further, the new thing contained in Government Regulation (PP) 36/2021 is regarding the type of wages. In Article 13 paragraph (1) Government Regulation (PP) 78/2015 it is explained that wages must be given based on the unit of time on a daily, weekly or monthly basis. Whereas in Government Regulation (PP) 36/2021 this later changed, in Articles 16-19 Government Regulation (PP) 36/2021 it is explained that rewards are given based on hourly, daily and monthly time units. In the case of remuneration based on hourly units of time, it can only be given to part-time workers, remuneration based on hourly units of time can only be given if there is an agreement between the worker and the employer with a note that the wages given cannot be under the calculation formulation as follows : (Prakoso, 2021)

$$Hourly\ Wages = \frac{Monthly\ Wages}{126}$$

Next, in paying wages with a daily scheme, based on Article 17 Government Regulation (PP) 36/2021 it is divided into two calculation schemes, namely:

- Companies that set a working day entry system of 6 (six) days a week, calculate workers' daily wages with the following formula

$$Daily\ Wages = \frac{Monthly\ Wages}{25}$$

- Companies that set a working day entry system of 5 (five) days a week, calculate workers' daily wages with the following formula

$$Daily\ Wages = \frac{Monthly\ Wages}{21}$$

Apart from the type of wages, the new thing contained in Government Regulation (PP) 36/2021 is regarding the minimum wage. The minimum wage itself is the minimum standard used by employers or industry players to provide wages to workers in a business or work environment (Rosandi et al., 2017). Based on Government Regulation (PP) 36/2021, the minimum wage consists of the provincial minimum wage (UMP) and district/city minimum wage (UMK). In terms of using the district/city minimum wage

(UMK), 1 (one) condition must be met, namely, economic growth or inflation in the district/city. Of the 2 (two) types of minimum wages, both UMP and UMK must be based on economic conditions and employment as measured by 3 (three) variables, namely; purchasing power parity / PPP or what is commonly referred to as purchasing power parity, the labor absorption rate (TPT) and the median wage. Matters regarding wages are classified as very different when compared to Government Regulation (PP) 78/2015 where the regulation requires that minimum wages be set based on decent living needs and taking into account economic growth. In addition, Government Regulation (PP) 78/2015 also recognizes the sectoral minimum wage, which is then not regulated in Government Regulation (PP) 36/2021.

In Government Regulation (PP) 36/2021 and Government Regulation (PP) 78/2015 both recognize the terms UMP and UMK, however, these two things are not identical because the use of the formula in determining wages in Government Regulation (PP) 36/2021 and Government Regulation (PP) 78/2015 is very different. It is mandatory for the Governor to determine the UMP in Government Regulation (PP) 36/2021 which will be adjusted annually. The UMP value in Government Regulation (PP) 36/2021 must be between the upper and lower limits of the minimum wage in that province. The upper limit and lower limit values are determined using the following formula:

$$Upper\ limit\ of\ UM_{(t)} = \frac{Average\ per\ capita\ consumption\ (t)\ \times Average\ number\ of\ household\ members}{The\ average\ number\ of\ working\ household\ members\ (t)}$$

$$Lower\ limit\ of\ UM_{(t)} = Upper\ limit\ of\ UM_{(t)} \times 50\%$$

Once the upper and lower limits are known, the UMP value is then determined using the following formula

$$UM_{(t+1)} = UM_{(t)} + \{Max(PE_{(t)} Inflation_{(t)}) \times (\frac{Upper\ limit_{(t)} - UM_{(t)}}{Upper\ limit\ (t) - Lower\ limit\ (t)}) \times UM_{(t)}\}$$

Information:

$UM_{(t)}$: Minimum wage for the current year

$UM_{(t+1)}$: The minimum wage to be determined

$PE_{(t)}$: Provincial economic growth, which must be calculated from the economic growth figures for the 4th (fourth) quarter of the previous year and the first, second and third quarters of the current year (in percent)

$Inflation_{(t)}$: Provincial inflation, which should be calculated from September of the previous year to September of the current year (in percent)

$MAS(PE_{(t)}, Inflation_{(t)}$: The highest value of the economic growth rate or inflation rate

After determining the UMP then, the Governor can determine the UMK if:

- The average economic growth in the regency/municipality for the last 3 (three) years has been higher than the average provincial economic growth; atau
- Economic growth in these regencies/cities for the last 3 (three) years after taking into account inflation has always been positive and higher than growth at the provincial level.

In setting the UMK, the governor had to calculate the relative value of the UMK to the UMP based on the ratio of the PPP (purchasing power parity), TPT (open unemployment rate) and median wage variables. In determining PPP, TPT and Median Wages use the following formula:

1) PPP

$$UMK_{(F1)} = \frac{PPP\ of\ Districts/Cities}{PPP\ Province} \times UMP(t)$$

2) TPT

$$UMK_{(F2)} = \frac{(1 - TPT\ of\ Districts/Cities)}{1 - TPT\ Province} \times UMP(t)$$

3) Median Wages

$$UMK_{(F2)} = \frac{District/City\ Median\ Wage}{Provincial\ Median\ Wage} \times UMP(t)$$

When PPP, TPT and Median Wages have been obtained, the Governor must calculate the average relative value of the MSE with the following formula:

$$UMK_{(t+1)} = \frac{UMK_{(F1)} + UMK_{(F2)} + UMK_{(F3)}}{3}$$

Information

$UMK_{(F1)}$	: UMK value for PPP
$UMK_{(F2)}$	: UMK value for TPT
$UMK_{(F3)}$	: UMK value for the median wage
$UMK_{(t+1)}$	: UMK value to be set
$UMP_{(t)}$	: UMP for the current year

3.2. The Legal Implications on the issuance of Government Regulation (PP) 36/2021 for the Workers' Wage System in Indonesia

The introduction of Government Regulation (PP) 36/2021 on Indonesian positive law has brought about a significant shift in the employment system that is in place in Indonesia. This rule is very obviously not the same as the rules that were in place previously regarding wages. In the previous regulation, namely Government Regulation (PP) 78/2015, the minimum wage calculation system for workers (UMP) was carried out by adding up the current year's minimum wage by multiplying the current year's minimum wage and the amount of inflation and economic growth, as a result of calculating with such a scheme, the minimum wage for workers (UMP) will increase progressively every year. This then changed in Government Regulation (PP) 36/2021, where this rule requires an upper and lower limit for workers' minimum wages (UMP), this will also become a challenge for the government in the future because, in the wage calculation scheme as stipulated in Government Regulation (PP) 36/2021 more variables are used. The variables used cannot use the data available at the central government, but the data used as a calculation variable must use the data available at the local government with the aim of making nominal differences between regions. In other words, when this regulation is passed, each region must have the ability to process data that will be used as a variable in

calculating wages and this will be a very big challenge for each region considering that each region has different resources, hence a regional level regulation is needed to regulate these matters.

In addition, since the enactment of this rule, 2 (two) very contradictory things will occur in social life, both of which are; This rule will ease the burden on employers in making wage adjustments, in other words, employers will have to spend less money in wage adjustments each year, or simply the employer will be more profitable. Then, this will be a contradiction on the part of workers because workers will not get an increase in the minimum wage for workers (UMP) as big as in previous years as stipulated in Government Regulation (PP) 78/2015, this will also cause a slowdown in the growth of the standard of living of the Indonesian people (Kirana, 2021).

In the new rules regarding remuneration based on Government Regulation (PP) 36/2021, there are indeed many new things or variables compared to the previous rules. However, the most important thing that people need to know is that the basis for giving wages themselves is statutory regulations and/or work agreements including company regulations and collective work agreements, provided that the work agreement does not conflict with statutory regulations. If in practice it turns out that the work agreement is contrary to statutory regulations, then the work agreement is declared null and void and remuneration refers to statutory regulations (Rachmad, 2009).

4. CONCLUSION

Wages are something that plays an important role in employment, because wages are a form of appreciation to workers/laborers given by employers for the work that has been done. Wages not only affect the welfare of workers, but more than that wages have a very important role because wages affect the welfare of a family and even a country. The development of life is always dynamically changing, so the standard of remuneration must also always be side by side with this. As the ruler of the state, the government has a very important role to ensure that every wage received by society is in accordance with existing developments so that a prosperous country can be achieved. In doing so, the government is often faced with 2 (two) facts, namely; policies that benefit employers/employers or benefit workers. With the formation of Government Regulation (PP) 36/2021 which is a derivative regulation from Law 11/2020 it is clear how the government formed this regulation with the aim that Indonesia has competitiveness in terms of manpower with other countries, so that many world entrepreneurs are interested in opening their businesses in Indonesia. However, it should also be noted that it is not enough for the government to simply make rules and then create a competitive labor market with other countries; the government must also carry out a very strict labor supervision accompanied by trainings that can make every existing and future labor force more skilled; if these things are done well, the state's goal of promoting the wellbeing of its citizens will be achieved.

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LEGAL RESPONSIBILITY FOR THE ROLE OF ONLINE TRANSPORTATION COURIER SERVICES IN DRUG TRAFFICKING

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Abstract

In this modern period, drug trafficking in Indonesia has adopted a new mode of operation, with drug traffickers utilizing online transportation courier services to facilitate drug delivery to their destination, in an effort to avoid and/or reduce the risk of legal proceedings. The purpose of this research is to analyze and determine the existence of law enforcement problems in handling the role of online transportation courier services that help drug trafficking. This research uses Normative Juridical methodology. The data used for the formulation of the problem is secondary data consisting of primary, secondary and tertiary legal documents. The results of the analysis show that with regard to law enforcement and accountability, each construction of the Intermediary Articles contained in Law Number 35 of 2009 concerning Narcotics relating to acts committed by couriers does not all fulfill the offense elements of each article. Based on Article 132 when couriers are unable to prove good faith as an online driver, such as not having the authority to inspect goods to be sent, courier service companies do not or have not supported goods scanning facilities, so they can enter into a conspiracy offense. However, even though the actions carried out by online couriers have fulfilled the formulation offense, they are not necessarily accountable. For the sake of creating a sense of justice for society, it is necessary to add new norms to the provisions of Article 114 paragraph (1) of the Narcotics Law and Article 114 paragraph (2) of the Narcotics Law.

Keywords: *Courier Services, Drug Trafficking, Online Transportation*

1. INTRODUCTION

The current rampant drug abuse, especially in Indonesia, has become one of the problems troubling Indonesian society. Drug circulation in Indonesia at this time can be said to be very rapid and attacks young people who are the next generation of the nation. If the next generation of this nation has been poisoned by drugs, it can have an impact on state losses in the form of nominal money, and the destruction of the nation's next generation which decreases human resources and can even cause various diseases such as HIV/AIDS, tuberculosis, hepatitis, and others.

In the framework of the Indonesian government's efforts to carry out national development at this time, drug trafficking and abuse with various implications and negative impacts have reached a very alarming and dangerous level for this community. The Indonesian government together with law enforcement officials must take firm action in law enforcement against drug trafficking and abuse.

Based on data from the Directorate of Drug Crime Bareskrim Polri that the development trend of drug crimes in Indonesia during the 2008-2010 period there were 86.856 cases with 116.536 suspects who were able to be arrested consisting of 107.219 men and 9.317 women, suspects who were Indonesian citizens totaling 116.196 as well as involving 330 foreign nationals of Nigeria, Pakistan, South Africa, India, France,

United States, Thailand, Chane, Brazil, Malaysia, Cordova, Nepal, Zimbabwe, Austria, Saudi Arabia, Liberia, Netherlands, China, Singapore and Iran. While the evidence that could be confiscated during the 2008-2010 period Dittipidnarkoba Criminal Investigation Police was 12.107,79 grams of heroin, 1.307.321,5 grams of cannabis, 90.783 items of Ecstasy, 49.180,91 grams of methamphetamine and 28.168.535 items of Psychotropics Group IV. Indeed, this is only a small part of the existing cases because drug crimes are like an iceberg that much more that is not visible than can be uncovered. Indonesia is one of the most drug user, and this is an iceberg phenomenon, where the number of people associated with drug abuse is greater than the figure above because it includes dealers, couriers, producers and workers. Indonesia is no longer just a transit and circulation area but has become a potential narcotics production area because of its large population and strategic location, even for ecstasy it can export abroad, such as to Malaysia and China, even drug exports to Malaysia reach 150.000 items per month.

Laws and regulations that support efforts to eradicate drug crime are urgently needed, moreover drug crime is a form of unconventional crime that is carried out systematically, uses a high modus operandi and sophisticated technology and is carried out in an organized manner (organize crime) and is already a transnational crime. Laws and regulations governing narcotics in Indonesia have existed since the entry into force of the Dope Ordinance (Verdoovende Middelen Ordonnantie, Staatsblad Number 278 Jo. 536 of 1927). This Ordinance was later replaced by Law Number 9 of 1976 concerning Narcotics which came into effect on July 26, 1976. Subsequently, Law Number 9 of 1976 was replaced by Law Number 5 of 1997 concerning Psychotropics and Law Number 22 of 1997 concerning Narcotics which came into force on September 1, 1997. Then, it was updated with Law Number 35 of 2009 concerning Narcotics (Narcotics Law), which has a minimum criminal penalty threat and a maximum criminal penalty even though its implementation has not gone as well as it should because there are still many drug offenders sentenced under the minimum penalty.

The Narcotics Law provides for strict and severe sanctions, namely 20 (twenty) years in prison, life imprisonment and even the death penalty for anyone who becomes the perpetrator or part of a drug-related crime. However, in reality the Narcotics Law has not been able to provide a preventive effect on the increasing crime of drug trafficking. Irianto (2006) said “The process of law enforcement for perpetrators of drug trafficking in Indonesia refers to the Narcotics Law”. In its implementation, a lot of law enforcement has been carried out with reference to the Narcotics Law, but we can see clearly that the desired deterrent effect with the implementation of the Narcotics Law does not appear significant enough, even drug trafficking in Indonesia seems to be getting more systematic and organized. Penitentiary institutions, which are expected to be the spearhead in fostering drug abusers so that they get a new and better way of life, are even involved and have even become one of the epicentrums for this process of trafficking in illicit goods (Purnama, 2021).

Narcotics crimes are no longer carried out individually, but involve many people together, even as an organized syndicate with an extensive network that works neatly and in great secrecy. Recently, drug offenders have used online transportation courier services to carry out the business of buying and selling drugs.

As we all know, the Narcotics Law regulates the abuse of narcotics, however, we do not find any regulations that explicitly regulate couriers. The term courier itself can refer to someone who is in charge of delivering a package (Herman & Kansil, 2022). So

in this case we can conclude that a courier in the narcotics trade system is someone who is entrusted with narcotics to be given to other people or in simple terms we call an intermediary. Thus, if we refer to the above understanding that a courier in the narcotics trade system is someone who becomes an intermediary who helps buy and sell narcotics, then the provisions in Article 114 of the Narcotics Law only emphasize someone who "everyone who without rights or against the law offers to sell, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or handing over Narcotics Group I" can be charged with a crime. In other words, it can be ascertained that the Narcotics Law does not differentiate a person's role specifically when carrying out drug trafficking, whether he is a user, intermediary or dealer. If the elements have been fulfilled, all perpetrators can be charged and prosecuted.

The presence of online transportation couriers in Indonesia is a new tool for drug offenders in the country. By using this online transportation courier service, drug trafficking has become rife, apart from the reason for fast delivery, drug trafficking is also not suspected by law enforcement officials (Subandri & Widyarsono, 2021).

In practice, online transportation couriers such as Grab, Gojek, Maxim, and so on, when delivering an order of goods from one place to another which turns out to contain drugs, admit that he does not know the contents of the goods to be delivered to their destination, because they have limited information on the contents of the goods only through an application filled in by the consumer, they do not have the authority to inspect the goods, and they are not equipped with a scanning tool used to detect these goods.

In this case, these couriers have a role in drug trafficking, so responsibility and punishment are attached to them. Couriers are considered to be participating in drug trafficking. Then what about handling?

Based on the background as described above, the aim of the research to be conducted is to analyze and find the existence of law enforcement problems in the context of handling the role of online transportation courier services that help drug trafficking. Analyze and develop what legal steps are appropriate in the framework of law enforcement and legal accountability for the role of online transportation courier services that assist drug traffickers in order to obtain legal certainty.

