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

081-123-1-666

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

CONTENTS

CIVIL LAW ANALYSIS OF UNWRITTEN AGREEMENTS IN BUSINESS ACTIVITIES

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Abstract

In traditional societies, unwritten contracts were frequently used for commercial transactions. Unwritten agreements are weaker than written ones, particularly when it comes to proving their existence in the event of a dispute. The aim of this article was to conduct an analysis of unwritten agreements in civil law and to evaluate the advantages and disadvantages of forming and implementing such agreements. This is a normative legal research which focuses on positive law inventory, legal principles and doctrine, legal discovery in in concrete cases, legal systematics, level of synchronization, comparative law and legal history. In the deliberation, a verbal agreement was considered valid under civil law so long as it did not contradict Article 1320 of the Civil Code. The existence of a verbal agreement was also supported by the principle of contract freedom, which allowed the parties to determine the form of the agreement. Unwritten agreements were advantageous in terms of the amount of time required to reach an agreement and the use of trust in the formulation and implementation of the agreement, but they lacked the ability to be proven in the event of a dispute.

Keywords: *Business, Civil Law, Unwritten Agreement*

1. INTRODUCTION

Every human being cannot be separated from activities that are interconnected with each other according to his needs, both in individual and group activities in association in his daily life. In essence, humans are social beings who cannot be separated from the social life of their group. According to Aristotle in Is (2017) humans are "*zoon politicon*", meaning that humans as social beings always try to live in groups and in society.

From the statement expressed by Aristotle, it shows that human nature is basically unable to live alone because human nature is a social being, which definitely needs other people to carry out the dynamics of life. In daily activities, humans are always bound by other humans. It is from this attachment that his needs will be easily fulfilled compared to doing it alone. In line with the old adage "if you want to go fast, go alone, and if you want to go right, go together". The existence of a relationship between humans in groups or even between individuals is a pattern of life that has a style as a *zoon politicon*. It is through this interaction that man meets the needs of his life, it will be inevitable in various ways, whether from the needs of clothing, food, or boards, and will not be excluded from anything else, this is called natural demands (Isnaeni, 2016). In the reality of life which is actually valid, every human being in fulfilling the necessities of life requires interaction between individuals or between groups. As an example of the form of interaction in question is in business activities such as buying and selling transactions, contracts, trade transactions, leasing transactions (Apdillah et al., 2022). In social reality, these activities are really needed by business people who aim to earn income that is profitable or profit oriented.

The creation of this business activity when viewed from the rails of civil law rules, ideally there is always an agreement that forms the foundation for carrying out business activities using either a written agreement or an unwritten agreement. Seeing the phenomenon of life today, the author highlights the activities of agreements in unwritten form or often referred to as verbal agreements. Because not a few business people carry out business activities with verbal agreements which sometimes have good, sometimes bad impacts. An unwritten agreement actually has more weaknesses. When faced with a legal issue, the legal strength of this verbal agreement is weak because the proof process is quite difficult, there is no real physical evidence that can be used as a reference to comply and comply with the agreement made. This verbal agreement or unwritten agreement prioritizes the principle of trust or emotional closeness between individuals. However, the fact is that not everyone can be trustworthy in carrying out the rights and responsibilities in the spoken agreement. Not even a few verbal agreements were broken, because the loopholes for breaking them were very easy.

Agreements made verbally or without written documentation can be either beneficial or harmful. As such, this study aims to investigate the validity and presence of unwritten agreements within the context of civil law. Through legal analysis, particularly within the principles of contract law, this study aims to provide a comprehensive understanding of the advantages and disadvantages of unwritten agreements.

2. RESEARCH METHODS

Normative case studies, in the shape of legal behavior products like reviews of laws were used in normative legal research. Law, conceived of as a norm or rule that applies in society and becomes a reference for everyone's conduct, was the primary focus of the study. This normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in in concrete cases, legal systematics, level of synchronization, comparative law and legal history (Ali, 2021).

3. RESULTS AND DISCUSSION

3.1. Agreements Made in Unwritten Form Reviewed in Civil Law

3.1.1. The meaning of the Agreement

An agreement or contract in definition is defined as a speech that is thrown at another person and must be fulfilled or carried out according to what was said before. In the context of the definition that in the agreement there are 2 or more people, one who makes promises and the other who receives promises. Article 1313 of the Civil Code states that: “An agreement is an act committed by 2 or more people in which one person binds himself to one or more other people”.

In article 1313 of the Civil Code in the editorial there is an element of engagement as stated in the word “binding himself to one or more people”. In essence, it is true that the emergence of an agreement is based on an agreement and this is stated in article 1233 of the Civil Code that “Every agreement that is born because of an agreement/agreement, then an agreement arises based on an agreement made by the parties to create an engagement relationship with legal consequences that appear in the agreement”. The definition of engagement refers to Sinaga (2020) view that “engagement is a legal relationship between two people or two parties, based on which one party has the right to

demand something from the other party, and the other party is obliged to fulfill the demand". According to Article 1234 of the Civil Code, "every engagement is to grant something, to do something, or not to do something" describes the rights and obligations of the parties involved in the legal relationship of the engagement. The actions in the engagement associated with the agreement constitute an obligation for one party and a privilege for the other party, who receives something based on the parties' agreement.

Re-recording the understanding of the meaning of the agreement as stated in article 1313 of the Civil Code, experts also argue about the agreement, starting from the opinion of Salim (2021) what is meant by "an agreement is a legal act based on an agreement between two or more people to cause legal consequences permitted by law". Meanwhile, according to Hartana (2016) states that "an agreement is a legal relationship regarding property between two parties, in which one party promises or is deemed to have promised to do something or not to do something, while the other party has the right to demand implementation that promise". In line with the version of Soeikromo (2013) who argues that "an agreement is a legal relationship of wealth/property between two or more people, which gives strength to one party's rights to obtain achievements and at the same time obliges the other party to fulfill achievements".

3.1.2. Agreement Form

Judging from its form, there are 2 types of agreements, namely written and unwritten (verbal) agreements. In simple terms, the written agreement is the promised points written in written form, while the unwritten (verbal) agreement promised is only spoken and only enough with the agreement of the parties.

3.1.3. Unwritten Agreement

The author will be emphasizing on unwritten or verbal agreements, which are frequently used by business individuals in their activities. These agreements are usually made by simply stating something between the parties involved. In business negotiations, verbal agreements are commonly used to come to a mutual understanding. To illustrate, let's consider the example of durian trade in traditional markets, where buyers and sellers bargain over the price of the durian, and after the bidding process is finished, they reach an agreement on the price without any written documentation.

The Once the agreement on the price of the durian is made, the seller delivers the durian to the buyer, and the buyer pays the agreed amount. Written documentation is not required in this scenario as the agreement is made verbally, and the delivery of goods purchased doesn't need a written agreement to be referred to. In business activities, especially between buyers and sellers as illustrated in the example above, verbal agreements are sufficient to save time and minimize the possibility of disputes or violations of the agreement. Even if the purchased goods are not as expected, for instance, if they are rotten, the issue can still be handled amicably without the need for proof of purchase as the verbal agreement already exists. However, if the purchase involves a large quantity of items and the agreement is solely verbal, it can be risky for both parties involved.

Verbal or unwritten agreements are generally considered to be agreements that are very weak in nature, because unwritten or verbal agreements are more difficult to prove because they will be easily denied by the party making the promise if the scale of comparison is with a written agreement which is point by point which is translated in

written form. so that the parties making the agreement must submit and comply with the agreement that has been agreed upon and formulated in writing, and strengthened by the signatures of the parties that mark the agreement. Even though in fact a written agreement will not be completely avoided from denial by the parties, for example in a state of error or compulsion that requires aborting the agreement.

A verbal (unwritten) agreement is considered to be weaker when compared to a written agreement, but that does not mean that an unwritten agreement has no rules which becomes a valid agreement, because an unwritten agreement is also legally valid. If the reference is to Article 1320 of the Civil Code, the following conditions must be fulfilled to determine the validity of a verbal or written agreement:

a. Agree to be bound;
b. A certain thing;
c. A certain reason;
d. A lawful reason.

The first two requirements, agreement and competence, can be thought of as subjective, while the third and fourth requirements, a topic and a lawful cause, are more clearly objective. The arrangement can be terminated legally if the subjective conditions are not met, but it will be null and void if the objective conditions are not met. Since the four legal terms of the agreement do not need to be in paper, this applies equally to a verbal agreement. In accordance with these four criteria, the presence of an unwritten agreement is also inseparable from the principles of civil law. Looking at several civil law principles, unwritten agreements can be based or analyzed on civil law principles as follows:

1) The Principle of Freedom of Contract

The principle of contract freedom is one of the reasons why implicit agreements exist. One of the pillars of contract law is the principle of contract freedom, which is universally recognized by the legal systems of all nations as a foundational principle capable of ensuring flexibility and intensified market activity. The freedom to contract, which is based on the freedom to determine the form, type, and content of the agreement, appears to be threatened by the challenges of the times and is resistant to deteriorate as a result of rapid progress. This principle is one of the tenets of the Human Rights that always uphold the dignity of the individual's will as a social being. Freedom of contract is an essential principle for the development of individuals in both their private and social lives, leading some experts to emphasize that it is a fundamental human right that must be respected.

According to Harianto (2016), “the principle of freedom of contract according to Indonesian contract law covers the following scope”:

a. Freedom to make or not to make agreements.
b. The freedom to choose the party with whom to enter into an agreement;
c. Freedom to determine or choose the cause of the agreement made;
d. Freedom to determine the object of the agreement;

Freedom to the terms of an agreement, including the freedom to accept or deviate from the provisions of the law which are optional (*aanvullend*, optional).

In practice, this principle of freedom of contract is generally used as a basis for the use of standard contracts governing consumer transactions with business actors. A standard contract is a written agreement that is only made by one of the parties, and frequently, the contract has been printed (or *boilerplated*) in the form of specific forms

by one of the parties. In this case, when the contract is signed, the parties typically only fill out certain informative data with little to no changes to the clauses, and the other party has little to no opportunity to negotiate or change the clauses that have been printed. In Article 1 point 10 of Law no. 8 of 1999 concerning Consumer Protection stipulates that "Standard clauses are any rules or conditions and conditions that have been prepared and determined in advance unilaterally by business actors as set forth in a binding document or agreement and must be fulfilled by consumers". When referring to Article 1320 of the Civil Code in conjunction with Article 29 paragraph (2) Compilation of Sharia Economic Law, there are actually several conditions that limit the application of the principle of freedom of contract in accordance with the terms of a valid agreement:

a. There is an agreement between the parties;
b. The ability of the parties to enter into agreements;
c. There is a certain object;
d. There is a cause that is not contrary to law.

Referring to the provisions of Article 1320 of the Civil Code, it can be assumed that there is a deviation from the application of the principle of freedom of contract in the standard business activity contract, because a business agreement that occurs is not due to a balanced negotiation process between the parties, but the agreement occurs by means of one party having prepared conditions - standard conditions (standard clauses) on A form of agreement that has been printed and presented to the other party for approval with almost no room for negotiation on the terms offered.

2) The principle of *Pacta Sunt Servanda*

Principle of *Pacta Sunt Servanda* is also an implementation of article 1338 paragraph (1) of the Civil Code. In this case, *pacta sunt servanda* derived from the Latin word meaning "promises must be kept". The norms contained in positive law are formulated as: every agreement made legally applies as a law for those who make it.

This principle is contained in Article 26 of the Vienna Convention on the Law of Contracts 1969. There are several exceptions to this principle, for example when the contents of the agreement conflict with jus cogens (norms that may not be violated under any circumstances). The principle of the *clause rebus sic stantibus* (as stated in Article 62 of the 1969 Vienna Convention) also allows a state to terminate an agreement if there has been a fundamental change in circumstances as long as that condition underlies the state's intention to be bound by this agreement.

An agreement is considered binding when it is carried out in accordance with the concept of *pacta sunt servanda*, which states that an agreement, whether written or verbal, is to be carried out in accordance with all of its terms.

3) The principle of good faith

Article 1338, paragraph (3) of the Civil Code stipulates that all agreements must be carried out in good faith, so every agreement that has been made and mutually agreed upon must be carried out in good faith. It can be concluded from this article that good faith is the foundation for implementing the agreement. The parties must adhere to the principle of good faith when making or implementing agreements, i.e., when carrying out the agreement, they must abide by compliance and decorum standards. In addition to what is expressly stated in an agreement, a contract is binding on everything that is required by decorum, custom, and the law due to the nature of the contract. The principle of good faith has two meanings, namely: (Arifin, 2020)

a. Good faith in an objective sense means that an agreement must be implemented

with due observance of the norms of decorum and decency, which means that the agreement must be implemented so that neither party is harmed. The result is that the judge may conduct a review of the agreement's terms if enforcing it would be contrary to the principles of good faith.

b. Good faith in a subjective sense, namely the concept of good faith that resides within an individual's interior attitude. Good faith is typically interpreted as honesty in legal contexts. Good faith in the implementation of the agreement entails compliance, i.e. an evaluation of a party's behavior in terms of carrying out what has been promised, and seeks to prevent one party from engaging in inappropriate or arbitrary behavior.

J.M. van Dunbe categorizes the phases of contracting as pre-contract, contract implementation, and post-contract. Since the pre-contract phase, when the parties begin negotiating, and throughout the contract implementation phase, good faith must exist.

At the pre-contract stage, good faith entails notifying or explaining and examining material facts pertaining to the sale and purchase of the keris (kris) being negotiated. According to the determinations of the Hoge Raad, all parties to the negotiations were acting in good faith.

4) The principle of consensualism

The principle of consensualism can be concluded in article 1320 paragraph (1) of the Civil Code. In this article one of the conditions for the validity of the agreement between the two parties. The agreement has been born since the agreement was reached. the agreement is binding when the agreement is stated or spoken, so there is no need for certain formalities. Except in cases where the law provides certain formality requirements for an agreement that requires it to be written (Matompo & Harun, 2017).