2. LITERATURE REVIEW

2.1. Criminal Law Liability Theory

There are two terms that refer to accountability in the legal dictionary, namely liability and responsibility. Liability is a broad legal term that refers to almost any type of risk or responsibility that is certain, depends on, or may include all of the characteristics of actual or potential rights and obligations such as losses, threats, crimes, costs, or conditions that create the duty to obey the law (Yanto, 2016). Responsibility means something that can be accounted for under an obligation, and includes decisions, skills, abilities including the obligation to be responsible for the laws that are implemented. In terms of understanding and practical use, the term liability refers to legal responsibility, namely accountability due to mistakes committed by legal subjects, while the term responsibility refers to political responsibility (Irianto, 2006).

2.2. Law Enforcement Theory

According to Soerjono Soekanto, law enforcement is an activity of harmonizing the relationships of values that are described in solid principles and attitudes as a series of

final stages of value translation to create, maintain, and sustain social peace (Soekanto, 2015).

Criminal law enforcement is the concrete application of criminal law by law enforcement officials (Ariyanti, 2019). In other words, criminal law enforcement is the implementation of criminal regulations. Thus, law enforcement is a system that involves harmonization between values and norms and real human behavior. These rules then become guidelines or benchmarks for behaviors or actions that are considered appropriate or appropriate. The behavior or attitude of the act aims to create, maintain, and promote peace.

2.3. The Role of Online Transportation Couriers in Drug Trafficking

Online transportation is a mode of transportation or public transportation that is only available through the internet (Pratama & Suradi, 2016). The difference between online transportation and transportation or public base transportation as usual is that online transportation is application-based, we must use an application connected to the internet if we want to order online transportation services while transportation or public base transportation still uses conventional methods. Online transportation has a socially minded technology company that aims to improve the welfare of workers in various informal sectors in Indonesia (Riani, 2021). Around 200.000 experienced and trusted online transportation drivers in Indonesia provide a wide range of services, including transportation and ordering food or delivering goods. Online transportation, which is becoming increasingly popular, has played a significant role in today's transportation in the capital and regions.The term online transportation is becoming increasingly popular. Online transportation is currently thriving in society because it is thought to make people's lives easier. However, behind this phenomenon there must also be positive and negative impacts on the existence of online transportation in Indonesia.

The actions of online transportation drivers who deliver narcotics from sellers to buyers can be referred to as narcotics intermediaries or couriers. The online transportation driver's actions constitute an "act of transportation" namely any activity or series of activities moving narcotics from one place to another by any method, capital or means of transportation (Article 1 Number 9 of the Narcotics Law). Online transportation drivers who deliberately deliver narcotics from sellers to narcotics buyers, these drivers know that the goods delivered are narcotics and get wages from the seller for delivering narcotics, they can be charged with Article 114 of the Narcotics Law as intermediaries in buying and selling narcotics. The intention to be punished or not returns to the decision of the judge who decided the case, because the transportation driver was a person who was ordered by the narcotics seller but without the knowledge of the driver that the goods being confirmed were narcotics, but this must first be proven by valid evidence in court.

2.4. The Role of Online Transportation Courier Services in Drug Trafficking in Law Enforcement Dynamics

In this study, this dynamic arises because of the provisions of Article 114 paragraph (1) of the Narcotics Law which states "*Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of Rp1.000.000.000,00 (one billion rupiah) and*

a maximum of Rp10.000.000.000,00 (ten billion rupiah)". Then article 114 paragraph (2) of the Narcotics Law states "*In the case of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)*".

The provisions of article 114 of the Narcotics Law do not provide a special categorization for people who offer to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or handing over Narcotics Group I if we take a nomenclature or editorial approach. Surely, this is a dangerous weapon for everyone who suddenly has drugs in their hands even though they don't know where the drugs came from, as well as an online transportation courier who accepts orders for delivery of goods which turn out to be drugs. Surely, the mastery of these goods can be questioned even run the risk of being prosecuted.

3. RESEARCH METHODS

In this research, we used normative juridical research conducted with a particular methodology to analyze and reconstruct a problem (Soekanto, 2015). The method to be used was normative juridical. Both the statutory research approach and the case research approach were utilized in the course of this investigation. The data collection stage employs a secondary data approach (data obtained from a literature review) which in the form of written materials that were related to the problems addressed in this paper, including:

a. Primary legal materials, including the Criminal Code, the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics and the Decision of the Court of First Instance at the Makassar District Court Number 1434/Pid.Sus/2018/PN
b. Secondary legal materials, including literature in the form of books, papers, journals and research results
c. Tertiary legal materials, such as legal dictionaries, language dictionaries, articles in newspapers or newspapers and magazines.

Collection of legal materials was carried out by identifying and inventorying positive legal rules, examining literature (books, scientific journals and research reports) and other sources of legal materials relevant to the legal issues being studied. Analysis of legal materials was done by means of legal interpretation. The legal interpretation techniques used were grammatical interpretation techniques, systematic interpretation techniques and theological interpretation techniques.

4. RESULTS AND DISCUSSION

4.1. 4Efforts to Enforce and Legal Accountability for Online Transportation Courier Services' Role in Drug Trafficking Crime

Drugs are goods and drugs that are common in the lives of Indonesians. In Indonesia, the term narcotics stands for narcotics and dangerous drugs. Then there is also the term Narcotics which stands for Narcotics, Psychotropics and Addictive Substances.

Drugs are another term specifically introduced by the Ministry of Health of the Republic of Indonesia.

Referring to the provisions of Article 1 Point (1) of the Narcotics Law "*Narcotics are substances or drugs derived from plants or not, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain and can cause dependence, which is differentiated into groups as attached in this law*". In addition, narcotics in the Narcotics Law are also known as Narcotics Precursors as referred to in the provisions of Article 1 Point 2 of the Narcotics Law which states that "*Narcotics Precursors are substances or starting materials or chemicals that can be used in the manufacture of Narcotics which are differentiated in the table as attached to this law*".

In almost all countries in the world including Indonesia, drugs consisting of narcotics, psychotropics and other addictive substances have been used as substances or drugs that are important and needed in the medical world for treatment.

Behind this medical need, drug use has been widely abused without rights or against the law, where drugs are used as a tool for exploitation of black business (black market) in order to gain huge profits regardless of the impact it has on users when drugs are misused. Possessing drugs for purposes other than science and medicine without a doctor's prescription is illegal and can result in charges under Narcotics Law Number 35 of 2009.

The Narcotics Law is designed to reduce the amount of narcotics circulation and reduce the number of victims of narcotics abuse in Indonesia. The purposes mentioned above can be seen in the preambles of Letters a to f of the Narcotics Law.

In the Narcotics Law there are several important chapters in efforts to enforce narcotics law, namely as follows:

1) CHAPTER I regulates General Provisions;
2) CHAPTER II regulates the Basis, Principles and Objectives;
3) CHAPTER III regulates Scope;
4) CHAPTER IV regulates Procurement;
5) CHAPTER V regulates import and export;
6) CHAPTER VI regulates the distribution of narcotics;
7) CHAPTER VII regulates Labels and Publications;
8) CHAPTER VIII regulates the Narcotics Precursor;
9) CHAPTER IX regulates Treatment and Rehabilitation;
10) CHAPTER X regulates Guidance and Supervision;
11) CHAPTER XI regulates Prevention and Eradication;
12) CHAPTER XII regulates Investigation, Prosecution and Examination at Court Sessions;
13) CHAPTER XIII regulates Community Participation;
14) CHAPTER XIV regulates Awards;
15) CHAPTER XV regulates Criminal Provisions;
16) CHAPTER XVI regulates Transitional Provisions; and
17) CHAPTER XVII regulates Closing Provisions.

However, in practice, the Narcotics Law as a legal instrument for enforcing the law against the distribution and abuse of narcotics has not been viewed as optimal in meeting all the requirements for preventing and eliminating narcotics crimes in Indonesia.

Currently, the development of drug trafficking operations in Indonesia is experiencing unusual changes and indicates new ways of distributing narcotics in Indonesia. In general, drug trafficking is carried out using the traditional modus operandi, namely transactions carried out by and between sellers and buyers, just like the transaction process for drug merchandise. However, along with the advancement of time and technology, the modus operandi has developed into a network with a disconnected communication system (Jainah, 2013). One of the changes in drug transactions in this era is where drug dealers use online transportation courier services to deliver drugs to their buyers.

Online transportation couriers are currently booming in society because they are considered to make their activities easier. However, behind this phenomenon there must also be positive and negative impacts on the existence of online transportation couriers. The positive impacts of having an online transportation courier are as follows:

1) Facilitate the community in carrying out activities by using online transportation couriers. Only by ordering an online transportation courier through the application, the online transportation courier will come to pick up where we are and deliver according to the destination, so we don't have to be tired anymore looking for public transportation.
2) The opening of job vacancies for the wider community. After the opening of online transportation in Indonesia, many people are interested in jobs as online transportation couriers. Moreover, there are many bonuses offered by online transportation courier companies where their income can even exceed employees in ordinary companies (Basir, 2017).

Technological developments in today's era, drug dealers have utilized online transportation courier services as a new tool/modus operandi in smoothing drug distribution transactions. The use of online transportation courier services is quite reasonable, apart from the fast delivery time, drug delivery via online transportation courier services is not suspected by law enforcement officials. The problem in general is that online transportation couriers do not know about drug crimes involving themselves as intermediaries for drug trafficking, couriers are considered or used as victims to send these drugs, unless transportation couriers deliberately want to be used as drug couriers, hence online transportation couriers cannot categorized as a victim. The online transportation courier is the person who delivers the seller's goods to the buyer (which turn out to contain drugs). For this delivery service, the online transportation courier is paid by a fee.

However, according to the provisions of Article 114 of the Narcotics Law, online transportation couriers can be classified as drug distribution intermediaries because, through their services, drug buying and selling transactions occur between sellers and buyers, as well as the transfer of drug goods from the hands of sellers to buyers, resulting in legal events of drug trafficking.

Following article 114 paragraph (1) of the Narcotics Law states "*Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)*". Then article 114 paragraph (2) of the Narcotics Law states "*In the case of the act of offering to sell,*

sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)".

Referring to the provisions of article 114 of the Narcotics Law, if we take a nomenclature or editorial approach to the article, article 114 of the Narcotics Law does not provide a special categorization for people who offer to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or hand over Narcotics Group I. Surely, this is a dangerous weapon for everyone who suddenly has drugs in their hands even though they don't know where the drugs came from, as well as an online transportation courier who accepts orders for delivery of goods which turn out to be drugs, surely mastery over these goods can be questioned even at risk of being prosecuted criminally.

The above scenario calls for a legal review and/or analysis by law enforcement. To avoid the risk of criminal prosecution of innocent people, the legal review and/or legal analysis presented must fulfill a sense of legal justice for all parties. They must follow the entire law enforcement process, beginning with the investigation, prosecution, and sentencing stages, as stated in the provisions of Article 114 of the Narcotics Law.

Focus on online transportation couriers who are proven to have carried drugs to be sent to their destination addresses, may be punished for actions without rights or against the law offering to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or handing over Narcotics Category I. However, if explored further through the approach of law enforcement theory and legal responsibility theory, online transportation couriers who are proven to have carried drugs to be sent to the destination address, may not be criminalized for reasons of non-fulfillment of errors followed by intent.

According to the theory of criminal responsibility, a person is responsible for the crime he has committed.Sudarto said that a person's sentence was not enough if that person had committed an unlawful act, but it had to be seen whether the person who had committed the act had a mistake followed by intention or not.

In criminal law the concept of responsibility is a central concept known as the teaching of error. In Latin, heresies are known as mens rea. The mens rea doctrine is based on an act that does not make a person guilty unless the person's thoughts are evil.

A person who commits a crime can be punished if he meets the requirement that the crime he has committed fulfills the elements specified in the law. If a prohibited act occurs, a person will be held responsible if the act was committed intentionally against the law and there is no reason to justify or negate the unlawful nature of the act committed.And when viewed in terms of the ability to be responsible, only people who are capable of being responsible can be held accountable for their actions. In the event that a person is found guilty of committing an act such as breaking the law, depending on whether in carrying out the act the person has made a mistake that is intentionally against the law, then that person may be punished.

The element of error accompanied by intent to violate the law is the main element in criminal responsibility. In the sense that a criminal act does not include matters of criminal liability, a criminal act only refers to whether the act is unlawful or prohibited by law, Whether a person who commits a crime is then sentenced depends on whether the

person who committed the crime has an element of guilt or not. In other words, will someone who is suspected of having committed a crime be punished or acquitted. If he is convicted, it must be proven that the act committed was against the law and that person is capable of being held responsible. This ability shows the error of action that is intentional or negligent. This means that it is disgraceful for the accused to be aware of the actions he has committed.

Law enforcement is an attempt to realize the ideas of justice, legal certainty and social benefits into reality. Law enforcement is essentially a process of embodiment of ideas. "Law enforcement" refers to the process of carrying out efforts to uphold or function real legal norms as a guideline in the legal relations of social and state life.Law enforcement is an attempt to bring legal ideas and concepts that the public expects to become reality to fruition.Law enforcement is a process that involves many things.

Based on a legal perspective, in everyday life the term legal association (*rechtsverkeer*) is known, which implies the existence of legal actions (*rechtshandeling*) and legal relations (*rechtbetrekking*) between legal subjects. Association, action, and legal relationship are conditions or circumstances that are regulated by law and/or have legal relevance. In that case there is an interaction of rights and obligations between two or more legal subjects, each of which is bound by rights and obligations (*rechten en plichten*). The law was created to regulate legal association so that each legal subject carries out their obligations properly and obtains their rights fairly. In addition, law also functions as an instrument of protection (*bescherming*) for legal subjects. In other words, law is made to ensure that justice is carried out in legal relationships. When there are legal subjects who neglect legal obligations that should be carried out or violate those rights, they are burdened with responsibility and are required to restore the rights that have been violated. The burden of responsibility and demands for compensation or rights are shown to every legal subject who violates the law, regardless of whether the legal subject is a person, legal entity, or the government.

The Narcotics Law regulates law enforcement efforts in the form of criminal provisions contained in the Narcotics Law which were formulated starting from Chapter XV of the Criminal Provisions covering Article 111 to Article 148. In the Narcotics Law, there are categories of unlawful acts prohibited by the Narcotics Law which then provide threats of sanctions crimes, namely every act of offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors as referred to in the provisions of Article 114 and Article 116 of the Narcotics Law for class I narcotics, provisions of Articles 119 and Article 121 of the Narcotics Law for class II narcotics, Article 124 and Article 126 of the Narcotics Law for class III narcotics and Article 129 letter (c) of the Narcotics Law

As an effort to enforce the law against the distribution of narcotics, the Narcotics Law specifically regulates the prohibition of narcotics distribution. Based on Law 35 of 2007 concerning Narcotics article 114 reads "*Anyone who without rights or against the law offers to sell, sell, buy, receive, act as intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah). (2) In the case of acts of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeds 5 (five) tree trunks or in the form of non-plants*

weighing 5 (five) grams, the offender shall be subject to death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a fine maximum as referred to in paragraph (1) plus 1/3 (one third)".

As well as emphasized in Article 132 of the Narcotics Law which states "*Which mentions Attempt or conspiracy to commit criminal acts of Narcotics and Narcotics Precursors as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129, the perpetrators are punished with the same imprisonment in accordance with the provisions referred to in these articles*".

In terms of the acts referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126 and Article 129 being carried out in an organized manner, imprisonment and a maximum fine shall be increased by 1/3 (one third).

The criminal penalty as referred to in paragraph (2) does not apply to crimes punishable by death penalty, life imprisonment, or 20 (twenty) prison terms.

The role of couriers in narcotics trafficking often occurs with technological developments that are increasingly rapid due to accelerated delivery times and are not suspected by law enforcement officials. In this case, there are several online transportation couriers who do not know this but there are also online transportation couriers who deliberately become narcotics couriers. Accountability for his actions must be viewed through the lens of error, then intentionality.

In the case of being an intermediary in buying and selling or handing over narcotics class 1, to be held accountable for his actions must be seen from the mistakes he made, whether the actions were intentional or acts due to negligence. Criminal responsibility is the responsibility of a person for the crime he has committed. Sudarto said that a person's sentence was not enough if that person had committed an unlawful act, but it had to be seen whether the person who had committed the act had a mistake followed by intention or not.

Couriers who accidentally deliver narcotic goods can also be charged with Article 132 paragraph (1) jo. Article 114 of the Narcotics Law regarding attempts or conspiracy to commit narcotic crimes. The accident is to be punished or the act returns to the decision of the judge who decided the case, because the courier is a person who is ordered by the narcotics seller but without the knowledge of the courier that the goods delivered are narcotics, but this must first be proven by evidence that legal in court. Legal evidence as stipulated in the provisions of Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP) states "valid evidence consists of: (a) witness statements, (b) expert statements, (c) letters, (d) evidence of instructions, and (e) testimony of the accused".

Apart from that, there is also valid evidence in court with technological developments, namely electronic evidence which has been regulated in Article 5 of Law Number 11 of 2008 concerning information and electronic transactions/electronic documents/printed results which are legal evidence that legitimate.

Regarding law enforcement and accountability, each construction of the Intermediary Articles contained in Law Number 35 of 2009 concerning Narcotics relating to acts committed by couriers does not all fulfill the elements of offense in each article, based on Article 132 when the courier or is unable prove good faith as an online driver,

such as not having the authority to check the goods to be sent, the courier service company does not or does not yet support goods scanning facilities, so it can enter into a conspiracy offense, but even though the actions carried out by online couriers have fulfilled the formulation of the offense, they have not certainly accountable.

4.2. Legal Justice Against Online Transportation Courier Services' Role in Drug Trafficking Crimes

Justice is one of the legal ideals that must always be achieved in law enforcement so as to create legal certainty. Justice is also one of the related concepts which can be interpreted as a reciprocal of what has been done. Whether it's a good deed or a bad deed. In law enforcement itself, justice is still relative and has many views related to the concept of justice which still seems difficult to understand because each person has different perspectives regarding the concept of justice. The concept of justice itself is contained in the fifth precept of Pancasila which reads “social justice for all Indonesian people”.

Every crime contained in the Criminal Code can generally be broken down into elements which can be divided into two kinds of elements, namely subjective elements and objective elements. What is meant by these objective elements are the elements that are attached to the actor himself, and which are included in it, namely everything that is contained in his heart, while what is meant by these objective elements are elements that have to do with circumstances. circumstances, that is, in the circumstances under which the actions of the actor must be carried out.

The subjective elements of a crime are:

1) Intentional or accidental (*dolus* or *culpa*);
2) Intent or *voormemen* on an attempt or pogging as referred to in Article 53 paragraph 1 of the Criminal Code;
3) Various purposes or *ogbrands* as contained, for example, in the crimes of theft, fraud, extortion, forgery, and others;
4) Planning in advance or *voorbedachte raad* as for example contained in the crime of premeditated murder article 340 of the Criminal Code;
5) Feelings of fear or *vress* such as those contained in the formulation of criminal acts according to article 308 of the Criminal Code.

The objective elements of a crime are:

1) The nature of breaking the law or *wederrechttelijheid*;
2) The quality of the perpetrator, for example "state as a civil servant" in a crime of office according to Article 451 of the Criminal Code or "state of being a manager or commissioner of a limited liability company" in a crime according to Article 398 of the Criminal Code;
3) Causality, namely the relationship between an action as a cause with a reality as a result.

In couriers who deliberately deliver narcotics from sellers to narcotics buyers, the driver knows that the goods delivered are narcotics and get wages from the seller, because he has delivered narcotics, he can be charged with Article 114 of the Narcotics Law as an intermediary in buying and selling narcotics. If a courier intentionally transports narcotics, the courier may be subject to Article 114 paragraph (1) of the Narcotics Law regarding any person who without the right to offer for sale, sell, buy, receive, become an intermediary in buying and selling, exchanging or handing over narcotics class one.

Intermediary in buying and selling means acting as a liaison between the seller and the buyer and receiving services or benefits in exchange for his actions. Someone connects the seller and the buyer and then that person gets goods in the form of narcotics which can be classified as intermediaries as buying and selling, therefore services or benefits here can be in the form of money or goods and even facilities. Services or profits are an important factor, without services or benefits obtained, it cannot be referred to as an intermediary for buying and selling if someone has brought the seller together with the buyer, but cannot be clear about the service, then that person is not an intermediary in buying and selling. However, as a liaison and a criminal offense that is imposed at least in conjunction with Article 132 of the Narcotics Law, whether in the context of buying or selling, and so on. An intermediary is different from an intermediary, because an intermediary is an act on orders while an intermediary acts alone in order to bring together sellers and buyers and intermediaries have independent responsibilities. The elements contained in the act were intentional, knowing the goods were narcotics, paying the courier.

As for the case regarding the courier who was acquitted of a narcotics crime in Makassar District Court Decision Number 1434/Pid.Sus/2018/PN. Mks. Result of Decision 1434/Pid.Sus/2018/PN.Mks. The Public Prosecutor used the alternative charge of Article 114 paragraph (2) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics or Article 112 paragraph (2) Jo. Article 132 paragraph (1), where the elements and articles are mutually compatible, but based on the facts of the trial and the testimony of witnesses, especially witnesses a de charge, where the article charged contains a subjective element, namely every person, but the facts between what was charged were elements of each person (the defendant) had no connection with the development of the narcotics case, so based on this statement the panel concluded that the elements of each person in this article were not proven, therefore it was fitting for the defendant to be released from indictment, bearing in mind the provisions of Article 191 of the Criminal Code paragraph (1) and legal provisions other interrelated matters, judges as enforcers of law and justice are obliged to explore and understand the laws that live in society. This is so that judges can make decisions in accordance with the law and the sense of justice in society. In the case of Decision Number 1434/Pid.Sus/2018/PN. Mks, the judge has made an expansion regarding the interpretation of Article 114 of the Narcotics Law.

It can be concluded that based on Article 114 of the Narcotics Law that anyone who without rights or against the law becomes an intermediary for the sale and purchase of narcotics can be directly punished by law, this threatens the absence of legal justice, because in the form of accountability it must be seen from the element of guilt first Previously, in Article 114 of the Narcotics Law there was no specific explanation regarding intent. If the courier is not proven guilty, then he should not be punished, but Article 114 of the Narcotics Law states that he can still be criminalized because he does not clearly mention the element of intent, if you look at the Makassar District Court Decision No. 1434/Pid.Sus/2018/PN . Mks. The results of the Decision 1434/Pid.Sus/2018/PN.Mks, in his consideration the judge decided to acquit the defendant because the elements of each person in this article were not proven, therefore he saw that there was legal injustice in Article 114 of the Narcotics Law.

Based on the explanation above, in order to create a sense of justice for society, it is necessary to add a new norm in the provisions of Article 114 paragraph (1) and the

Narcotics Law which states "*Any person who without rights or against the law offers to sale, sell, buy, receive, being an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)*". Then article 114 paragraph (2) of the Narcotics Law states "*In the case of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)*".

The addition of the norm is meant by adding an element of intent in the article so that it changes to: Article 114 paragraph (1) of the Narcotics Law states "*Every person intentionally and without rights or unlawfully offers for sale, sells, buys, receives, becomes an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)*". Then adding the norm in Article 114 paragraph (2) of the Narcotics Law states "*In the event of an intentional act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Category I as referred to in paragraph (1) which in plant form weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)*".

5. CONCLUSION

5.1. Conclusion

The conclusions that can be drawn in this study are as follows:

1) Whereas with regard to law enforcement and accountability, every construction of the Intermediary Articles contained in Law Number 35 of 2009 concerning Narcotics relating to acts committed by couriers does not all fulfill the elements of offense in each article, based on Article 132 when the courier or not able to prove good faith as an online driver, such as not having the authority to check the goods to be sent, the courier service company does not or does not yet support goods scanning facilities, so it can enter into an offense of conspiracy, but even though the actions carried out by online couriers have fulfilled the formulation of the offense, not necessarily justifiable.
2) For the sake of creating a sense of justice for society, it is necessary to add new norms to the provisions of Article 114 paragraph (1) and the Narcotics Law which states "*Any person who without rights or against the law offers to be sold, sells, buys, receives, becomes an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years*

and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)". Likewise, article 114 paragraph (2) of the Narcotics Law states "*In the case of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)*".

The addition of norms is meant by adding an element of intent in the article so that it changes to:

Article 114 paragraph (1) of the Narcotics Law states "*Every person intentionally and without rights or unlawfully offers to sale, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)*". Then adding the norm in Article 114 paragraph (2) of the Narcotics Law states "*In the event of an intentional act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Category I as referred to in paragraph (1) which in plant form weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)*".

5.2. Suggestion

Based on the findings and conclusions above, this study sugggest that in law enforcement and criminal liability for the role of online transportation courier services in drug trafficking, law enforcement officials must ensure that the online transportation courier is intentional. In addition, the government can add more rules to the provisions of Article 114 of the Narcotics Law in order to establish justice.

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HOW TO ENFORCE CRIMINAL LAW AGAINST NARCOTICS ABUSE OF NEW TYPES OF VARIANTS THAT HAVE NOT BEEN INCLUDED IN LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS

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Abstract

Today, many different narcotics, psychotropics, and other illegal drugs emerged. These new variants are not/have not been regulated by law number 35 of 2009 concerning narcotics. This research uses Normative Juridical methodology. The data used for the formulation of the problem is secondary data consisting of primary, secondary and tertiary legal documents. The results of the analysis show that in order to implement the provisions of Article 6 paragraph (3) of the Narcotics Law, it is necessary to stipulate a Regulation of the Minister of Health concerning Changes in the Classification of Narcotics, which is the last position where this research was written. Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics. Law Number 35 of 2009 concerning Narcotics and Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics which are guidelines for law enforcement against drug abuse with new variants in Indonesia are still deemed ineffective and efficient and do not accommodate all needs -the need for law enforcement against narcotics abuse, especially narcotics with new types of variants. An alternative policy formulation to Law Number 35 of 2009 concerning Narcotics, the formulation policy that is deemed suitable for implementation in the future is to revise Law Number 35 of 2009 concerning Narcotics in particular to expand the meaning related to narcotics in the provisions of Article 1 number 1 and/or Article 6 paragraph (1).

Keywords: *Criminal Law Enforcement, Narcotics, Narcotics Abuse of Novel Variants*

1. INTRODUCTION

In this modern era, narcotics crimes committed by narcotics offenders have entered the area of transnational law and involve perpetrators from various countries, so that narcotics offenders use increasingly sophisticated modus operandi and are supported by an increasingly broad organizational network. As a result, law enforcers are demanded/must follow existing developments in acting to eradicate narcotics circulation (Sadiq, 2017; Tutik, 2013).

The phenomena that occurred in this era, many types of narcotics, psychotropics and other illegal drugs emerged which had various variants. These new variants are not/have not been regulated by law number 35 of 2009 concerning narcotics. One example of a new type of narcotics at that time was gorilla tobacco narcotics. According to the National Narcotics Agency (BNN), synthetic tobacco (gorilla tobacco) is a mixture of tobacco/cigarettes and synthetic/imitation marijuana which contains the substance AB-CHMINACA. AB-CHIMACA is a type of Synthetic Cannabinoid or synthetic cannabis that can have addictive effects. Gorilla tobacco is a new type of narcotic that has not been regulated in Law Number 35 of 2009 concerning Narcotics, but later, the government determined gorilla tobacco as a class I narcotic as contained and listed in the Regulation

of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning Changes in the Classification of Narcotics.

Law Number. 35 of 2009 concerning Narcotics has classified 3 (three) categories of Narcotics, namely:

1) Narcotics class I are narcotics which can only be used for scientific development purposes and are not used in therapy and have a very high potential to cause dependence.
   Example: Heroin, Cocaine, Coca Leaf, Opium, Marijuana, Jicing, Katinon, MDMA/Ecstasy, and more than 65 (sixty five) other types.
2) Narcotics class II are narcotics which are efficacious for treatment used as a last resort and can be used in therapy and/or for the purpose of scientific development and have a high potential to cause dependence.
   Example: Morphine, Pethidine, Fentanyl, Methadone and others.
3) Narcotics class III are narcotics which have mild addictive power, but are useful and efficacious for treatment and research. Group III narcotics are widely used in therapy and/or for the purpose of scientific development and have the potential to cause dependence.
   Example: Codeine, Buprenorphine, Ethylmorphine, Kodeina, Nikokodina, Polkodina, Propiram, and there are 13 (thirteen) kinds including several other mixtures.

Narcotics abusers are people who use drugs outside of supervision and control or in another sense are those who use drugs without medical advice. Although a narcotics abuser either intentionally or unintentionally commits acts of narcotics abuse without medical guidance and supervision. People who abuse narcotics can be categorized as victims of narcotics crimes (Kiaking, 2017; Moeljatno & Cipta, 1983).

In Indonesia there are several cases of new types of narcotics abuse, but the authors include 2 (two) phenomenal cases, namely:

1) A very phenomenal case in the entertainment world at that time, where on January 27 2013, BNN carried out a hand-catching operation against an actor named Mr. Raffi Ahmad for drug abuse. Mr. Raffi Ahmad was arrested by BNN at his residence which is located in the Lebak Bulus area, South Jakarta. Mr. Raffi Ahmad was arrested for being caught red-handed using narcotics containing the substance cathinone or cathinone or methylone. Mr. Raffi also tested positive for using a new type of narcotics with the substance katinone or cathinone or methylone. After undergoing a long process and having undergone rehabilitation in Lido, Sukabumi, West Java province, Mr. Raffi Ahmad was finally released in April 2013. Head of Public Relations for the National Narcotics Agency, Kombes. Pol. Slamet Pribadi declared the case file on behalf of Mr. Raffi Ahmad, was not accepted by the prosecutor (Attorney General's Office) because the prosecutor clashed with the case of Mr. Raffi Ahmad with the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code (KUHP). Because of the type of narcotics consumed by Mr. Raffi Ahmad is a narcotic with a new type of variant or in other words not included or not yet registered in Appendix I or Appendix II of the Narcotics Law as well as colliding with the principle of legality which reads "*Nullum delictum, nulla puna sine praevia lege punali*" or no crime, no criminal punishment without prior criminal law as referred to in the provisions of Article 1 paragraph (1) of the Criminal Code, then Mr. Raffi Ahmad was declared free. From

this description it is clear that the legal process against Mr. Raffi Ahmad could not continue because the substances katinone or cathinone or methylone were not contained in the annex to the Narcotics Law. That means, Mr. Raffi Ahmad cannot be criminally prosecuted because there is no legal basis for the status of the substance katinone or cathinone or methylone which is not contained in the Narcotics Law; and

2) DKI Jakarta High Court Decision Number: 110/PID/1997/PTDKI 1996, in which Ms. Zarima abused narcotics with the type of ecstasy which at that time was a new substance originating from the Netherlands Windmill Country. Narcotics of the ecstasy type have not been regulated by laws and regulations. However, after conducting laboratory tests, ecstasy-type narcotics contain the substance methylonediaxsy methamphetamine (MDMA), where MDMA contains a synthetic derivative of the substance dimethyl (methelidioxy) femethylamine which is listed in article 3 attachment I to the Regulation of the Minister of Health of the Republic of Indonesia Number 124/Menkes/per/II /1993 dated February 8, 1993 regarding certain hard drugs.

Abuse of new variant types of narcotics in any form including but not limited to forms containing synthetic derivatives of dangerous substances should not be abused freely without medical supervision, moreover freely traded, produced, distributed and consumed by the general public (Ariandini, 2010). Arrangements for drug abusers of new variant types must obtain firm certainty in the context of enforcing the law on narcotics and the legal vacuum of sanctions that will be imposed for each new variant type of narcotics abuser. The implementation of the law enforcement function carried out by authorized institutions is expected to be able to implement a policy and strict legal sanctions against perpetrators of narcotics crimes and drug abusers of new types of variants, bearing in mind the government's consistency in eradicating narcotics crimes which cannot be separated from the objectives of the Indonesian state which is stated in the Preamble of the 1945 Constitution, namely to promote general welfare and educate the life of the nation and state.

Based on the background mentioned above, which basically explains the emergence of new types of narcotics with new variants, the aim of the research to be achieved is to analyze the conditions of narcotics abuse with new types of variants that live in society; and analyzing what breakthroughs can be made in the context of providing legal protection to the public by enforcing the law in an effort to tackle and combat the abuse of regulated narcotics as well as narcotics with new types of variants in Indonesia.