3.2. The Advantages and Disadvantages of Forming and Implementing Unwritten Agreements

Verbal agreements or what are often called unwritten agreements, in daily activities and business activities, verbal agreements are often used, either consciously or not. An unwritten agreement, if the comparison scale is with a written agreement, in certain respects, for example providing a sense of security and proving the agreement, of course this is an advantage over a written agreement. However, in terms of its use, verbal agreements are more often used by traditional communities in business activities.

Verbal or unwritten agreements as agreements are used in business activities because these verbal agreements are easier to use and do not have to take a long time to reach an agreement. If the scale of comparison is a written agreement, the process of reaching an agreement on this written agreement requires a relatively long time because there are a series of processes that must be gone through and through the stages of negotiation, and after reaching these stages it is described in written form and signed for proof that the parties must submit and comply with the agreement.

This is different when compared to an unwritten agreement. In an unwritten agreement, it is only sufficient to negotiate verbally on the basis of trust in reaching an agreement. If an agreement has been reached, the parties can carry out directly all the things that have been agreed upon. Based on all the things that have been described above, it can be concluded that an unwritten agreement or a verbal agreement has advantages and disadvantages. The advantages and disadvantages of unwritten agreements include: (Vijayantera, 2020)

1) Advantages of unwritten agreements:
   a. It doesn't take long to reach an agreement
   b. The formation and implementation of the agreement is based on the trust of each party.
   c. Addition or reduction of agreement clauses can be done quickly.
   d. Strengthening a sense of trust in interactions and business activities.
   e. The existence of a sense of trust is able to create a good relationship even after the end of the agreement.
5) Disadvantages of unwritten agreements:
   a. Points in the agreement are easy to deny or not acknowledge because they are not stated in writing.
   b. It is less secure when used as evidence in a litigation process because it only depends on the recognition of the parties who made and implemented the agreement.

Based on the weakness of the unwritten contract, efforts can be made to cover up the weakness of the unwritten contract, namely prepare at least 2 (two) witnesses to prove the agreement of the parties to enter into an unwritten agreement. All transactions in unwritten contracts must also be accompanied by receipts or payment receipts or receipts to avoid disputes in the future.

4. CONCLUSION

Based on the research on civil law, it can be concluded that an unwritten contract can be considered as a valid contract, as long as it does not violate Article 1320 BW. This is because the principle of freedom of contract allows parties to make and carry out contracts, including unwritten agreements, which is supported by other contract law principles. However, there are advantages and disadvantages of using unwritten contracts. On the one hand, written contracts are more time-efficient and establish trust in making and executing contracts. On the other hand, unwritten contracts are prone to disputes because everything that has been agreed upon needs to be proven.

To effectively utilize unwritten contracts in practice, it is recommended to have at least 2 witnesses present when closing the contract, as well as to maintain a record of all payment slips, receipts, and invoices for every transaction that occurs during the execution of the contract. This can help to ensure that there is evidence to support any disputes that may arise in the future, and can also help to establish a clear understanding of the terms and obligations of the contract for all parties involved.

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THE LEGALITY OF INTERFAITH MARRIAGE CONDUCTED ABROAD IN THE PERSPECTIVE OF INDONESIAN LAW

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Abstract

Based on the provisions of the legislation that applies positively in Indonesia, it is stated that interfaith marriages cannot be carried out. However, it turns out that interfaith marriages still occur as a result of social interaction among all Indonesian citizens, so the interfaith couples carry out their marriages abroad. Interfaith marriages are implicitly not specifically regulated in the Marriage Law. The problem studied in this paper is how the legality of interfaith marriages abroad in the perspective of Indonesian law. The purpose of this study is to find out the legality of interfaith marriages abroad in the perspective of Indonesian law. This research uses a normative method by reviewing the laws and regulations related to the legal issues under study. The results of the study concluded that the legitimacy of interfaith marriages outside the jurisdiction of Indonesia was invalid because it violated several articles in the Marriage Law. If interfaith marriages abroad still occur, then the marriage is a violation of the law.

Keywords: *Abroad, Interfaith Marriage, Validity*

1. INTRODUCTION

Humans are considered social beings because they need to interact with each other to feel mutual care, love, respect, and the desire to live and be happy. God created humans in pairs, male and female, and everyone has the same position and rights before the law, including the right to form a family in a legal marriage bond. Marriage is not only a personal matter but also an institution or social agent called the household and family. Marriage has both juridical and sociological consequences. For instance, when a person who was previously considered immature enters into a marriage, they will be considered an adult and change their legal status (Humbertus, 2019).

This concept is explained in the 1945 Constitution of the Republic of Indonesia in Article 28B paragraph (1). Based on this concept, Law No. 1 of 1974 concerning Marriage regulates the marriage of Indonesian citizens conducted outside the jurisdiction of Indonesia. Forming a family means forming a small community unit consisting of a husband, wife, and children. Forming a household means forming a husband and wife relationship in one container, which is called a shared residence.

Previously, Law No. 1 of 1974 stipulated that mixed marriages were based on Hukum Adat (customary law), except for marriages between Indonesian citizens and foreigners (Undang-undang Republik Indonesia Nomor 16, 2019). However, in marriages between Indonesian citizens and foreigners, religious differences may arise. This means that such marriages are subject to the same rules as mixed marriages under Hukum Adat, but they are carried out abroad. This is possible because Article 56 paragraph (1) of the Marriage Law states that “Marriage in Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign national is legal if it is carried out according to the law in force in the country where the marriage took place.” Moreover, the principle of lex loci celebrations in Private International Law states that every civil law act, including

marriage, is subject to the legality of the rules under which the act was committed. Both of these rules determine the law in the country where the act takes place, rather than the parties' country of origin. Indonesian citizens use this as a basis for marrying abroad, even when they have different religions (which may be an obstacle under the Marriage Law).

However, the elucidation of Article 2 of the Marriage Law states that no marriage should be carried out outside the regulations of one's own religion and beliefs, regardless of citizenship. Additionally, the second phrase of Article 56 paragraph (1) of the Marriage Law states that marriages carried out by Indonesian citizens abroad should not violate the provisions of the law. This creates a problem for Indonesian citizens who marry abroad, particularly those of different religions.

Currently, mixed marriages involve not only partners of different religions but also different nationalities, leading to the classification of mixed marriages into two categories: (1) mixed marriages due to religious differences and (2) mixed marriages due to differences in nationality. The Marriage Law provides not only principles but also the basis for marriage law, which has been a guideline for all Indonesian people since its promulgation (Indrawan & Artha, 2019). This shows that the practice of mixed marriages has evolved beyond the classical view, which tends to understand mixed marriages solely in terms of religious differences (Amin, 2016). Interfaith marriage remains a classic issue whose legal status has not yet been agreed upon (Mutakin, 2021).

Thus, if a marriage is carried out by a person who is not of the same religion where each religion or one of these religions prohibits the marriage, then the Marriage Law is prohibited from carrying out the marriage. In the provisions of Article 8 letter (f) of the Marriage Law it has been regulated regarding the prohibition of marriage which reads, that: “Marriage is prohibited between two people who have a relationship whose religion or other applicable regulations prohibit marriage”.

With this article, it should be a consideration for carrying out interfaith marriages. People in Indonesia have different beliefs. This diversity has made the Indonesian nation a nation rich in culture and it is not impossible that interfaith marriages occur from social interaction in Indonesian society. Marriage between two people, men and women who are subject to different laws because of different religions is called interfaith marriage (M. D. Ali, 2017). In this diverse condition of Indonesian society, both in terms of culture, ethnicity, race, religion, contact between one community group and another is certainly unavoidable. This contact between people with different backgrounds later gave rise to a phenomenon in society, namely in the form of interfaith marriages.

One of the most debated issues regarding mixed marriages is when partners have different religions. The problem with interfaith marriages is that there is a fundamental difference in the marriage that may cause various complicated problems to arise in the future (Hanifah, 2019). Therefore, many oppose such marriages, not only within the wider community but also by positive laws in our country and the religious laws they profess. Although it cannot be denied that there are parties who support the existence of interfaith marriages.

At present, society still applies customary law to provide an illustration that the existence of customary law is still recognized and implemented as a compliance with the values and norms that apply in society. In the Hindu religion, marriages for Hindus who do not meet the requirements can be annulled. A marriage is void if it does not meet the requirements to be legalized, for example if it is performed according to Hindu law but

does not meet the requirements, such as those who do not adhere to the same religion at the time of the marriage ceremony cannot be carried out according to Hindu religious law. If one of the bride and groom is not Hindu, they are required to convert to Hinduism, because the prospective groom who is not Hindu is not purified first and then the marriage is carried out, violating the provisions in sloka V89 of the Manawadharmasasstra book. Thus, according to the explanation, every marriage carried out within the jurisdiction of Indonesia must be carried out within one religious line, and marriages of different religions are not allowed to take place. If this happens, it is a violation of the constitution.

In this paper, we conducted a literature review and found that it contains elements of originality, indicating that there is no plagiarism involved. However, to provide a comparison, the author reviewed two other articles discussing similar issues. The first article, written by Soebandi & Haryono (2020), explores the legal consequences of interfaith marriages abroad based on Indonesian positive law. The second article, written by Fans (2021), analyzes the laws and regulations regarding marriage in the perspective of legal certainty. These articles reveal that the focus of this paper is on the legality of interfaith marriages abroad from the perspective of Indonesian law, offering a unique perspective compared to the broader issues discussed in the two journals.

Based on the background above, this research focuses on one problem formulation that will be studied further, namely how the legality of interfaith marriage abroad is viewed from the perspective of Indonesian law. The aim of this paper is to understand and analyze the legality of interfaith marriages abroad from the perspective of Indonesian law.

2. RESEARCH METHODS

The problems studied in this legal journal are approached through doctrinal legal research, which focuses on analyzing legal texts and principles to answer legal questions (Z. Ali, 2021). Specifically, the research examines the rules and norms that apply to the research object, including legal principles, systematics, and vertical and horizontal synchronization. To do this, the study employed a statutory and conceptual approach, which involved reviewing the legal concepts in theory or doctrine relevant to the problems studied (Rismajayanti & Santosa, 2022). For example, the research analyzed the legal principles related to marriage and population administration in Indonesia.

The study used secondary data, consisting of primary legal materials, such as official documents like Law No. 1 of 1974 jo. Law No. 16 of 2019 concerning Marriage, Law Number 23 of 2006 jo. Law Number 24 of 2013 concerning Population Administration, and secondary legal materials like relevant books, journals, information media on the internet, and other sources related to the research problem (Undang-undang Republik Indonesia Nomor 24, 2013).

The data collection method utilized library research techniques to collect primary and secondary legal materials, which were then analyzed using thematic analysis. Specifically, the data and legal materials were coded based on their relevance to the research problem, and then analyzed to identify patterns and themes. The results were presented by describing the data and legal materials, and providing an analysis of the findings.

3. RESULTS AND DISCUSSION

3.1. Legality of Interfaith Marriage Abroad in the Perspective of Indonesian Law

In Article 1 of the Marriage Law, it can be seen that marriage is a physical and spiritual bond between a man and a woman based on the belief in one Almighty God. Therefore, every aspect of marriage must involve religious values. While marriages conducted abroad may not necessarily follow the same procedures as those in Indonesia, such as being carried out according to religious procedures, for example, Hindus performing a series of Manusa Yadnya ceremonies in front of religious leaders, Muslims obtaining consent from an authorized priest, Christians promising allegiance before their pastor, and other religions before their respective religious leaders. Marriages performed abroad may be recorded at the local Civil Registry Office, which means that when a marriage has been registered by an authorized state institution, the marriage is considered legally valid even though the process was not carried out according to the respective religious procedures. Interfaith marriage in Indonesia continues to be a polemic that serves as a legal guideline regarding marriage. There is still controversy when discussing this marriage. If you look at positive law alone, you will not gain clarity regarding marriages like this. This marriage is complicated because to determine its validity, one has to look at the religious law recognized in Indonesia. Marriage cannot be separated from the element of religion (Sunu, 2021). In this case, we will discuss two conflicting rules regarding the legality of interfaith marriages abroad according to Indonesian law.

3.1.1. The legality of interfaith marriages abroad according to Law no. 1 of 1974 jo. Law No. 16 of 2019 concerning Marriage.

Prior to the enactment of Law no. 1 of 1974 concerning Marriage, the Dutch East Indies government, through the King's Decree dated 29 December 1896 No. (Stb. 1898 No. 158) concerning Mixed Marriages, which was later called GHR, regulates interfaith marriages where if two people of different religions want to get married, the civil registry office will register the marriage. However, according to Rismawati (2019), “in the political context of state law in Indonesia, the state has regulated marriage in Law Number 1 of 1974, hereinafter referred to as the Marriage Law, and other implementing legal regulations”. The presence of the Marriage Law became the starting point for renewal, codification and unification of marriage law in Indonesia after the enactment of Law no. 1 of 1974, especially after 1983, the implementation of interfaith marriages became difficult (Wahyuni, 2016) The marriage law is seen from the plurality of religious laws by analyzing the Judicial Review (Ashsubli, 2015). The Marriage Law through Article 57 regulates mixed marriages, namely marriages between two people who in Indonesia are subject to different laws, because of differences in nationality and one of the parties is an Indonesian citizen. If examined the provisions of Article 57, it means that marriages caused by differences in nationality are not differences in religion or belief. Mixed marriage regulations have not provided a way out for parties who carry out interfaith marriages, so that prospective husband and wife couples who have different religions carry out marriages abroad with the aim of obtaining marriage validity.

Interfaith marriages carried out by citizens abroad will also intersect with provisions in International Private Law. The principles of international private law used to regulate the formal validity of marriages are based on the principle of *locus regit actum*, it is accepted the principle that the validity/formal requirements of a marriage are determined

based on *lex loci celebrationis*. In addition, the principles used to regulate the material validity of marriage are:

1) The principle of *lex loci celebrationis*, that is, the material validity of a marriage must be determined based on the legal rules of the place where the marriage was made official/conducted.
2) The material validity of a marriage is determined based on the legal system where each party becomes a citizen before the marriage takes place.
3) The material validity of a marriage must be determined based on the legal system of the place where each party is domiciled before the marriage takes place.
4) The material validity of a marriage must be determined based on the legal system of the place where the marriage took place (*locos celebrationis*), without neglecting the marriage requirements in force in the legal system of the parties before the marriage took place (Seto, 2013).