2. LITERATURE REVIEW

2.1. Extensive Legal Interpretation Theory

In general, interpretation is better understood as a process, action and way to describe or explain something that is not clear. Legal interpretation has a very important role in exploring and understanding the applicable legal provisions, for reasons of the conditions of the legal provisions themselves which are impossible to immediately apply to concrete cases given the different characteristics between the two.

According to Black's Law Dictionary, interpretation is "*The art or process of discovering and ascertaining the meaning of a statute, will, contract, or other written*

document. The discovery and representation of the true meaning of any sign used to convey ideas" or in other words interpretation is not limited to a method or action but a skill/art to get the true meaning of a legal document (Black, 1990).

Interpretation is a skill that must be possessed by jurists, especially judges, to understand the intent of existing laws and determine the correct legal basis for cases submitted to them. Legal interpretation is understood as "*...may be either 'authentic', when it is expressly provided by the legislator, or 'usual', when it is derived from unwritten practice*" (Black, 1990). Understanding and mastery of legal interpretation is really a very crucial basis for judges in dealing with cases submitted to them.

2.2. Criminal Law Policy Theory

Arief (2011) argue that "the term policy in this paper is taken from the term policy (English) or *politiek* (Dutch). Starting from these two foreign terms, the term criminal law policy can also be referred to as criminal law politics. In foreign literature the term criminal law politics is often known by various terms including *penal policy*, *criminal law policy*, or *strafrechts-politiek*".

According to A. Murder strafrechtspolitiek is a policy line to determine: (Arief, 1998)

1) To what extent do the applicable criminal provisions need to be changed and updated;
2) What can be done to prevent the occurrence of criminal acts; and
3) The manner in which investigations, prosecutions, trials and execution of crimes must be carried out.

2.3. Narcotics Abuse Crime

According to the World Health Organization (WHO), narcotics are substances which, if put into the body, will affect physical and/or psychological functions (except food, water or oxygen (Juliana, 2013). Where as according to medical terms, narcotics are drugs that can relieve aches and pains originating from the viresal area or organs of the chest cavity and abdominal cavity and can cause a long dazed effect while still conscious and cause poisoning (Sylviana, 1996).

2.4. New Type of Narcotics Abuse Crime

Based on the provisions of Article 1 number (1) of Law Number 35 of 2009 concerning Narcotics (Narcotics Law), "*Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of feeling, reducing to eliminating pain and can cause dependence, which are divided into groups as attached to this law*". In addition, narcotics in the Narcotics Law are also known as Narcotics Precursors as referred to in the provisions of Article 1 point 2 of the Narcotics Law which states that "*Narcotics Precursors are substances or starting materials or chemicals that can be used in the manufacture of Narcotics*".

2.5. Law Enforcement Dynamics Against Narcotics Abuse with New Variants

Law Number 35 of 2009 concerning Narcotics (Narcotics Law) as a legal umbrella that regulates law enforcement on narcotics abuse is considered not to accommodate all needs, including not limited to enforcement of narcotics abuse in Indonesia.

Uncertainty about law enforcement regulations regarding narcotics with new types of variants in Indonesia makes handlingCriminal acts of narcotics abuse with new types are also different, some provide criminal sanctions against perpetrators of narcotics abuse with new types of variants and those who do not make demands for criminal sanctions against narcotics abuse with new types of variants for reasons that the Narcotics Law does not regulate narcotics with a new type of variant at the same time contrary to the principle of legality.

The difference in the handling of cases of criminal acts of narcotics abuse with this new type of variant has resulted in unfair treatment in law enforcement resulting in a decrease in public trust in law enforcement officials who handle cases of criminal acts of narcotics abuse, especially narcotics abuse with new types of variants in Indonesia.

3. RESEARCH METHODS

In this study, we used the Normative Juridical research method which was carried out with a certain methodology to analyze and reconstruct a problem (Soekanto, 2006). The writing method used in this research was normative legal research which was basically a normative legal approach (a research is written and compiled based on statutory provisions). Meanwhile, the research approach used was the statutory research approach, and the case research approach.

The secondary data approach (data obtained from a literature study) was used during the data collection stage, in which researchers researched and studied secondary data in the form of written materials that had a correlation with the problems in the object of writing this thesis. The secondary data include:

a. Primary Legal Materials, which are used in this writing include:
    1) Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics;
    2) Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics
    3) Decision Number: 387/Pid.SUS/2013/PN.Mtr; and
    4) Decision Number: 75/Pid.sus/2017/PN Bms.
b. Secondary legal materials, including writings from legal experts with the issues being studied or those related to primary legal materials include literature in the form of books, papers, journals and research results.
c. Tertiary legal materials, including legal materials that support primary and secondary legal materials, such as legal dictionaries, language dictionaries, articles in newspapers or newspapers and magazines.

Legal materials were collected by identifying and cataloging positive legal rules, researching library materials (books, scientific journals, and research reports), and other sources of legal materials relevant to the legal issues under consideration. Legal materials that have been collected were then classified, selected and ensured that they do not conflict with each other to facilitate analysis and construction of a legal research.

Analysis of legal materials was carried out by means of legal interpretation. The legal interpretation technique used was a grammatical interpretation technique.

4. RESULTS AND DISCUSSION

4.1. Law Enforcement Efforts Against Narcotics Abuse Based on Law Number 35 of 2009 concerning Narcotics and Other Legislations

Narcotics are substances or drugs that are extremely beneficial and required in the treatment of certain diseases. However, if it is abused or used against medical guidelines, it can have serious consequences for individuals or society, particularly the younger generation. This will be even more damaging if it is accompanied by drug abuse and illicit drug trafficking, which can endanger the lives and cultural values of the nation and ultimately weaken national security.

Abuse of Narcotics and other dangerous drugs is a very complex problem that requires continuous, active and comprehensive countermeasures by involving law enforcement agencies, experts and all levels of society to jointly combat the distribution of narcotics widely and free.

Law No. 35 of 2009 concerning Narcotics (Narcotics Law) is designed to reduce the amount of narcotics circulation and reduce the number of victims of narcotics abuse in Indonesia which has become transnational in nature. The purposes mentioned above can be seen in the preamble letters a to f of the Narcotics Law.

Referring to the provisions of Article 1 point (1) of the Narcotics Law "*Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain and can cause dependence, which is differentiated into groups as attached in this law*". In addition, narcotics in the Narcotics Law are also known as Narcotics Precursors as referred to in the provisions of Article 1 point 2 of the Narcotics Law which states that "*Narcotics Precursors are substances or starting materials or chemicals that can be used in the manufacture of Narcotics which are distinguished in the table as attached to this Law*".

Narcotics abuse is a criminal act regulated by the Narcotics Law.The meaning of nomenclature related to narcotics abuse cannot be found in the Narcotics Law. But even so, the Narcotics Law regulates abusers as referred to in the provisions in Article 1 number (15) of the Narcotics Law which states "*Abuse is a person who uses Narcotics without rights or against the law*".

In the Narcotics Law, narcotics abusers are people who use narcotics without rights or against the law. Drug addicts can receive medical and social rehabilitation services. From this understanding of narcotics abusers, it can be concluded that narcotics abuse is an act of using narcotics without rights, against the law, or in violation of the provisions of the laws and regulations in force in Indonesia.

The Narcotics Law in Indonesia based on the Narcotics Law prohibits and threatens punishment for Narcotics abusers, which can be in the form of individuals or legal entities (corporations). Abusers can be individuals or legal entities (corporations). Abusers can be people who use Narcotics without rights or against the law, such as addicts, namely people who are already addicted to Narcotics, which according to the Narcotics Law is formulated in Article 1 number (13) states that "*Narcotics addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically*".

In the Narcotics Law there are several important chapters in efforts to enforce narcotics law, namely as follows:

1) CHAPTER I regulates General Provisions;
2) CHAPTER II regulates the Basis, Principles and Objectives;
3) CHAPTER III regulates Scope;
4) CHAPTER IV regulates Procurement;
5) CHAPTER V regulates import and export;
6) CHAPTER VI regulates the distribution of narcotics;
7) CHAPTER VII regulates Labels and Publications;
8) CHAPTER VIII regulates the Narcotics Precursor;
9) CHAPTER IX regulates Treatment and Rehabilitation;
10) CHAPTER X regulates Guidance and Supervision;
11) CHAPTER XI regulates Prevention and Eradication;
12) CHAPTER XII regulates Investigation, Prosecution and Examination at Court Sessions;
13) CHAPTER XIII regulates Community Participation;
14) CHAPTER XIV regulates Awards;
15) CHAPTER XV regulates Criminal Provisions;
16) CHAPTER XVI regulates Transitional Provisions; and
17) CHAPTER XVII regulates Closing Provisions.

The Narcotics Law regulates law enforcement efforts in the form of criminal provisions contained in the Narcotics Law which were formulated starting from Chapter XV of the Criminal Provisions covering Article 111 to Article 148. In the Narcotics Law, there are four categorizations of unlawful acts that are prohibited by the Narcotics Law which then provide threats criminal sanctions for perpetrators, namely as follows: (Sunarso, 2012)

1) The first category includes any acts of possessing, storing, controlling or providing narcotics and narcotics precursors as referred to in the provisions of Articles 111 and 112 of the Narcotics Law for class I narcotics, the provisions of Article 117 of the Narcotics Law for class II narcotics and the provisions of Article 122 of the Narcotics Law for narcotics group III and the provisions of Article 129 letter (a) of the Narcotics Law;
2) The second category includes any acts of producing, importing, exporting or distributing narcotics and narcotics precursors as referred to in the provisions of Article 113 of the Narcotics Law for class I narcotics, the provisions of Article 118 of the Narcotics Law for class II narcotics, and the provisions of Article 123 of the Narcotics Law for narcotics group III and the provisions of Article 129 letter (b) of the Narcotics Law;
3) The third category includes every act of offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors as referred to in the provisions of Article 114 and Article 116 of the Narcotics Law for class I narcotics, provisions of Article 119 and Article 121 of the Narcotics Law for class II narcotics,Article 124 and Article 126 of the Narcotics Law for class III narcotics and Article 129 letter (c) of the Narcotics Law; and

4) The fourth category includes any acts of bringing, sending, transporting or transiting narcotics and narcotics precursors as referred to in the provisions of Article 115 of the Narcotics Law for class I narcotics, the provisions of Article 120 of the Narcotics Law for class II narcotics and the provisions of Article 125 of the Narcotics Law for class III narcotics and Article 129 letter (d) of the Narcotics Law.

Arrangements regarding narcotics crimes are outlined starting from the provisions of Articles 5, 6, 7 and 8 of the Narcotics Law, which can be concluded as follows:

1) Article 5 of the Narcotics Law explains that the regulation of narcotics in the Narcotics Law includes all forms of activities and/or actions related to Narcotics and Narcotics Precursors;
2) Article 6 of the Narcotics Law explains the division of narcotics into 3 (three) groups, namely as follows:
   a. Narcotics class I;
   b. Narcotics class II; and
   c. Narcotics class III.
3) Article 7 of the Narcotics Law explains that narcotics can only be used for the benefit of health services and/or science and technology development; and
4) Article 8 of the Narcotics Law explains that class I narcotics are prohibited from being used for the benefit of health services, but in limited quantities class I narcotics can be used only for the development of science and technology, for diagnostic reagents, and laboratory reagents after obtaining approval on a recommendation from the Head Drug and Food Control Agency (BPOM).

As an effort to enforce the law against narcotics abuse, the Narcotics Law regulates the existence of instruments to add or change attachments to narcotics groups as stipulated in Appendix I and Appendix II of the Narcotics Law through Ministerial Regulations cq Regulations of the Minister of Health as referred to in the provisions of Article 6 Paragraph (3) of the Narcotics Law states that "Provisions regarding changes to the classification of narcotics as referred to in paragraph (2) are regulated by a Ministerial Regulation".

In order to implement the provisions of Article 6 paragraph (3) of the Narcotics Law, it is necessary to stipulate a Regulation of the Minister of Health concerning Changes in the Classification of Narcotics which is the last position where this research was written,Regulation of the Minister of Health of the Republic of Indonesia which regulates changes to the classification of narcotics is regulated by Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics. As for the classification of narcotics based on the Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the categorization of narcotics, it can be concluded that there are 191 (one hundred and ninety one) lists of class I narcotics, 91 (ninety one) lists of class II narcotics and 15 (fifteen) lists of narcotics class III narcotics.

The Regulation of the Minister of Health of the Republic of Indonesia concerning the classification of narcotics has undergone a change every time there is a change and/or addition of narcotics with a new type of variant, so that it can be said that the changes and/or changes to the Regulation of the Minister of Health of the Republic of Indonesia concerning the classification of narcotics have become ineffective and ineffective. efficient.

If in the future narcotics with new types of variants are found that have not been regulated in the provisions of the Narcotics Law both in Appendix I and Appendix II as well as in the Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics, then in addition to law enforcement officers experiencing difficulties and dilemmas in enforcing the law against abuse of narcotics with these new types of variants, of course narcotics with new types of variants will be included in the legislation again by adding and/or replacing them, especially Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics .

Based on the discussion above, of course, adding and replacing Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics every time there is a narcotic with a new type of variant is not an effective and efficient solution, so changes need to be made immediately so that the enforcement of narcotics law in Indonesia can run effectively and efficiently.

4.2. Appropriate and Efficient Criminal Law Policies in the Context of Law Enforcement Against Narcotics Abuse of New Variants in the Future

Referring to the previous discussions, this study found a legal issue that is very disturbing in efforts to enforce the law against narcotics abuse in Indonesia. As is well known, Law Number 35 of 2009 concerning Narcotics (Narcotics Law) and Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics are legal umbrellas in efforts to enforce the law against the abuse of narcotics in Indonesia.

Unfortunately, it is felt that the two legal instruments above have not accommodated all the needs of law enforcement against the abuse of narcotics in Indonesia, especially law enforcement against the abuse of narcotics with new types of variants. In practice, there are various handling of cases of criminal acts of narcotics abuse with new types of variants, some are charged with criminal sanctions and some are acquitted of charges of criminal sanctions.

The difference in the handling of narcotics abuse cases with this new type of variant has finally given rise to legal polemic, then how exactly do cases of narcotics abuse crime with a new type of variant be handled, whether criminal sanctions are given or not criminal sanctions are given because they collide with the principle of legality as stipulated in the provisions of Article 1 paragraph (1) of the Criminal Code (KUHP) states "An act is only a crime, if this is predetermined in a statutory provision".

Through this research, researchers try to approach the problem solving of the Narcotics Law and the Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics which are not felt to be able to accommodate all the needs of law enforcement against the abuse of narcotics in Indonesia, especially law enforcement against the abuse of narcotics of this type. new variant by applying extensive interpretive theory and criminal law policy theory.

As explained in the previous chapter, in general extensive legal interpretation is more understood as a process, action and way of describing or explaining something that is not clear. Extensive legal interpretation has a very important role in exploring and understanding the applicable legal provisions, for reasons of the conditions of the legal provisions themselves which are not immediately applicable to concrete cases given the different characteristics between the two.

Extensive legal interpretation is a method of legal interpretation that can be used to bridge the application of legal provisions to concrete cases that occur. When used in handling criminal cases, extensive interpretation must pay attention to the limits of the grammatical sound of the legal provisions so that there will be no violation of legal certainty.

Through extensive legal interpretation, law enforcement officers can expand the meaning of specific provisions to become general provisions in accordance with the rules of grammar. This was once done by a judge who interpreted grammatical rules, because the aims and objectives were unclear or too abstract to make it clear and concrete, the meaning needed to be expanded. For example, the word theft of goods as referred to in the provisions of Article 362 of the Criminal Code, is expanded to mean the essence of electricity as an intangible object. The result of this extensive interpretation in the theft of goods case is that goods are broadly interpreted by the judge to include electricity, but does not create a new offense but is still theft. Based on the essence of meaning and the practice of its application, extensive interpretation is carried out by expanding the meaning of words or sentences contained in a statutory regulation by finding equivalents or compatibility with other words or sentences without changing or changing the substance of the intent of the statutory provisions being interpreted.