The principles of civil international law on marriage as mentioned above, the fourth principle is in line with the provisions of Article 56 paragraph (1) of the Marriage Law which states that formally the validity of a marriage conducted abroad between two Indonesian citizens who have different beliefs must be based on the law of the place where the marriage took place. However, according to Seto (2013), "materially the place of the country where the marriage took place must also pay attention, namely: First, the law of the place where each party became a WN before the marriage took place. Second, the legal system from where each party was domiciled before the marriage took place. Third, the marriage requirements that apply in the legal system of the parties before the marriage takes place".

Reviewing the theories of international private law in the field of marriage, it is for prospective husband and wife couples who marry abroad which gives freedom to each partner to carry out the marriage without questioning religion. However, the country where the marriage is held must also pay attention to the material legal system of each spouse domiciled or the marriage requirements of the parties' legal system, in this case the Marriage Law, especially in Article 2 paragraph (1). In the explanation above, interfaith marriages conducted abroad can be considered as a form of legal smuggling carried out by Indonesian citizens to avoid provisions in the Marriage Law, one of which is the obligation to have the same religion before marriage. Legal smuggling which in Dutch is known as "*Wetsontduiking*", the French term, "*fraude a la loi*", the Latin term, "*Gesetzesumgehung*", and the English term, "fraudulent creation of point contact", namely the method carried out by couples who have religious differences to obtain the legality of marriage in a country that does not question religious differences, but by violating the rules of national law. In this case the rules in Article 2 paragraph (1) of the Marriage Law regarding the validity of marriage. As a result of the smuggling of the marriage law, it is null and void by law, known as the principle of *fraus omnia corrupit*. Listyawati (2020) explain that "the provisions of marriage law, whether express or implied, do not regulate the granting of marriages between adherents of different religions. This is because marriage is prohibited between two people who have a relationship that by their religion or other regulations prohibiting marriage does not mean that provisions in Islam prohibit interfaith marriage".

3.1.2. The legality of interfaith marriages abroad according to Law Number 23 of 2006 jo. Law Number 24 of 2013 concerning Population Administration.

Population administration is regulated in Law No. 23 of 2006 which was subsequently amended by Law No. 24 of 2013. This law states that registration of marriage as a right is the same as registration of births and deaths because marriage registration is the right of a married couple, which in turn is the obligation of the state and the authorities to fulfill these rights. Therefore, Article 35 letter a states that "The registration of marriages as referred to in Article 34 also applies to: Marriages determined by the Court". Explanation of Article 35 letter a is what is meant by "marriage determined by the court" namely marriages carried out between people of different religions. The court's decision is the basis for registering the marriage. Then, in Article 34 paragraphs (1) and (2) it states that (1) Marriages that are legal based on statutory provisions must be reported by residents to the implementing agency at the place where the marriage took place no later than 60 (sixty) days from the date of the wedding. (2) Based on the report referred to in paragraph (1). Based on Article 35 letter a Law No. 23 of 2006 jo. UU No. 24 of 2013 above, the Civil Registry Office now has the authority to record interfaith marriages that have received a stipulation from the court. The court in question is the District Court and not the Religious Court and the explanation does not find the competence of the Religious Courts in recording different religions except for *itsbat* marriage.

After the marriage takes place abroad, the couple registers their marriage at the local civil registry. Deeds issued by the local state Civil Registry are universally applicable, but in order to have legal consequences in Indonesia, the marriage must be registered in the registration book at the Indonesian representative and reported to the Indonesian Civil Registry, namely in the area of origin of the Indonesian citizen. Marriage reporting is usually done within a year after the spouse returns to Indonesia to the place of origin of the Indonesian citizen. UU No. 23 of 2006 which was amended by Law No. 24 of 2013 concerning Population Administration, in paragraph 2 of the registration of marriages outside the territory of the Unitary State of the Republic of Indonesia in Article 37. If the marriage abroad is not registered in Indonesia, then the consequence is that the marriage is deemed to have never existed. The legal basis is the Supreme Court Circular No. 3 of 2015 as a guideline for carrying out tasks for the court.

3.1.3. Legality of interfaith marriages abroad according to Supreme Court Jurisprudence.

Furthermore, Supreme Court Decision Number 805 K/Pdt/2013 dated 27 June 2013 (Mahkamah Agung Republik Indonesia Nomor 805, 2013). In this decision, there was a husband and wife couple who married in Hong Kong in 1993 in January. The marriage is then proven by a marriage certificate issued by a local official. Furthermore, after marriage, the couple returned to Indonesia and lived in Central Java. From that marriage two children were born, with this birth they asked for a court ruling regarding the validity of their marriage in Hong Kong and in order to change the birth certificates of their two children. Based on the request, the court stated that the request for determination was unacceptable. Then came the decision of the Supreme Court also stating that the application could not be accepted because the marriage of the applicants was carried out abroad, namely Hong Kong and was not reported to the Representative of the Republic

of Indonesia in Hong Kong as in accordance with Article 37 paragraph (2) of the Population Administration Law.

Differences of opinion regarding the legality of interfaith marriages should also be taken into consideration, namely the decision of the Supreme Court Number 1400 K/Pdt/1986 (Mahkamah Agung Republik Indonesia, 1986). The Civil Registry Office is permitted to enter into and register interfaith marriages. This case stems from the marriage that Ani Vonny Gani P (female and Muslim) wanted to register with Petrus Hendrik Nelwan (male and Christian). The decision stated that at that time the Civil Registry Office was allowed to enter into interfaith marriages. This case began with a marriage that was about to be registered by a Muslim female applicant with her Protestant Christian partner. In its decision, the Supreme Court stated that by submitting a marriage registration at the Civil Registry Office, the marriage had chosen not to take place according to the Islamic religion. Thus, the applicant no longer cares about his religious status (Islam), the Civil Registry Office must carry out and register the marriage as a result of interfaith marriages being held.

From the two jurisprudences of the Supreme Court above, when compared with interfaith marriages conducted abroad, the two couples do not wish to marry according to their respective religious procedures as stated in the Marriage Law but to do so according to local state procedures.

4. CONCLUSION

The status of interfaith marriages conducted abroad is still a legal problem. On the other hand, from the Indonesian legal system, the marriage is valid by basing the argument on the first phrase in Article 56 paragraph (1) of the Marriage Law and in Article 35 letter a of the Population Administration Law and the Supreme Court Jurisprudence, namely the Supreme Court decision No. 1400 K/Pdt/1986. Whereas in Article 2 paragraph (1) and the second phrase in Article 56 paragraph (1) of the Marriage Law, interfaith marriages abroad are invalid because they violate these two articles. If interfaith marriages abroad still occur, the marriage is a violation of the law in the form of law smuggling which can result in the cancellation of all actions and legal consequences.

ACKNOWLEDGEMENT

The author expresses his deepest gratitude to the lecturers of the Faculty of Law. who have been willing to help the author of this article and assist the writer in developing ideas so that writing articles related to the validity of interfaith marriages abroad in the perspective of Indonesian law can run well and on time. The author also does not forget to thank the family and relatives who have provided support and all those who have helped the author in the brainstorming process so that this article can be completed. The author really hopes that all the thoughts that have been outlined in this article can be useful for the development of knowledge related to interfaith marriages conducted abroad.