With this approach, even though a new type of narcotics crime has occurred, where the new type is not included in the Annex to the Narcotics Law, criminal sanctions can be imposed on the perpetrators. There is an example of a case in 2013 in the West Nusa Tenggara area, namely the abuse of methylone type narcotics. The law enforcers handling this case collaborate so that the perpetrators can be charged under the Narcotics Law. In handling it, the panel of judges carried out an extensive interpretation so that methylone-type narcotics were included in the annex to the Narcotics Law, because the panel of judges considered that methylone-type narcotics were kathinon derivatives so that they were included in the annex to the Narcotics Law.

Through an extensive interpretation approach, law enforcement officials can also use Law Number 36 of 2009 on Health (Health Law) to prosecute drug abuse with new variants. Narcotics are interpreted as drugs and substances with medicinal properties in the Health Act. new types of narcotics abusers can be categorized as drug abuse or drug misuse. Katzung (2002) give an opinion that “drug abuse tends to be interpreted as the use of drugs with non-medical purposes, usually to change consciousness. While the wrong use of drugs tends to mean wrong indications, dosage errors or prolonged use”.

Article 197 of the Health Law states as follows: "everyone who deliberately produces or distributes pharmaceutical preparations and/or medical devices that do not have a distribution permit as referred to in Article 106 paragraph (1) shall be punished with imprisonment for a maximum of 15 (fifteen) years with a maximum fine of Rp1.500.000.000,00 (one billion five hundred million rupiahs)".

Further, article 98 paragraph 2 states as follows: “Anyone who does not have the expertise and authority is prohibited from procuring, storing, processing, promoting, and distributing drugs and substances with medicinal properties. From the two provisions above, it is emphasized that people who produce or distribute pharmaceutical preparations and/or medical devices that do not have a distribution permit are subject to imprisonment and fines”.

Even so, law enforcement officials cannot continue to rely on an extensive approach, because even so solving problems using extensive interpretation requires

strong legal arguments without changing the substance of the intent of the statutory provisions being interpreted.

Furthermore, the discussion of criminal law policy has also been discussed in the previous chapter. Criminal law policy can be defined as actions or policies taken by the state or government to use criminal law to achieve specific goals, particularly in the fight against crime. It must be recognized that there are numerous ways and efforts that each country or government can make to combat crime. One method of combating crime is through criminal law policy or criminal law politics.

In order to make and at the same time formulate regulations governing criminal law, this is part of law enforcement efforts. For the simple reason that the basic act of creating and collecting criminal law regulations is an attempt to prevent, mitigate, minimize, and provide sanctions against criminals. Therefore, many say that politics or criminal law policies are part of law enforcement policies.

The development of criminal law policies to combat the abuse of new narcotic variants can begin by proposing amendments to Narcotics Law Number 35 of 2009. One idea for legal reform is to add the meaning of narcotics to the definition of narcotics in Article 1 Number 1 of the Narcotics Law and Article 6 paragraph (1) of the Narcotics Law, thereby broadening the definition of narcotics themselves. The idea of legal renewal through law reformulation opens up more opportunities for law enforcement to make criminal law decisions so that it is expected to minimize the abuse of new types of narcotics that are not listed in the annex to the Narcotics Law and law enforcement can be implemented optimally.

Narcotics Law and Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics which is a guideline in the context of law enforcement against narcotics abuse with new types of variants in Indonesia is still deemed ineffective and inefficient and does not accommodate all law enforcement needs against narcotics abuse, especially narcotics with a new type of variant so that it is necessary to take alternative policy formulations for the Narcotics Law, then the formulation policy that is deemed suitable to be implemented in the future is to revise the Narcotics Law in particular to expand the meaning related to narcotics in the provisions of Article 1 point 1 and/or Article 6 paragraph (1) as follows:

Article 1 point (1) reads:

"*Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached in this Law*"

Become:

"*Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached in this law including but not limited to all derivatives of narcotics in each of the groups as attached to this law*"

Article 6 paragraph (1) reads:

"Narcotics as referred to in Article 5 are classified into:

a. *Narcotics Category I;*
b. *Narcotics Category II; and*

c. Narcotics Category III".

Becomes:

Narcotics as referred to in Article 5 are classified into:

a. Narcotics Category I;
b. Narcotics Category II;
c. Narcotics Category III; and
d. All Derivatives of Narcotics Groups I, II, III.

5. CONCLUSION

5.1. Conclusion

The following are some of the conclusion that can be drawn from this research :

1) Whereas in the framework of law enforcement efforts against narcotics abuse, Law Number 35 of 2009 concerning Narcotics regulates the existence of instruments to add or change attachments to narcotics groups as stipulated in Appendix I and Appendix II of the Narcotics Law through Ministerial Regulations cq Regulations of the Minister of Health as referred to in the provisions of Article 6 Paragraph (3) of the Narcotics Law states that "Provisions regarding changes to the classification of narcotics as referred to in paragraph (2) are regulated by a Ministerial Regulation". In order to implement the provisions of Article 6 paragraph (3) of the Narcotics Law, it is necessary to stipulate a Regulation of the Minister of Health concerning Changes in the Classification of Narcotics which is the last position where this research was written,Regulation of the Minister of Health of the Republic of Indonesia which regulates changes to the classification of narcotics is regulated by Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning changes to the classification of narcotics.
2) Whereas Law Number 35 of 2009 concerning Narcotics and Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 regarding changes to the classification of narcotics which are guidelines for law enforcement against abuse of narcotics with new types of variants in Indonesia are still felt to be less effective and efficient and not accommodate all the needs of law enforcement against narcotics abuse, especially narcotics with new types of variants. The world is increasingly experiencing significant changes, including in which various modus operandi for the crime of narcotics abuse will be found with the presence of narcotics with new types of variants. An alternative formulation policy to Law Number 35 of 2009 concerning Narcotics, the formulation policy that is deemed suitable for implementation in the future is to revise Law Number 35 of 2009 concerning Narcotics in particular to expand the meaning related to narcotics in the provisions of Article 1 number 1 and/or Article 6 paragraph (1) as follows:

   Article 1 point (1) reads: *"Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached in this Law*"

   Become: "*Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached in this law including but not limited to all derivatives of narcotics in each of the groups as attached to this law*"

Article 6 paragraph (1) reads:
"Narcotics as referred to in Article 5 are classified into:
a. *Narcotics Category I;*
b. *Narcotics Category II; and*
c. *Narcotics Category III*".
Becomes:
Narcotics as referred to in Article 5 are classified into:
a. *Narcotics Category I;*
b. *Narcotics Category II;*
c. *Narcotics Category III; and*
d. *All Derivatives of Narcotics Groups I, II, III.*

5.2. Suggestion

Based on the findings and conclusion above, current research suggest that in the efforts to prevent and eradicate drug abuse, especially narcotics with new types of variants, must be carried out by all levels of law enforcement officials together with the community. Therefore, supporting facilities are needed in law enforcement efforts against narcotics abuse with new types of variants. In addition, government may revise Law Number 35 of 2009 concerning Narcotics, in particular expanding the meaning related to narcotics in the provisions of Article 1 number 1 and/or Article 6 paragraph (1).

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SETTLEMENT OF DEFAULT IN THE CAR RENTAL AGREEMENT AT PT. SURYADITA 88 TRANSPORT IN BADUNG REGENCY

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Abstract

Car rental businesses are now relatively accessible in Badung Regency. Because Badung Regency is a popular tourist destination, numerous individuals have opened car rental services. In Badung Regency, PT Suryadita 88 Transport offers car rental services. In its operation, PT Suryadita 88 Transport is not exempt from issues involving default-causing factors and efforts to resolve defaults. This study aims to uncover the causes of default in the car rental agreement at PT. Suryadita 88 Transport and potential solutions. This study employs the Empirical Law research technique, which correlates the legal aspects of existing issues with their practical application in society. The applicable legal basis is Article 1548 of the Civil Code, pertaining to Leasing. The results revealed that disputes shall be resolved through litigation if they cannot be resolved through alternative means.

Keywords: *Agreement, Default, Lease*

1. INTRODUCTION

Along with the development of the era, the existence of transportation is very important in facilitating all activities, including the business that is being carried out. As a destination for local and foreign tourists, the important role of transportation is also a special concern for the Province of Bali. Badung is a tourism destination city because it has many beautiful tourist objects and is an attraction for tourists. Of course, not all of these tourists bring private vehicles from their hometowns, especially foreign tourists. Therefore, it is very easy to find a place to rent a car in Badung Regency. Popularity as a tourism area makes many tourists interested in renting a car. Therefore, many residents of the Badung area offer car rental services with varying rental prices.

When renting a car, the rental agreement will be made in writing by the lessee and the lessor. If both parties have agreed to bind each other, then the rental agreement must be signed so that the leasing process can run. An agreement is defined as an event where one party makes a promise to another party to carry out an agreement (Subekti, 2010).

PT. Suryadita 88 Transport which is located on Jalan Raya Darmasaba No. 88 Br. Peninjoan Darmasaba Village, Abiansemal Badung District is one of the business entities that rents cars in the Badung Regency area. In its business, there are stages or procedures set by the company. Before finally being rented out, tenants need to carry out several stages that have been determined by PT. Suryadita 88 Transport, including checking the eligibility of the car to be rented and agreeing to a written agreement that contains the duration of the rental and criteria for the party that will rent it. Then, the car will be handed over after the car rental fee has been fully paid. The agreement between the two parties is an important thing in an agreement. However, this does not mean that the ownership

rights will be transferred to the party that will rent the car because the party will only obtain the usage rights with reference to the mutually agreed cost of using the goods.

Wirjono Prodjodikoro defines an agreement as a legally recognized relationship related to wealth belonging to 2 parties where one party agrees to do something, while the other party demands that the promise be fulfilled (Prodjodikoro, 1989). Article 1548 of the Civil Code explains that "leasing is an agreement, with which one party binds himself to provide the enjoyment of an item to another party for a certain time in exchange for the payment of a price that the latter party can afford". Leased goods can be either fixed or movable (Suharnoko, 2015).

As a form of consensual agreement, the existence of this rental agreement is because both parties have agreed to bind each other so that this agreement has legal force based on the Civil Code (Civil Code, article 1338). The existence of achievement is the hope of both parties towards an agreement, but sometimes there are parties who are negligent so that the achievement fails to be achieved which is better known as default. Default is defined as poor performance in Dutch. The existence of a default is caused by a party that does not carry out its obligations through negligence or other negligence (Sudarsono, 2007).

According to the explanation from Mr. I Gusti Ngurah Suardita, S.E., as the director of PT. Suryadita 88 Transport explained that there were several factors that led to defaults in PT. Suryadita 88 Transport, including:

1) Failure to carry out agreed obligations such as no notification regarding the return of the car or rental that wants to be extended to PT. Suryadita 88 Transport in 2 hours before the end of the rental period.
2) The car's return time wasn't exactly as scheduled.
3) The negligence of the car renter resulted in minor and major damage to the vehicle.
4) Violating collective agreements such as car rental rights that are handed over to other people who are not in the agreement and using the car as collateral for other things.

Referring to the description above, the purpose of this study is to find out how the implementation of the car rental agreement and find out how to resolve defaults that occur in the agreement between PT. Suryadita 88 Transport with the tenant.

2. RESEARCH METHODS

Empirical legal research was used in this study. Empirical legal research examines legal provisions such as codification, laws or contracts that were directly enforced at certain legal events that occur in society with an emphasis on implementing normative requirements at certain legal events (Muhammad, 2004). The empirical method was applied in this study by taking an approach to the issues that occurred and by conducting interviews and observations of informants as the main source. Literature research was also applied in this study by searching, collecting all that was obtained and then understanding and analyzing related books in order to obtain more data.

Primary and secondary data were applied in this study. The researcher obtained primary data through interviews with respondents or interested parties who could provide

information about the implementation of the car rental agreement and solutions to possible defaults by the party renting the car. Data was then collected by directly observing the events that occurred at the research location related to the study issues and applying interview techniques to respondents and informants.

3. RESULTS AND DISCUSSION

3.1. Factors Causing Default in the Car Rental Agreement at PT. Suryadita 88 Transport in Badung Regency

Car rental in Badung Regency is commonly used as a means of meeting personal needs for companies. There are several stages that must be passed before there is an agreement in the rental agreement. The agreement certainly contains several criteria that have been agreed by both parties. However, if one party disagrees, the agreement is considered invalid and cannot be continued.

PT. Suryadita 88 Transport has a predetermined car rental procedure. According to I Gusti Ayu Sintya Dewi, as the manager of PT. Suryadita 88 Transport tenants must meet the requirements to rent a car. These conditions include:

1) Tenants must have a valid SIM A (driver license)
2) The tenant has a valid Bali ID card
3) The tenant has a Family Card (KK)
4) Tenants are willing to be surveyed where they live
5) Tenants must leave the motorbike along with the motorcycle registration certificate as collateral
6) The tenant must have two people in charge
7) The tenant must pay the rent payments
8) Tenants must sign a car rental agreement.

In carrying out the leasing procedure, default is not spared. Defaults have often occurred in the world of car rental business (Maheswari et al., 2021). Yahya Harahap explained that default is defined as untimely execution of an agreement or discrepancy in implementing an agreement or even none of it is implemented (Harahap, 1986).

Article 1238 of the Civil Code stipulates that “the debtor is negligent, if by order or for the sake of his own agreement, that is if it stipulates that the debtor is considered negligent after the specified time has passed”. In this study, what this explanation refers to is negligence in carrying out the agreement entered into by the debtor (the party who rents) with the creditor (the party who gives the lease).

There are several reasons behind the default on PT. Suryadita 88 Transport including:

a. ID card is not owned by the party who will rent the car. Not having an ID card, especially those who live in Badung, will have an impact on default because the party giving the rental will have difficulty finding out where the party who will rent the car lives.
b. The car was not returned on time.PT. Suryadita88 Transport often faces things like this. This delay will subject the renter to a fine of 10% of the rental price each day.
c. Negligence on the part of the tenant while driving the car. Such negligence can be in the form of traffic violations or even accidents that result in car damage.

d. Leasing a rental car to other parties not listed in the agreement with PT. Suryadita 88 Transport.
e. There are criminal acts committed by the party who rents such as embezzling a car or making the car a drug buying and selling transaction.
f. There is no guarantee in the form of a motorcycle and motorcycle registration certificate for the lessee. However, this is rarely used as a condition because both parties already know each other.

Even though they know there are risks in running a business, the party giving the lease basically does not expect a default to occur. If the prospective lessee is unable to submit his ID card (KTP) or vehicle as collateral, then the agreement should not be approved because there are indications of a criminal act. Debtors and creditors certainly do not want a default that can harm all parties to the agreement. The loss felt by the debtor is the obligation to compensate for all forms of damage or violation of the collective agreement. Meanwhile, default for creditors is an opportunity to ask for compensation and reach an agreement (Sudharma, 2018).

3.2. Settlement Efforts from the Occurrence of Default in the Car Rental Agreement at PT. Suryadita 88 Transport in Badung Regency

3.2.1. The legal consequences of a default in a car rental agreement on PT. Suryadita 88 Transport in Badung Regency

The debtor who does not succeed in carrying out his obligations or acts outside his rights as a tenant will make the contents of the agreement that has been made fail to be implemented so that it has an impact on rights that cannot be fully obtained by the debtor.

Defaults committed by the debtor will receive legal sanctions where the implementation has been contained in the Civil Code as a formal regulation that discusses in detail the juridical aspects of an agreement (Suryodiningrat, 1996). This legal sanction is given because of the obligatoir principle in an agreement, namely the reciprocal relationship between rights and obligations in a legal relationship. Achmad Ichsan defines the principle of obligatoir as the sides in an agreement, so according to him the agreement has 2 (two) sides, namely the passive side in the form of obligations and the active side in the form of rights (Lisdiyono, 2019).

Regarding the legal basis for determining default for the debtor, it is after the debtor concerned is declared negligent or does not fulfill his achievements, even though he has been reprimanded or given a subpoena (Fadilah & Heriyani, 2020; Novianta et al., 2015). Article 1243 of the Criminal Code also explains that compensation costs along with interest can only be paid by debtors who have been declared negligent in complying with the contents of the agreed agreement. If a debtor has been warned for the fulfillment of his achievements and if the debtor is negligent in fulfilling his achievements, juridical sanctions can be given as a result of the default that the debtor has committed. Sanctions for default by debtors in Article 1243 of the Civil Code are formulated that:

"compensation for costs, losses and interest due to non-fulfillment of an agreement, only begins to be required if the debtor has been declared negligent in fulfilling the agreement, continues to be negligent in fulfilling the agreement, or if something that must be given or done can only be given within a time that exceeds the specified time".

According to Purwahid Patrik, due to legal consequences for defaults that occur in an agreement, the debtor is required to:

1) Pay compensation;
2) The responsibility for the object used in the agreement is handed over to the debtor;
3) The creditor terminates the agreement if the bond is a reciprocal agreement (Patrick, 1994).

Based on the results of an interview with Mr. I Gusti Ngurah Suardita, SE who is the director of PT. Suryadita 88 Transport explained that there are several consequences that must be borne by the debtor when a default occurs, including:

1) There is an obligation to make payments for all losses caused by violations of the agreements that have been made;
2) There is an obligation to bear the risk of the car being rented;
3) There is an obligation to pay off court costs if this default is brought to court;
4) There is a necessity in reaching the points of the agreement after the existence of the default has been proven.

3.2.2. Efforts to Settle for Defaults Made by the Lessee in the Car Rental Agreement on PT. Suryadita 88 Transport in Badung Regency

Obstacles and negligence on the part of the debtor have certainly been experienced by parties carrying out car rental agreements both in Badung Regency and in other Regencies/Cities. These impediments can also be pressured conditions or *overmacht* in the car rental agreement. PT. Suryadita88 Transport explained that defaults that often occur are delays in returning the car after the rental period ends and the car being rented is used as collateral for mortgage.

Disputes can be resolved by everyone who is facing legal or other problems (Artawan & Priyanto, 2016; Pendit et al., 2019). Arrangements regarding disputes are contained in RI Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which was previously announced on August 12, 1999. Judging from the elaboration of Article 1 Point 10 and Paragraph 9 of the General Explanation of RI Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it can be concluded that there are several events such as consultation, negotiation, mediation, conciliation or expert judgment.

Institutional solutions in overcoming disputes formulated in Law no. 30 of 1999 is specifically explained in verses in Article 6 such as:

1) Negotiations carried out by the parties as stipulated in paragraph (1).
2) Mediation controlled by a neutral third party is contained in paragraphs (3), (4) and (5).
3) Arbitration as discussed in paragraph (9).

The good solution is needed by disputes in lease agreements that can take place at any time. There are 2 solutions that can be chosen to resolve disputes including:

1) In court (litigation), disputes are resolved through the judiciary.
2) Out of court (non litigation), disputes are resolved out of court by way of negotiation, mediation and arbitration.

PT. Suryadita 88 Transport usually resolves disputes that occur in default by the lessee by means of non-litigation, unless the default is classified as "serious" such as pawning a car rented by a third party by the lessee, which will be immediately resolved

through litigation. Deliberations that are familial in nature are more often applied by PT. Suryadita 88 Transport to resolve disputes out of court.

PT. Suryadita88 Transport describes a number of things that happen if there is a default along with the solutions taken, including:

1) Non litigation
   Cars that are late to return are also a default that is often carried out by tenants at PT. Suryadita88 Transport. Tolerance for various reasons uttered by the lessee cannot be given because the agreement calculates every hour of the delay and the lessee is required to compensate as much as 10% of the car rental price.
2) Litigation
   In the event that a dispute is brought to court, it is usually due to default committed by the lessee, which is classified as a serious violation, such as pawning a rental car to a third party without the knowledge of the rental party. Pawning a rented car by the lessee is classified as embezzlement because it justifies several elements of embezzlement contained in Article 372 of the Criminal Code, namely:
   a) Whoever
      That this element has been fulfilled, namely the subject (renter) who rents a car and then pawns it to a third party;
   b) Intentionally and against the right
      In this element, the lessee deliberately pretends to be the person who owns the goods and acts outside the rights he should have obtained by way of pawning the car to a third party without the consent of the rent car party and reaping profits from the violation.
   c) Items belong to other people
      The car that is under the use of the lessee belongs to the rent car, not the lessee, so the lessee is prohibited from doing things outside of the rights he gets.
   d) Not for a crime
      In this case the car that is pawned by the lessee is not the result of a crime, but the right to use it is obtained through a legal leasing process.

In cases where the car is mortgaged by the lessee, this dispute is no longer subject to a non-litigation process, the default dispute report will be given directly by the rent car to the authorities and brought to court.

4. CONCLUSION

4.1. Conclusion

Judging from the presentation of the study results, there are several solutions that can be obtained to overcome the problems discussed, including: the negligence of the lessee when driving the car, renting the rental car to other parties not listed in the agreement with PT. Suryadita 88 Transport, there was a criminal act committed by the party who rented it, and there was no guarantee in the form of a motorcycle and motorcycle registration certificate for the lessee.

Efforts to settle defaults made at PT. Suryadita 88 Transport namely through non-litigation settlements and out-of-court settlements. Negotiation and mediation are 2 possible solutions. Negotiation is defined as communication between two parties who have the same or different interests in order to reach a mutual agreement, while mediation is defined as a type of negotiation between disputing parties by involving a third party as

a mediator in resolving existing disputes. Settlement of disputes through the courts will be pursued if the non-litigation solution does not reach an agreement or does not work peacefully. The legal consequences of this default can be in the form of fines that are adjusted to the mistakes made by the lessee.

4.2. Suggestion

Based on the above, as a form of prevention from the risk of default by lessees, it is recommended that when making a car rental agreement, a rental agreement is made in a rental agreement that lists the rights and obligations of both the lessor and the lessee. It is also hoped that the parties will comply with and comply with what has been agreed upon and mutually agreed upon. In addition, it is recommended that there be consistency between the lessee and the rent car in fulfilling the contents of the agreement made, this is suggested so that later there will be no misunderstanding between the two parties, and if a default occurs it can be resolved properly in accordance with applicable law.

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LEGAL PROTECTION OF PATENT RIGHTS AS FIDUCIARY GUARANTEES IN BANKING CREDIT

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Abstract

This study aims to identify and understand the legal protection of patents as fiduciary guarantees in bank credit and how to measure the economic value of patents as fiduciary guarantees. In addition, the study will investigate how to measure the legal protection of patents as fiduciary guarantees. This is a normative legal research using statutory approach, in this case Law Number 13 of 2016 concerning Patents and the Legal Concept Analysis Approach. This study includes primary legal material in the form of Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 10 of 1998 concerning Banking as well as secondary legal material that is not binding but explains the primary legal material. The findings revealed that in granting credit, clearly there is a guarantee that must be given by the debtor to the creditor. Hence, for the purpose of guaranteeing credit, the form of guarantee that is most appropriate to use in this case is to use a fiduciary guarantee. Further, fiduciary guarantees are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees.

Keywords: *Credit, Fiduciary Guarantee, Legal Protection, Patent Rights*

1. INTRODUCTION

According to Article 1 sub 1 of the Fiduciary Law, fiduciary is the transfer of ownership rights to an object on the basis of trust, provided that the object whose ownership rights are transferred remains under the control of the object's owner. The transfer of ownership rights over an object and on the basis of trust are two of the defining aspects of this concept. The transfer of property rights entails the transfer of the owner's ownership rights to the object pledged as collateral to the creditor receiving the collateral, so that the creditor getting the guarantee is now the owner of the thing pledged as collateral (Kharismawan & Purwanto, 2019). On the basis of trust, the mention of the characteristics mentioned above by legislators is immediately followed by the mention of the next characteristic, namely on the basis of trust. As for what these words mean, there is no official explanation. In the past, before the emergence of the Fiduciary Law, the doctrine of these words was given an interpretation, that although it was stated that there was a transfer of property rights, the transfer was actually not intended to actually make the creditor the owner of the collateral object, but only to provide collateral rights to creditors. This is in accordance with the purpose of submitting collateral objects to Fiduciary Institutions whose purpose is none other than to provide guarantees for a claim (Latuihamallo, 2014).

Initially, fiduciary objects consisted only of physical movable property in the form of inventories, merchandise, receivables, machine tools, and motorized vehicles (Prayudi, 2008). However, as time goes on, not just movable goods can be utilized as fiduciary guarantee objects; intangible moving objects, as well as stationary objects, can also become fiduciary objects.

One of the transportable intangible assets that can serve as collateral is a patent that is within the scope of intellectual property rights. Patents cannot be used as collateral for loans because they are not governed by any legal rules. However, there has been a way out since the issuance of Law Number 13 of 2016 concerning Patents, as this law is a change from Law Number 14 of 2001.

The purpose of Law Number 13 of 2016 is to achieve economic independence by relocating the economic sector. In accordance with Article 1 number 1 of Law No. 13 of 2016, a patent is an exclusive right granted by the state to an inventor for his invention in the field of technology for a specified period of time to carry out the invention himself or give permission to another party to carry out the invention (Dharmawan, 2018). The scope of patent protection is technology that can be applied in industrial processes.

There is a specified duration of patent protection to ensure that the patent holder o holder must publish his invention at the end of the patent protection so that the invention can be known to the general public. In connection with these economic benefits, it can be assumed that patents can become collateral objects. Regarding the high or low economic value of patents, it is influenced by the enforcement of patent law in a country and the provisions on patent protection in a country.

The activities of banks as financial institutions include collecting cash from the public in the form of demand deposits, savings deposits, and time deposits, as well as offering credit facilities to the public. Most of the time, people go to the bank to apply for a credit loan. In granting credit, the bank will reduce the impact of the risk of the possibility of default by the borrower so that the bank will place a guarantee for each credit that will be disbursed. Collateral is an absolute right to an object that is the object of collateral for a debt, which at any time can be cashed for repayment of the debtor's debt if the debtor breaks his promise. By its nature, this guarantee is divided into 2, namely: individual guarantees and material guarantees. Collateral with tangible (material) objects, can be in the form of objects or tangible (immaterial), can be in the form of goods or immovable objects that are commonly accepted by banks as credit guarantees in the form of debtors' rights to claim against third parties.

The issue that arises in society is whether or not banks can use patents comprising intellectual property rights as collateral for fiduciary guarantees when extending credit. Patents, as part of industrial property rights, are considered capable of contributing to a nation's economic progress from an economic standpoint (OK, 2003). In the realm of civil law, the rights linked to patents are material in character, as patents comprise two rights: economic rights that might offer advantages in the form of royalties, and moral rights that are always tied to the patent owner. Considering the aforementioned provisions, patents can serve as collateral for loans.

Paragraph 1 of Article 108 of Law No. 13 of 2016 states that patent rights may be utilized as objects of fiduciary guarantees, while paragraph 2 states that applicable rules and regulations govern the terms and processes for patent rights as objects of fiduciary guarantees. However, the empty standard for determining the economic value of a patent as a fiduciary pledge is ambiguous.

Based on the previous explanation of the background, this study aims to identify and understand the legal protection of patents as fiduciary guarantees in bank credit and how to measure the economic value of patents as fiduciary guarantees. In addition, the study will investigate how to measure the legal protection of patents as fiduciary guarantees.

2. RESEARCH METHODS

In this study, we used normative legal research methods. According to Irvan & Purwanto (2020), normative legal research was a research that focuses on norms. This research was conducted by examining the laws and regulations that apply or apply to a particular legal issue (Abdulkadir, 2004). This study employed the statutory approach, specifically Law No. 13 of 2016 pertaining to Patents, as well as the Legal Concept Analysis Approach (Sukardi, 2021). Primary legal material in the form of Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 10 of 1998 concerning Banking. Then secondary legal material was material that is not binding but explains the primary legal material (Marzuki, 2021). The technique for collecting legal materials used a card system technique. This technique begins by collecting legal materials and then analyzing legal books, legal journals and all relevant materials to be used as research objects. The legal material analysis technique used was the description technique, namely by describing the relationship between the theories related to the problem.

3. RESULTS AND DISCUSSION

3.1. Patent Legal Protection as Fiduciary Guarantee in Banking Credit

Based on Article 1 of the Paris Convention regarding the protection of industrial property rights in 1883, patents are included in the legal protection of industrial property. Patents are granted by the state to inventors for their inventions in the field of technology and provide exclusive rights to inventors. Granting rights by the state is a form of legal protection given to inventors. This is in line with the theory of intellectual property rights put forward by John Locke which says that the property rights that a human has towards objects have existed since humans were born. Objects in this case are tangible and intangible objects called intellectual property rights. On the basis of this theory, legal protection of intellectual property rights is based on two very strong reasons, namely moral rights and commercial rights (Syafrinaldi, 2006).

According to Setiono (2006), "legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings". (Soekanto, 1984) also explained "legal protection is all efforts to fulfill rights and provide a sense of security to witnesses and/or victims. Legal protection for victims of crime as part of public protection can be realized in various forms, such as through the provision of restitution, compensation, medical services and legal assistance".

The concept of legal protection for patents refers to the exclusive nature of patents. These monopoly property rights can be used by other people with the permission of the patent owner. The implementation of the permit is in the form of granting a license through a licensing agreement. Article 1 point 11 of the Patent Law defines a license as a permit provided by a patent holder, whether exclusive or non-exclusive, to a licensee based on a written agreement to use a patent that is still protected over a specified time period and under particular circumstances. The patent license is a means for patent law protection, apart from through law.

The license functions to break through the exclusivity of patents, so that other people can use a brand safely and legally. Licensing is also a form of free will of the

patent owner in exploiting his exclusive rights. The making and execution of a license agreement is based on the principles of the agreement contained in contract law in general.

Pratama et al. (2022) said “Legal protection for creditors in credit agreements with fiduciary guarantees is very necessary, considering that objects that are objects of fiduciary guarantees are on the debtor's side, so that if the debtor defaults on a credit agreement with fiduciary guarantees, the creditor's interests can be guaranteed by this legal protection”. Legal protection for these creditors is regulated in general, namely: regulated in the Civil Code Articles 1131 and 1132 and Law Number 42 of 1999 concerning Fiduciary Guarantees. Article 1131 of the Civil Code stipulates, "all materials, both existing and new ones that will exist in the future, are borne by all individual engagements". The preceding article can be interpreted to mean that once a person commits to an agreement, all assets, both existing and future, become dependents for all his agreements.

Law Number 42 of 1999 in this case describes legal protection for interested parties in credit agreements with fiduciary guarantees, in other words the Law which specifically regulates fiduciary guarantees, Articles 11, 14 and 15 of Law Number 42 of 1999 which basically states that objects burdened with a fiduciary guarantee must be registered and then a fiduciary guarantee certificate is made which includes the directions “For the sake of Justice and Belief in the Almighty God”, so that the fiduciary guarantee certificate has the same executive power as a court decision that has been obtain permanent legal force (Fuady, 2013).

According to Ardiawan & Purwanto (2019) reserach, “the creditor has the right to carry out the execution as stated in the fiduciary guarantee certificate, if the debtor defaults”. Creditors also have the right to sell things that are the subject of fiduciary guarantees via public auctions and settlement of receivables from sales or underhand sales conducted based on an agreement between the creditor and the debtor. Law Number 42 of 1999 further establishes penal provisions for fiduciary donors or debtors who transfer, control, or lease assets subject to fiduciary guarantees without the recipient's or creditor's prior written consent. Then it may be penalized with a maximum of two years in prison and a fine of up to Rp50.000.000,00.

3.2. How to Measure the Economic Value of a Patent as a Fiduciary Guarantee

Objects or goods that will be used as collateral must be assessed at the time the credit analysis is carried out. Inaccuracies in determining the value of collateral will affect and or may result in errors in the analysis of lending and losses on the part of the bank. The basis for guarantee assessment is based on realistic prices and tends to be conservative (Priyanto & Purwanto, 2022). According to Naja et al. (2018), “the meaning of the appraisal itself is the work process of an appraiser in providing an estimate and opinion on the economic value of a property, both tangible and intangible”.

It is impossible to isolate the use of a patent as a Fiduciary Guarantee from the object features of the Fiduciary Guarantee. Objects that can be pledged as Fiduciary Collateral have economic value in the sense that they can one day cover the debt if the debtor is unable to repay it (Dewi & Purwanto, 2018). Patent rights include moral and economic rights, allowing them to serve as Fiduciary Guarantees. Moral rights are rights that are perpetually tied to the inventor to continue to include his name on the copy in relation to the public's usage of his work. Economic rights are inventors' or patent holders' exclusive rights to gain economic benefits from their discoveries.