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IMPLEMENTATION OF DIVERSION TOWARDS CHILDREN WHO COMMIT CRIMINAL ACTS OF DRUG ABUSE IN DENPASAR CITY RESORT POLICE

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Abstract

This study aims to determine the application of diversion for children who commit narcotics abuse in the Denpasar City Police, as well as to identify the obstacles encountered in carrying out diversion related to cases of narcotics abuse crimes committed by children in the same jurisdiction. The research method used is empirical legal research by analyzing the gaps between "das sollen" (what should be) and "das sein" (what is). The approach used is the statutory approach and the fact approach. Data collection techniques include literature search, documentation, and interviews. Furthermore, both primary and secondary data were qualitatively analyzed. The results of this study indicate that investigations into narcotics crimes committed by children in the jurisdiction of the Denpasar City Police involve asking for consideration or advice from the Community Advisor after a crime is reported or complained about. In cases of children who are in conflict with the law related to narcotics crimes during 2020, 2021, and until the end of August 2022, investigators did not make diversion efforts because the child perpetrators had repeatedly committed the same offense. Therefore, the diversion requirements were not met in accordance with the Juvenile Crime Justice System Law. However, in 2019, there was one successful case of diversion attempt. This was because it was the first time the child in conflict with the law was involved in narcotics abuse.

Keywords: *Denpasar City Police, Diversion, Investigation, Narcotics Crime*

1. INTRODUCTION

The current issue of drug abuse among children is a cause for concern for many people, and it is frequently discussed and publicized. In fact, the problem of drug abuse has become a concern for various groups, and almost everyone emphasizes and desires that Indonesian society, especially children, should never try or consume drugs. Unfortunately, as witnessed almost every day through print and electronic media, the circulation of drugs has spread everywhere regardless of age, especially among children. Childhood is a period of self-identity search when children become curious, want to explore, and try various new things, even those with high risks (Setiawan & Purwanto, 2019). Therefore, it is highly likely that the number of drug crimes committed by dealers and users among children will continue to increase day by day.

Children require protection or diversion as they are the future of the nation and a valuable asset for national development. Without a clear future and reliable quality of life for children, it is difficult to carry out national development, and the fate of the nation is at stake (Punyantari & Windia, 2018). Philosophically, children are part of the younger generation and have the potential to fulfill the nation's aspirations in the future. They have unique roles and characteristics, and thus, require special guidance and protection (Maswandi & Kartika, 2019). Child protection is a way to ensure that children receive fair treatment and do not face negative threats. According to Arif Gosita in Salam (2005), children have the right to grow up in a healthy and positive environment, and taking care

of them is a moral obligation. The criminal procedures can cause trauma and stigma in children, and they may also be influenced by adults. Moreover, there are no special cells or locations for children, and diversion is an effective way to prevent them from getting involved in drug abuse or other criminal activities, while also protecting them from excessive trauma and stigma.

The definition of a child, according to Article 1 paragraph (1) of Law No. 23 of 2014 concerning Child Protection, is "a person who has not yet reached 18 years of age, including a baby still in the womb." As mandated by the 1945 Constitution of the Republic of Indonesia, every child has the right to survival, growth, and development, as well as protection from violence and discrimination. Therefore, Indonesia enacted Law No. 11 of 2012 concerning the Juvenile Justice System, which emphasizes the diversion of child crime. Diversion is the transfer of juvenile cases from the criminal justice system to a process outside the criminal justice system (Article 1 Number 7 of Law No. 11 of 2012 concerning the Juvenile Justice System). This transfer is an option that is in line with various international legal standards. The aim of diversion is to keep juvenile offenders away from the justice system and instead guide them into the social system. Judicial institutions can use various considerations to make this transfer, and children can be entrusted to their parents, the Social Services Office, and the government.

According to Article 8 paragraph 1 of the law, the diversion procedure can be based on a restorative justice approach and carried out through discussions involving the child, their parents or guardians, the victim and/or their parents/guardians, community support workers, and professional social workers. Deliberation may be used where necessary involving community members and/or social welfare workers. The interests of the victim, the welfare and responsibility of the child, avoiding negative stigma and retaliation, social harmony and propriety, decency, and public order all need to be considered during the diversion process. The examination stage at the investigation level, the examination stage at the prosecution level, and the examination stage at the court session are the three stages of the process and mechanism for resolving criminal cases in the Criminal Procedure Code (KUHAP).

Drug abuse is a prevalent issue in every society, including the abuse of drugs by children, which is a growing concern for communities. Based on data from the National Narcotics Agency (BNN), there were 12.858 reported cases of drug and psychotropic substance use by perpetrators with education levels ranging from elementary school up until 2007. In July 2019, the Denpasar Police successfully arrested 29 underage drug abusers in Denpasar City.

It seems that the *SatResnarkoba* unit or Drug Investigation Unit of the Denpasar City Police discovered cases of drug abuse involving minors in July 2019. They handled a total of 26 cases, which involved 29 suspects. The lack of harmony between "*das sein*" (legal reality) and "*das sollen*" (what should be) can lead to legal disparities if laws are not properly enforced. The latest law governing narcotics is Law No. 35 of 2009, but when it comes to criminal acts committed by children, it must be synchronized with Law No. 11 of 2012 concerning the Juvenile Justice System and decision-making efforts regarding the resolution of criminal cases involving children. Given this disparity, it is essential to conduct research.

In order to provide a comparison, this research will be compared to two previous studies. The first study was conducted by Virginia Christina from Hasanuddin University in Makassar, with the title "Implementation of Diversi in Cases of Assault Committed by

Children (Case Study No. 20 / Pid.Sus-Anak / 2014 / PN.Mks)." The study aimed to provide information on the implementation of diversion in cases of assault committed by children and the readiness of relevant agencies to implement diversi in the case study No. 20/Pid.Sus-Anak/2014/PN.Mks. The second study was conducted by Mayasari from Sunan Kalijaga State Islamic University in Yogyakarta, with the title "Implementation of Diversi for Offenders (Case Study of the Selaman District Attorney's Office)." This study aimed to provide information on the implementation of criminal law and the protection of the rights of child offenders during the diversion process in the Selaman District Attorney's Office.

Both of these studies differ from this research. While the first study focuses on cases of assault committed by children, this research examines the mechanism of implementing diversion for children who commit drug and psychotropic abuse crimes, based on Law No. 11 of 2012 on the Juvenile Justice System. It aims to address the challenges faced and solutions to implementing diversion related to drug and psychotropic abuse cases committed by children. Similarly, while the second study focuses on the protection of the rights of child offenders during the diversion process, this research also examines the challenges and solutions to implementing diversion for children who commit drug and psychotropic abuse crimes, based on Law No. 11 of 2012 on the Juvenile Justice System.

Based on the background information, the main objective of this research is to investigate the implementation of diversion for children who commit drug abuse crimes in the Denpasar City Police Resort, and to identify the challenges encountered in implementing diversion in cases of drug abuse committed by children in the Denpasar City Police Resort.