According to Mulyani (2012) in the Journal of Legal Dynamics, "there are several approaches to assessing Intellectual Property as collateral objects". Several methods can be utilized to determine the monetary worth of a work. The market approach is the initial strategy. The market approach provides a standardized framework for assessing the value of intangible assets based on an examination of similar real sales and/or tangible license transactions. The second strategy is the income approach. The income approach provides a systematic framework for assessing an intangible asset's worth based on the capitalization of economic income or its present or future value. Utilization, licensing, or renting of the intangible asset will provide economic value. The third is the cost methodology (Naja et al., 2018).

Intellectual property is principally a material right that has economic value (Awatari et al., 2020). Economic value signifies the ability to transfer, trade, or lease anything from a business standpoint. The inventor who has intellectual property rights is the owner of the economic value in a civil context. The implementation of this finance based on intellectual property has been subpar. As explained previously, there is no public appraiser who can evaluate intellectual property collateral, and the size and eligibility requirements for financing based on intellectual property do not exist.

In this case, the government must initiate the Ministry of Finance and Bank Indonesia to make regulations regarding the valuation of Intellectual Property as collateral. By making regulations related to Intellectual Property valuators and assessment criteria in Intellectual Property, banks can use the results of the valuation of Intellectual Property collateral in providing financing. Thus, banks do not need to worry about violating OJK and BI regulations, considering that the value of financing is based on an appraisal formula made by a certified public appraiser and the value of Intellectual Property collateral is calculated according to these regulatory standards.

The capitalization of economic income is reflected in the financial statements, considering that Intellectual Property is recorded in intangible assets. Intellectual Property is an intangible asset of a company regulated in the inclusion of accounting standards (PSAK) Number 19 regarding intangible assets (Suryo, 2010). The concept of assets in PSAK No. 19 of 2000 is a resource that is controlled by the company as a result of past events and can generate economic benefits. Based on the description above, Intellectual Property is an intangible asset whose value can be estimated to be used as collateral in banking according to the applicable principles of determining guarantees and financing.

In assessing the value of KL as collateral, Shannon Pratt and Alina V Nacuilt conclude that the cost approach can be applied to the formulation of Intellectual Property as financing collateral. The economic value of a work influences the category of Fiduciary Guarantee in connection to a patent as an object of Fiduciary Guarantee. The loading of things with a fiduciary must include the following:

1) Identity of the fiduciary giver and recipient;
2) Main agreement data guaranteed by fiduciary;
3) A description of the objects that are the object of the Fiduciary Guarantee;
4) guarantor value; and
5) The guarantor value and the object value of the Fiduciary Guarantee (Bakti et al., 2019)

As previously explained, invention as an object of Fiduciary Guarantee falls under the category of immaterial object. The economic significance of an invention inspires the

notion that it can serve as a guarantee. Besides inventions, land also has significant economic worth (Purwanto, 2005). In an economic framework, the birth of an invention involves a lot of effort, time, and money. All of these will indicate the value of the work based on the usefulness or economic value of an innovation if these criteria are quantified. When viewed from the perspective of the state's need to realize the order of economic life, continue to pay respect to individual rights in a balanced manner with the interests of society (Bujangga & Purwanto, 2022). Based on this, a creation is a product of human thought that has value, and is considered as intangible wealth.

Several models can be used to calculate the economic value of a patent, as discussed above. Obviously, banks and financial institutions have a specialized team of appraisers to estimate the worth of goods to be used as collateral in institutions that accept intangible moveable objects such as patents. The economic value of an innovation determines the collateral value; the greater the invention's value, the greater the collateral value received by the debtor or fiduciary donor. The economic value of an innovation is also affected by the moral rights of the inventor; the more well known the inventor, the greater the invention's economic value.

4. CONCLUSION

4.1. Conclusion

As the subject of banking credit fiduciary guarantees, patents can be legally protected through a license agreement. The license is granted by the right holder to give other parties the opportunity to enjoy the economic value of the patent. In this particular instance, the legal protection afforded to interested parties in credit agreements that include fiduciary promises is outlined in Law Number 42 of 1999.

Using the market approach, the income approach, and the cost approach, the economic value of a patent as a fiduciary promise can be determined. The economic value of an innovation dictates the quantity of collateral value; the greater the invention's value, the greater the collateral value the debtor or fiduciary donor will earn. The economic value of an innovation is also affected by the moral rights of the inventor; the more well known the inventor, the greater the invention's economic value.

4.2. Suggestion

The government should provide socialization to the public and banking institutions regarding Intellectual Property Rights, especially Patents that can be guaranteed as fiduciary guarantees. Therefore, the Government should establish an institution such as KJPP (Public Appraisal Services Office), especially to assess Intellectual Property Rights that have been registered at the Directorate General of Intellectual Property, so that fiduciary institutions as well as other credit institutions obtain clarity regarding the economic value of guaranteed patents.

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PROXY WAR IN THE ERA OF GLOBALIZATION IN INTERNATIONAL LAW PERSPECTIVE

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Abstract

Along with the development of science and technology, there has also been a shift in the form of war which we know is synonymous with military force, firearms and artillery explosions. Marked by the emergence of Proxy War as a new style in the world of war. The absence of direct involvement and the existence of competition between the great powers between the parties is one of the characteristics of the Proxy War itself but the Proxy War itself still has an impact that is as dangerous as a normal war, because Proxies can be formed from within/outside the country which makes it be difficult to detect. This paper aims to find out how Proxy War exists in historical developments and to see and understand Proxy War in the present which is very closely related to cyber warfare. The method used was a normative legal research method whose research focuses on the relationship between norms and predicts their development in the future. The findings showed that proxy war as a new style of warfare creates its own worries. Because the close link between Proxy War and Cyber War can cause national instability in a country. If propaganda that occurs in cyberspace is spread widely and systematically, this has the potential to cause riots within a country.

Keywords: *Cyber Warfare, National Instability, Proxy War*

1. INTRODUCTION

When we hear the word "war," it immediately brings to mind images of conflict, brutality, and carnage. It cannot be denied that since the beginning of human civilization, war has colored the history of the development of life on earth, both the wars that occurred during the kingdom era and the wars that have raged in the modern era. War itself is a form of interaction that is formed from the relationships that occur between humans. Not infrequently differences in interests, a sense of dissatisfaction and disputes between the parties are a number of factors that suggest a war occurs.

We have heard many stories that have been engraved in the dark history of our civilization about wars that have claimed many human lives for various reasons, both economic, social, political, territorial disputes and other disputes that cannot be resolved through deliberation. Etymologically, war has a meaning, namely physical and non-physical action or hostile conditions carried out by means of violence and other uses of force that occur between two or more human groups in order to fight over a goal.

Meanwhile, Karl Von Clausewitz in Nurwulansari et al. (2022) expressed his opinion regarding the definition of “war as a struggle on a large scale intended by one party to subdue its opponent in order to fulfill its will”. From some of the meanings that have been conveyed above, it can be understood that war is something that is synonymous with violence and the use of force to achieve a goal.

Along with the development of the times and technology, we are now in the era of globalization where the exchange of information has become so easy and there have been various shifts in the aspects of human life that are now completely modern, so it also

happens in the form of the war itself. Today, war is no longer visible to the naked eye, no longer synonymous with the use of weapons and violence but still has the same destructive impact as the conventional war we know.

This is what became known as a proxy war. It may still sound foreign to most people's ears, but this proxy war is currently happening in the midst of an international audience. Proxy War itself has the following meaning “A proxy war is a conflict inflicted by a major power or powers that do not become involved in it directly. Often, proxy wars involve countries fighting their opponents’ allies or helping their allies fight their opponents” (Hidayat, 2017).

Thus, the above understanding about "proxy war" refers to a conflict that occurs between a large power or more that are indirectly involved in it (Dalimunthe et al., 2022). Often, proxy wars involve countries fighting allies of their enemies or helping their allies against their enemies. From the above understanding it can be seen that there is an element of indirect involvement, this is what makes proxy wars difficult to see with the naked eye but has an impact that is just as dangerous as other wars.

Especially the internet which is now a means of connectivity that connects people from all over the world. Etymologically the internet comes from the word Interconnection and Networks. The internet itself is defined as “a network of networks that connects computers all over the world” (Syafrizal, 2020).

Even though the presence of the internet as a means of connectivity brings a variety of positive impacts, of course, behind all this, there are various negative impacts that can be detrimental and have a damaging impact. In the development of cyber law itself, the term Cyberspace is known, which is a space for long-distance conversations to take place. not in the phone, but in the intangible space that is out there (Nugroho et al., 2020).

In connection with proxy wars, cyberspace or the internet itself is a medium that can be used by parties who have an interest (state or other entity) to form proxies to achieve predetermined goals. This could have started with the spread of anti-government narratives, radicalism, and the spread of certain ideologies through cyberspace.

Therefore, Cyber Law has an important role in preventing undesirable things from happening, because after all the damage that arises from within is more difficult to see than the damage that is visible from the outside. As such, this research will be oriented towards the existence of Proxy War in the Cyberwarfare era in the perspective of International Law and its preventive efforts.

Based on the background that has been explained, writing paper aims to find out the importance of cyberlaw in the era of proxy wars and to know and understand proxy wars in more depth which will be studied in the perspective of International Law.

2. RESEARCH METHODS

The writing method used to compile this scientific journal was a normative law research method in which the subject matter of the study was law conceptualized as norms or rules that apply in society and become a reference for society itself. Normative legal research was also known as doctrinal legal research, as stated by Hutchinson that doctrinal legal research in broad outline was research on regulations governing certain categories, analyzing the relationship between regulations, explaining areas that experience obstacles, and even predicting future developments (Muhajirin & Maya, 2017).

3. RESULTS AND DISCUSSION

3.1. Social Media as A Proxy War Catalyst and Preventive Efforts on A National Scale

Looking back to find out and understand the history and development of something is one method that is often used to get more comprehensive information about a problem. Likewise in the context of understanding Proxy War. In providing a classification of a war that can be categorized as a proxy war, we can see from the existence of several elements which include:

1) There is a party that becomes a proxy (State / Non-State Actor)
2) There is a strategic goal
3) The existence of an indirect involvement (indirect involvement) (Mumford, 2013)

Some of the elements above can of course be used as a measure to classify a war/conflict as a Proxy War.

How then can social media be said to be one of the catalysts for Proxy War in the era of globalization? before examining further, the term catalyst used in writing this scientific journal has the meaning of "something that causes change and causes new events or accelerates an event". Seeing the fact that the number of social media users in Indonesia continues to increase from year to year makes social media one of the platforms that is very vulnerable to being infiltrated by the interests of proxies. This is based on survey results quoted from APJII (Association of Indonesian Internet Service Providers) which recorded in 2017 which noted that 143,26 million Indonesians actively used the Internet and 87,13% of the total are active social media users who have various age ranges.

The trend of social media in Indonesian society certainly has both positive and negative impacts simultaneously. Ease of access to information is expected to be one of the driving factors for human resource development in Indonesia, but the spread of fake news (hoaxes) and the use of social media as a tool to divide the nation must also be watched out for as having a potentially high negative impact.

The government as the holder of authority must participate in creating a safe and peaceful life for the nation and state, in this case as a preventive measure for the disintegration of the nation, the government forms a legal product which we know as Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, or better known as the ITE Law which was issued in response to the government's response to the rapid progress of access to information technology, has become one of the legal instruments that provides restrictions regarding activities that may and may not be carried out in cyberspace. As referred to in the summing up of articles 27 – 37 of the ITE Law, it can be seen that there are limits set by the government in terms of Information Technology.

The spread of radicalism through social media, the existence of divisions caused by differences of opinion both related to politics and religion are several things that are very vulnerable and have the potential to form proxies that damage from within. The right to freedom of opinion is regulated and protected by the constitution, but what is happening now is not an argument based on logical reasons and scientific references but rather hate speech and provocation. Segregation occurs on social media in the name of one group and another, which then develops into a growing dichotomy in society. This is a particular concern because several things that have happened recently have the potential to disintegrate the nation due to differences in political choices and religious matters.

3.2. Cyber Warfare in International Law

Seeing the relationship between Cyber Warfare and Proxy War, we can depart from the explanation previously described that there has been a shift in the characteristics of war which are now no longer closely related to armed contact and military force, which is also supported by the rapid development of technology and the rapid exchange of information on a massive basis on the internet.

As explained in the previous section regarding Proxy War including its definitions and elements, this section will focus on Cyber Warfare and its existence in the Proxy War era. The term "Cyber Warfare" may sound unfamiliar to some people, in Indonesian, while this term also known as "Cybernetic War". In KBBI or Indonesian Dictionary, Cybernetics means the science of communication and supervision, especially with regard to comparative studies of automated surveillance systems.

The full definition of Cyber Warfare is put forward by UNTERM (United Nations Multilingual Terminology Database) that "Cyber Warfare is The offensive and defensive use of information and information systems to deny, exploit, corrupt or destroy an adversary's information, information based processes, information systems and computer based networks while protecting one's own. In this case, such actions are designed to achieve advantages over military or business adversaries" (P. A. Prasetyo, 2020).

If freely translated, the provisions above can be interpreted as an act of using information and information systems both offensively and defensively to prevent, utilize, damage and destroy the opponent's information, or processes based on information systems and computer-based networks. This action was designed to gain both military and business advantages.

Meanwhile, the United Nations Interregional Crime and Justice Research Institute (UNICJRI) provides a simpler definition of Cyber Warfare, namely "Any action by a nation-state to penetrate another nation's computer networks for the purpose of causing some sort of damage" (B. Prasetyo, 2022). This definition is simpler without losing the meaning that there is an element of action taken to penetrate a country's computer-based network system with the aim of causing damage.

Referring to the data compiled by The Center for Strategic International Studies (CSIS), cited by Naufal Herdanto (2022) estimates that between May 2006-June 2011 there were at least 78 significant cyber incidents, some of which resulted in successful attacks on government agencies, defense and technology companies with estimated losses of millions of dollars.

In order to provide evidence that Cyberwarfare has an important role in the Proxy War era, we can look at the case of the Stuxnet virus attack in 2012, which is a virus designed by computer scientists from the United States and Israel with the aim of slowing down the Uranium repair system at Nuclear facilities in Iran and to paralyze Iran's nuclear arsenal.

Directly related to Cyber Warfare, the importance of regulating Cyber Crime is of particular concern to the international community. Cyber Crime itself was defined at the 10th UN Congress in Vienna in 2000 as:

1) Any action taken by means of an electronic device that targets computer security systems and processed data (in a narrow sense).
2) Any illegal action carried out with the intention of or related to a computer system or network, including criminal acts such as illegal possession, provision or distribution of information through a computer system or network.

The international legal instruments that are relevant to Cyber Crime which are used as a reference in writing are the 2001 Convention on Cybercrime initiated by the Council of Europe (European Union) in Budapest. This convention can be said to be one of the effective efforts in the context of International Law because this convention acts as a Legally Binding Hard Law for the parties. The 2001 Convention on Cybercrime was drafted to form harmonization of International Law into the National Law of the countries that ratified this convention. This is strengthened by the existence of provisions to implement the provisions of the Convention into the Criminal Law of each country that ratifies it, as well as providing formal legal provisions in investigative procedures, investigations and prosecution. As well as the provisions on Extradition and Mutual Assistance in Part III of this convention, making the 2001 Convention on Cybercrime one of the instruments of international law that was successful in forming Legal Harmonization, especially in the realm of Cyber Crime.

Definitively, there is a difference in the meaning between proxy war and cyberwarfare where in general a proxy war is a power competition between 2 or more parties that occurs without the direct involvement of the parties. Meanwhile, cyber warfare is generally defined as the use of a computer system or network as a means to launch an attack on a computer network from a country or other institutions and entities.

Both Proxy War and Cyber warfare have correlations that are quite relevant in writing this scientific journal. Because with the special characteristics of a Proxy war that allows no direct contact between conflicting parties, this makes these feuds now occur in cyberspace. By starting with simple things as a trigger of more complicated problems that have a damaging impact and disturb the stability of the country.

The importance of harmonization of international legal products into Indonesian national law, especially in the realm of cyber law in order to prevent the occurrence of unlawful acts in cyberspace, can be used as an alternative to form a preventive and repressive effort related to cybercrime. Bearing in mind that every country has the same international legal responsibilities from all forms of cyber operations that impact other countries (International Group of Experts at NATO Cooperative Cyber Defence Centre of Excellence, 2013). This is strengthened by the role of international organizations such as the ITU (International Telecommunication Union) which established the ITU Toolkit for Cybercrime Legislation as a guide for countries to draw up legal regulations related to cybercrime.