2. RESEARCH METHODS

This research was included in empirical research as it aimed to determine the application of diversion to children who committed crimes of drug abuse and psychotropic substances. The approach used in compiling this research was The Statute Approach and The Case Approach to find out the responsibility and legal protection for children who committed criminal acts of abuse of Narcotics and Psychotropics (Daniswara & Purwanto, 2022). The data source for this research was obtained from primary data sources in the form of a number of juvenile cases from 2019 until the end of August 2022 obtained directly from the Denpasar City Police Resort. Meanwhile, the secondary data were in the form of documented legal materials called secondary data. This type of data came from literature studies, not directly from primary sources. Primary legal materials, secondary legal materials, and tertiary legal materials were all types of legal materials. The data collection technique was obtained from the results of interviews, and the data was processed using descriptive qualitative methods.

3. RESULTS AND DISCUSSION

3.1. Implementation of Diversion Against Children in Narcotics Abuse Crimes at the Denpasar City Police

In the Denpasar City Resort Police, diversion is prioritized in cases involving children who are in conflict with the law (drug abusers). The Law on Juvenile Criminal Justice System in Indonesia, Law Number 11 of 2012, which came into effect on July 30,

2014, includes provisions on diversion. Based on this law, not all cases involving children can be requested for diversion. In order for a case involving a child to be considered for diversion, the offender must still be a child (aged 8 to 18 years old), the offense must carry a sentence of less than seven years, and the offender must not have committed a new offense.

In 2020, 2021, and until the end of August 2022, all cases involving children who had committed drug-related offenses were not considered for diversion because these children had already been considered for diversion more than twice in previous processes. Only one case in 2019 was considered for diversion and succeeded because the child involved was a first-time offender. The use of drugs by children is caused by several factors, including environmental factors such as having friends who use or even sell drugs, lack of parental supervision, allowing children to hang out late at night without knowing what activities they are involved in, and excessive pocket money given to schoolchildren.

Based on the interview conducted by the author with Mr. IPDA I Wayan Sudarsana, as the Head of Sub-Division 1 of the Narcotics Unit of the Denpasar City Police, it was explained that "In cases involving children in conflict with the law, especially in 2021 and until the end of August 2022, investigators did not attempt diversion because the child offenders had done it repeatedly or more than once, so the diversion requirements were not met according to the Law on the Criminal Justice System for Children, and only in 2019 and 2020 were there 2 (one) cases of diversion that were attempted and successful, this was because the children involved in the legal process were only involved in drug abuse for the first time" (Interview on February 2, 2023).

Children are so vulnerable that many become victims of drug crimes, especially in the jurisdiction of the Denpasar City Police (Afifah, 2014). As with gambling, narcotics crimes where the perpetrators are identified as narcotics abusers and the perpetrators are also identified as victims of drug abuse is one of them. crime which is classified as having its own uniqueness in cases of juvenile delinquency related to narcotics. It is not surprising that narcotics crime can be described as a victimless crime where the perpetrator also acts as a victim. or drug crime. Gambling, drinking, pornography and prostitution are also victims of crime, apart from drugs. Often, the relationship between the perpetrator and the victim is not seen in victimless crimes. Because everyone is involved and part of the crime, there are no target victims. He can be both a victim and a perpetrator (Devi & Purwanto, 2014).

However, upon deeper scrutiny, the term "victimless crime" is actually inappropriate because all crimes must have a victim or an impact, either directly or indirectly. Using religious language, such changes often have more harm than good. Crimes that are more commonly known as consensual crimes (Makarao, 2013). Article 127 paragraph 3 of the Indonesian Law Number 35 Year 2009 concerning the Child Criminal Justice System, as amended by Indonesian Law Number 11 Year 2012, defines a child victim of drug abuse as a child who unintentionally uses drugs because they were persuaded, deceived, coerced, or threatened to use drugs. According to Graham Blaine, a psychiatrist cited in Anhari (2012) mentioning the causes of drug abuse are as follows:

1) To demonstrate bravery by taking risky and dangerous actions;
2) To oppose parents, teachers, law enforcement, or regulatory authorities;
3) To facilitate sexual actions and distribution;
4) To avoid feelings of loneliness and experience emotional satisfaction;

5) To try to find a sense of purpose in life;
6) To fill a void and alleviate boredom caused by a lack of activity;
7) To alleviate frustration and anxiety caused by insurmountable obstacles and dead ends, particularly for those whose personalities clash;
8) To follow the desires of friends and foster friendship solidarity;
9) To entertain or out of a sense of curiosity.

According to Graham Blaine in Rahayu (2015), the nine causes of drug abuse above do not only affect adults; In fact, several causes of drug abuse also affect children, especially the ninth cause, namely children who abuse drugs because they are curious or just for fun. In addition, Soedjono Dirdjosisworo revealed, the reasons for teenagers using drugs and the age of the child can be broken down into three categories, namely: (Dirdjosisworo, 1982):

1) Those who are interested in experiencing (experience seekers), especially those who seek thrills and new experiences through drug use;
2) Those who intend to escape or avoid the realities of life (the oblivion seekers), especially those who see being in a stupor as the most beautiful and comfortable escape;
3) Those who want to change their personalities (personality change), especially those who believe that drug use can change their personalities, such as becoming more flexible in relationships.

An interview with Mr. IPDA I Wayan Sudarsana, as the Head of Sub-Division 1 of the Narcotics Detective Unit of Denpasar City Police, resulted in an explanation that the examination of children who face the law in various cases, including drug-related cases, must be done very carefully and must focus on their rights. The assessment should be done in a family atmosphere, the questions should not contain coercion, especially for children who are facing legal cases for the first time (or what is known as a criminal offense for adults), the investigator will first attempt diversion.

3.2. Obstacles Faced and Solutions in the Implementation of Diversion Related to Cases of Crime of Narcotics Abuse by Children at the Denpasar City Police

The Police Resort (Polres) has a strategic position in handling drug cases that arise in the community because they are a unit equivalent to the district military command (KOD). To stop the spread of the disease in society, it is crucial for the police to eradicate drugs, especially at the KOD level. The Criminal Law Enforcement Operations Unit, Intelligence Unit, Security and Order Unit, Partnership Development and Community Empowerment Unit, as well as cooperation with the community and related agencies to create synergy, are all needed for the KOD unit to handle drug cases that have recently been rampant in various regions in order to enforce the law at the KOD level between internal and external policies (Dahniati et al., 2021). That is certainly not as simple as discussed in public. In the process of investigating drug crimes committed by children, the Denpasar City Police investigators face several obstacles regarding the diversion process and the investigation of drug crimes committed by children.

Based on the author's interview with Mr. IPDA I Wayan Sudarsana, as the Subsection Chief of *SarResnarkoba* of Denpasar City Police Resort, it was explained that "the basic problem lies with the fact that they are placed near the location of adult examinations, so the information provided during the examination process is not optimal and the lack of facilities is also a major obstacle in carrying out their duties by the

investigators of the Denpasar City Police Narcotics Unit is an internal and very typical obstacle. However, they continue to work professionally and as best as possible with the facilities and budget available, with the hope that both can be improved in the coming years. The minimal arrest time given by the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Justice System, which is 1 x 24 hours as stipulated in Article 30 paragraph (1), and still having to wait for the results of forensic laboratory examinations by the investigators are other internal obstacles."