Until now, international legal instruments have only provided recommendations or the Rule of Guidance regarding the preparation of legal regulations relating to cybercrime. Clearly, this is inseparable from the jurisdiction of the state in relation to all actions that occur within its jurisdiction where a state is obliged to take firm action against all criminal actions based in cyberspace as long as the action occurs within the territory of a country or has a direct impact on the security and stability of the country concerned. .

Regardless of the role of international organizations, the role of the government, especially as regulators, is very important in realizing harmonization between international legal instruments and their application in national legal products, bearing in mind that the stability and security of the country in the era of globalization are not only vulnerable to visible threats but also vulnerable to threats that invisible, such as Proxy War, which uses social media as a medium for forming proxies. Hence, the role of the state is very important in preventing the formation of proxies from the development of radical understandings and narratives that are provocative of the safety and stability of the state.

4. CONCLUSION

Based on the findings, it can be concluded that Proxy Wars is a real form of a shift in the world of war. It is marked by the absence of direct involvement from the proxy maker as a big power that appoints or forms other parties, both state actors and non-state actors as an extension to achieve the strategic goals of the proxy maker himself. In the current age, Proxy War is often used by parties who want to take advantage indirectly from the occurrence of national instability in a country. Technological developments and the rapid exchange of information have now become a medium for parties aiming to form proxies from within the country with the aim of triggering national instability. As a result, public awareness and the role of government are very important in forming regulations related to cyberspace in order to prevent national disintegration that occurs as a result of efforts by foreign powers to undermine the national life of a nation.

Hence, it is extremely vital for there to be a high level of public knowledge of the presence of unseen dangers that occur as attempts by foreign powers in order to avoid conflicts in the life of the country and the state. Besides, it is hoped that the government's role in forming regulations that are oriented towards technological development, as well as updating the national cyber system can be the first step in preventing the entry of propaganda and foreign powers that can affect the stability of the country by contributing to the importance of filtering information that is widely circulated in society.

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LEGAL CONSEQUENCES OF ELECTRONIC AGREEMENTS VIEWED FROM ARTICLE 1866 OF THE CIVIL LAW

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Abstract

Legal issues with regard to authenticity, authenticity, and proof arise frequently because no laws exist to control the private information of users of electronic agreements. The aim of this research is to determine whether or not there are issues with the legal binding force of agreements established via electronic means. This study employs a normative qualitative approach, based on the analysis of secondary data and bolstered by original data collected in the field. The findings prove that digital investigative tools can be used to verify the legitimacy, veracity, and integrity of electronic contracts. A person's permission is required before any of their personally identifiable information (PHI) can be used in any way, shape, or form via technological media. The evidentiary weight of an electronic or digitally signed deal is the same as that of a handwritten one. As progress is made toward open proof, the judicial system can make use of the system. Given the prevalence of online media in modern business dealings, it follows that any evidence acquired from any source, provided it is true, is admissible so long as it does not violate public order.

Keywords: *Electronic Agreement, Legal Consequences, Authenticity*

1. INTRODUCTION

The rapid growth of internet use, the impact of advances in electronic technology, and the actions of the global community in carrying out agreements and other tasks are examples of how humans are increasingly conducting their daily lives online. It is as if there are no barriers for humans to establish legally binding relationships across vast distances and time. In this regard, the rule of law must step in to ensure that all participants in electronic transactions are afforded equal protection under the law regardless of the nature of the transaction.

The agreement is mandatory for the parties and must be implemented in good faith if it fulfills the legal requirements of the agreement. The requirements of Article 1320 of the Civil Code must be met before making a contract. In order for judges to have confidence in the evidence presented at trial, it is important for both parties to present evidence of real events. This is an example of proof.

Concerns about which laws and jurisdictions apply to the conduct of electronic agreements arise when the parties to the agreement are located in different places. Many people still think that contracts or agreements signed online are not legally binding because they exist on the internet or cyberspace. When an electronic agreement is created, it demonstrates that its participants don't just imagine themselves somewhere in cyberspace (Sitorus, 2015).

Tokopedia, Shopee, and Bukalapak are just a few of the many online applications that act as intermediaries for electronic commerce, although sellers and buyers are free to transact with each other directly. Of course, in electronic transactions this cannot be separated from data which is also provided digitally because it is used to facilitate

transactions. Because if the data is known by other parties, then the transaction will not be in accordance with what is desired by the parties in the transaction, it is only natural that electronic transaction intermediary application providers want to maintain the security of the data that has been given to them. Bukalapak, an application supplier for electronic transaction intermediaries, suffered a data breach that affected 91 million of its users (Simamora et al., 2022). In this case, both the plaintiff and the defendant must rely on electronic evidence.

The author will analyze the relevant parts of the Civil Code, especially Article 1320 regarding the legal requirements for agreements, Law no. 19 of 2016 concerning Information and Electronic Transactions, and finally Article 163 HIR together with Article 1866 concerning types of proof of the Civil Code.

Based on the background described above, this research was conducted with the aim of finding out how the problems of authenticity, authenticity and integrity of electronic agreements and the validity of an agreement made electronically.

2. RESEARCH METHODS

This research uses a socio-legal approach, which examines law from the community's point of view. The aim of this research is to illuminate the challenges inherent in legal compliance. The purpose of this descriptive research is to document the current state of a particular variable or subject, in this case the symptoms and conditions being experienced by the participants. This study details the protocols and procedures for determining the legality of electronic transactions based on Article 1866 and the ITE Law.

This socio-legal study relies on secondary data supplemented by original data collected in the field. Most of the information was collected through in-depth interviews with government officials at the Ministry of Communication and Informatics and the Tangerang District Court.

3. RESULTS AND DISCUSSION

3.1. Problems with originality, Authenticity and Integrity of Electronic Agreements

The difficulty in proving the authenticity of an electronic agreement stems from issues such as the following: how to prove that the parties have provided electronic agreement with an electronic signature? Law No. 19 of 2016 concerning Information and Electronic Transactions is the only substantive legislation that currently regulates electronic evidence (Dotulong, 2014).

Problems with electronic evidentiary law relating to electronic signatures on paper remain in Indonesian civil procedural law (Saruji & Martana, 2015). According to Arif Budi Cahyono, a judge at the Tangerang District Court, in an online national seminar regarding electronic agreements, he said that "with digital forensics. Digital forensics is a method used to identify, collect, analyze and test digital evidence for a legal case.

Furthermore, Arif Budi Cahyono, a judge at the Tangerang District Court, when asked several questions, added that, “There is no legal regulation relating to e-commerce. Currently using the default 'terms of agreement' on the e-Commerce page. As soon as we click 'I accept', it means that we have automatically submitted ourselves and are bound to the agreements and regulations of the e-Commerce that we use”.

Arif Budi Cahyono further explained that: “According to the Supreme Court,

electronic evidence is classified as evidence if it is linked to Article 184 of the Criminal Procedure Code. What needs to be considered is if the electronic evidence is denied by the opponent. So that's why we use digital forensics to find out the authenticity of the evidence. For example, photos can be changed and edited. This is where the role of digital forensics is to test its authenticity to ensure that the photo was taken from what source and is original without editing. An example is the Antasari case where there is evidence that he texted the perpetrator, even though according to an ITB expert it was not sent from his cell phone". Providers can be defined as companies or business entities that provide services to users. Providers can sometimes also be referred to as companies that usually serve as website creation, arrange their placement in the cyber world (including maintenance and provision of Internet access) as well as help in terms of promotion so that the website is visited by Internet users (Romindo et al., 2019).

According to Ruby Zukri Alamsyah, a forensic expert, revealed that "Residents can report the provider to the police if it is proven that there are non-law enforcement civilians who intentionally leak personal data without the owner's permission, the provider is subject to a warning or sanction from the Indonesian Telecommunication Regulatory Agency".

Josua Sitompul as The Ministry of Communication and Information Technology (KOMINFO) Legal and Cooperation Coordinator in his answers to our Research and Research questions stated that "Electronics is easy to change, add, or subtract. Therefore, the acceptance of electronic information as legal evidence (admissibility) is determined by the certainty that the authenticity of the information is maintained and its availability. The meaning of authentic is not that electronic information is made by an authorized official. There are at least two things that must be considered in determining the authenticity of electronic information or documents. First, electronic information is called authentic if the source of the electronic information comes from a person or party that has the right or authority to issue the intended electronic information or document. Second, the content or content is the content intended by the source".

As stated in Article 26 paragraph (1) of the Information and Electronic Transactions Law which states that: "Unless otherwise provided by laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned. Therefore, if personal data is violated, such as in the case of leaking of personal data, the party who feels their rights have been violated can file a lawsuit".

Electronic information or documents and/or printouts are recognized as valid evidence according to Article 5 paragraph 1 of the ITE Law. The definition of "Electronic Knowledge" is contained in the ITE Law Article 1 Point 1. On the other hand, the definition of electronic documents used in the Criminal Code is regulated in Article 1 Number 4. Although they can be distinguished, electronic and paper information cannot be separated. The difference between electronic information and electronic documents can be summed up as follows: electronic information is data, while electronic documents are data in a certain structure. Electronic Information, for example, refers to words, writing, letters and numbers contained in files with extensions .doc, .pdf, .mp3 and .jpg. .doc, pdf, mp3, and jpeg are file types for electronic documents.

The procedural law in force in Indonesia recognizes electronic information and/or electronic documents and/or printouts as additional valid evidence. This is stated in Article 5 paragraph (2) of the ITE Law. This arrangement is a first for the ITE Law, and

it helps bridge the gap between traditional rules and principles for presenting evidence (which require tangible objects) and technological advances.

In order to expand the scope of evidence that can be accepted in the Criminal Procedure Code, it is necessary to expand the scope of evidence regulated in Article 186 of the Civil Code, in particular the expansion of documentary evidence. In this context, truncation refers to hard copies of data or files that were originally stored digitally. The term "electronic evidence" is used to describe a growing body of evidence that can be presented in court, in this case information or letters stored or transmitted by electronic means.

3.2. The Legitimacy of Agreements Through Electronic Viewed from Article 1866 of the Civil Code

As a result of having agreed on the terms of the agreement, now each party is legally obliged to carry out the rights and obligations (also called achievements) set forth in the agreement (Sa'adah, 2020). The consequences imposed by law on the parties to the agreement are the result of the legal actions they took to realize their rights and fulfill their obligations under the agreement (Sari, 2017).

According to Subekti in Kumalasari & Ningsih (2018) that "An agreement isan event where a person promises to another or where two people promise each other to do something". Based on Article 1313 of the Civil Code, it states that "Consent is an act in which one or more people bind themselves to one or more other people". According to Article 1320 of the Civil Code, for an agreement to be valid, four conditions must be met. This includes consent on their own terms, free and informed consent, no coercion or undue influence, and no fraud.

According to Bambang & Joni (2013), "There are 4 (four) explanatory theories when an agreement can be considered as having been reached: Pronunciation Theory; Delivery Theory; Theory of Knowledge and Theory of Acceptance". The ability to make an agreement means that the parties who will make an agreement must be legally competent, if there are parties who are not legally competent, the agreement can be canceled. Based on Article 1330 it states that "Incompetent to make an agreement are: First, immature people, meaning that immature people are prohibited from making agreements, the law stipulates that what includes immature people is those who have not reached the age of 21 years; Second; those who are placed under guardianship, meaning that people who are still placed under guardianship cannot make an agreement, if they make an agreement then the guardian will represent them; and thirdly, women, in matters stipulated by law, and in general all people to whom the law has prohibited making certain agreements, meaning that women are included as people who are not competent at law, but after the marriage law is born, this rule does not apply. As long as they are an adult and there are no other problems, married women are considered fully competent legal subjects under the law. What this means is that the agreement should define clear, achievable goals that can be used by both parties, rather than something that is just a pipe dream or a tentative plan. When an agreement is said to be for valid reasons, it means that it is not against the principles of law, morality, or public order.

Article 8 paragraph (1), "United Convention on the Use of Electronic Communication in International Contracts recognizes the validity of electronic agreements, which can be legally enforced".

Josua Sitompul stated that "The validity of printed results from electronic

information depends on the validity of the electronic information and documents. If the electronic information or document is valid, then the printout is also valid". In order for data or paper stored in electronic format to be legally binding, the following conditions must be met:

1) Article 5 paragraph (4) of the ITE Law which confirms that "according to the law, letters must be made in written form or letters and documents which according to law must be made in the form of a notary deed or a deed drawn up by an official making the deed. In this case, the electronic form of the letter or document cannot be used as valid legal evidence. The formal requirements set out in the Civil Code, are a private deed or other letter that is recognized by interested parties".
2) Article 6 of the ITE Law, "Electronic Information and/or Electronic Documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed for its integrity, and can be accounted for so as to explain a situation".
3) Article 7 of the ITE Law, "every person who declares rights, strengthens existing rights, or rejects the rights of other people based on the existence of Electronic Information and/or Electronic Documents must ensure that the Electronic Information and/or Electronic Documents in it originate from an Electronic System that meet the requirements based on the Laws and Regulations".

Furthermore, Josua Sitompul said that "regarding electronic signatures, the ITE Law and PP 71/2019 regulate the existence of non-certified electronic signatures (for example in the form of scans), and certified signatures. Certified signature using a trusted third party. Both types of signatures have legal force and legal consequences as long as the provisions of Article 11 of the ITE Law are met".

Telecommunications Law Number 36 of 1999 concerning Telecommunications in Article 2 states that "telecommunication is organized based on the principles of benefit, fairness and equity, legal certainty, security, partnership, ethics, and self-confidence". Article 3 states that "telecommunication is organized with the aim of supporting national unity and integrity, increasing the welfare and prosperity of the people in a fair and equitable manner, supporting economic life and government activities, and enhancing relations between nations".

According to Mualifah (2020) that "Proof contains logical, conventional and juridical meanings". In a logical sense, is to provide absolute certainty. In the conventional sense it means certainty only not absolute certainty. In a juridical sense, it is proof that provides the truth that applies only to the parties to the case.

Yahya (2005) said that "what is meant by the general principle of proof is the basis for the application of evidence. All parties, including judges, must adhere to the standards outlined by the said principle. Indeed, in addition to that, there are more specific principles that apply to each type of evidence, so that it must be used as a benchmark in the application of a system of evidence. However, what is discussed in general principles is a provision that applies to the evidentiary system in general".

According to Arif Budiman, the Tangerang District Court judge, when interviewed, explained Article 5 paragraph (1) of the Electronic Information and Transaction Law, stating that: "Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence". Furthermore, judges' acceptance of electronic evidence broadens the scope of what can be considered evidence.

According to Article 164 HIR and Article 1866 of the Civil Code, our country's

civil procedural law recognizes the following pieces of evidence: (1) written; (2) witnesses; (3) presumption; (4) recognition; and (5) oath.

According to Yusandy (2019) that "the evidentiary system adopted to date is as follows: Closed and Limited System. The parties are not free to submit the type or form of evidence in the process of settling a case. Developments Towards Open Evidence In evidentiary law it is no longer determined a certain type or means of evidence, but from any means of evidence the truth must be accepted as long as it does not conflict with public order."

4. CONCLUSION

In conclusion, there is a slight refusal to update or delete data in electronic form. Therefore, the availability and guarantee of maintaining the authenticity of information determines whether or not the information can be used as legal evidence (admissibility). This term does not imply that any particular piece of electronic data has been created by a sanctioned authority figure. To verify the legitimacy of digital files, two factors are required. For starters, we can say that an electronic information is genuine if it comes from a source that has the right or legal power to publish certain parts of the electronic documentation. Second, the information presented is what the original author had in mind. Those involved, including courts, must be able to easily access the electronic information required for evidentiary purposes. Each party making a statement in a civil law dispute must bear the burden of proof. The ITE Law which applies to every material or document made electronically recognizes the legal force of electronic agreements. When a case goes to court, the court will be able to apply an evolving evidentiary system that supports open evidence.

A recommendation to the legislature of the Personal Data Protection Act is necessary for personal information security to ensure that all parties involved in electronic interactions are protected. The burden of upholding legal certainty lies with the judiciary, especially regarding evidence that is not regulated in Article 1866 of the Civil Code.

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Acknowledgments (if any)

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