According to the interview conducted by the author with IPDA I Wayan Sudarsana, the Head of the Sub-Division 1 of the Drug Enforcement Unit of Denpasar City Police Resort, there are also external factors related to the challenges faced in handling drug cases involving children. Sudarsana stated that "the work of the Drug Enforcement Unit of Denpasar City Police Resort could be made easier and lighter if family members could take care of the child and maximize parental supervision, especially when the offender is a child. In addition, the investigators greatly need the awareness of the community to cooperate with the Drug Enforcement Unit of Denpasar City Police Resort in uncovering drug crimes, especially if the perpetrators are children."

The strategy for overcoming drug crimes is carried out, among others, by enforcing the law and meeting the expectations of the community. Countermeasures can be done in several ways, among others

a. In the eradication of drug crimes, the Indonesian National Police Chief (Kapolri) collaborates with related institutions such as the National Narcotics Agency (BNN), Department of Education, Department of Social Affairs, social organizations, and student organizations.
b. Indonesian National Police members at the level of Regional Police Chief (KOD) who achieve success are rewarded or punished by the Kapolri, as well as anyone who violates policies related to drug crimes.
c. The Kapolres (Regional Police Chief) collaborates with several non-governmental organizations (NGOs) that handle drug-related issues to help them as effectively as possible.
d. The Kapolres collaborates with print and electronic mass media to broadcast public service announcements about the dangers of drugs to the younger generation.
e. The National Police Chief coordinates drug operations with partners and Samapta and other functional units at the KOD level, such as criminal justice, intelligence and security.
f. The Kapolres conducted a drug operation simulation in which fostered partners and Samapta, in addition to operational units at the KOD level, both criminal and intelligence, participated in drug operations.
g. The Police Chief appealed to the public to report drug-related activities in the community and involve the community in combating narcotics.
h. The Kapolres routinely conducts secret operations or raids in public places such as campuses, malls, schools and other nightlife venues.
i. The Head of Police provides guidance to the general public about the dangers of opiates in the local area so that people are aware of the dangers of opiates.
j. The police chief gave directions to guardians so that they generally take care of their children to avoid chronic drug use.
k. The National Police Chief educates the younger generation about the dangers of drugs in schools and campuses.

l. In order to make the public aware of the dangers of drugs, the National Police Chief organizes various activities involving religious leaders, community leaders, and youth leaders.
m. In order to educate the public about the dangers of drugs, the National Police Chief makes public service advertisements in the form of posters, brochures, booklets, pamphlets and other outreach tools (Albar, 2022).

The Indonesian National Police (Polri) is demanded to work professionally, and the number of cases they handle is not proportional to the state budget allocated to them. As a result, the handling of cases and the availability of adequate facilities to support the handling of drug crimes within society are greatly affected by these internal obstacles.

4. CONCLUSION

The Denpasar City Police Resort prioritizes diversions in cases involving children in conflict with the law for drug abuse, seeking advice and considerations from Social Counselors in the investigation of such cases. However, in cases where children have previously committed drug crimes more than twice, no diversion efforts were made in 2020, 2021, and late August 2022. Only one case was successfully diverted in 2019. Investigators faced several obstacles during the diversion process, including a lack of public cooperation with investigators and the Satresnarkoba or Drug Investigation Unit of the Denpasar City Police Resort in uncovering drug crimes committed by children, and the public's protective attitude towards these children. Additionally, a lack of attention from family members or parental supervision of children who are vulnerable to outside influences can easily lead them to engage in criminal activities.

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MECHANISM FOR APPLYING FOR CREDIT RELAXATION AT FINANCING INSTITUTIONS IN DENPASAR

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Abstract

This study aims to determine the mechanism of applying for credit relaxation at financing institutions in Denpasar and identify the inhibiting factors in applying for credit relaxation at financing institutions. The method used is empirical, with primary data sources consisting of interviews with respondents and informants, and secondary data sources consisting of library materials such as books, journals, and internet media. The results showed that there is a mechanism for applying for credit relaxation submitted by the debtor to the creditor, which is adjusted to the policies of each financing institution. The factors inhibiting credit relaxation in financing institutions are both internal and external. Internal factors include technological problems, while external factors include frequent interruptions in internet connectivity.

Keywords: *Credit, Financing Institutions, Mechanism, Relaxation*

1. INTRODUCTION

Credit relaxation procedures are guidelines for creditors and debtors to implement credit relaxation. The existence of credit relaxation is necessary for creditors and debtors because of the problems that can occur in credit (Santiago, 2021). The problems with credit in financing institutions usually arise from debtors who are no longer able to continue their credit or who default on their payments. Such debtors will undoubtedly experience difficulties when continuing their credit. Based on the credit, if the debtor is unable to pay, the pledged object will be confiscated by the creditor as the holder of the power of attorney for the pledged object.

Before foreclosure, the creditor will issue a warning to the debtor regarding any payment arrears that have been made (Pohan & Hidayani, 2020). The creditor may allow a grace period for the arrears to be settled. If the debtor fails to settle the arrears within the given time, the creditor may proceed with confiscation or execution (Yudistika & Putrawan, 2019). The creditor has the right to confiscate the debtor's collateral since the creditor holds the security right, which is given by the debtor when obtaining credit. Naturally, the debtor does not want their collateral to be confiscated since it is still essential for their daily needs. Collateral is a basic need in the debtor's life that must be fulfilled (Ayi, 2020). Therefore, the debtor takes steps to ensure that their collateral is not confiscated by the creditor. For example, vehicles used by debtors who work as online motorcycle taxis, vegetable drivers, or even newspaper vendors are essential for their livelihoods. When viewed from the perspective of their profession, the vehicles are crucial in fulfilling the needs of the community. Thus, vehicles can be considered as primary needs because without them, people will experience difficulties in their lives.

In light of this phenomenon, debtors may apply for credit relaxation from their creditors. The purpose of applying for credit relaxation is to alleviate the burden of debt or credit payments to financing institutions. The debtor must submit the application for credit relaxation since they are unable to continue paying their credit due to financial

objections. Heavy credit payments were particularly felt during the pandemic, as many debtors lost their jobs and could not generate income to continue paying their credit at the financing institution. Hence, debtors may apply for credit relaxation at financing institutions.

Submitting an application for credit relaxation to a financing institution is permitted, but the creditor must still refer to the previous agreement between the creditor and the debtor, namely the credit agreement. For creditors, the credit agreement serves as a guideline for the implementation of credit. Everything that has been agreed upon becomes a benchmark for both the creditor and the debtor. According to the provisions, it is mandatory for both the debtor and the creditor to refer to the agreement they have made.

Referring to the agreement made between the creditor and the debtor, there is no clause stating that the debtor is allowed to apply for credit relaxation at a certain time. Debtors do not have the right to apply for credit relaxation at any time. The credit agreement was made based on the conditions of the debtor and the creditor at that time. The credit agreement did not include a clause on the application for relaxation, a time limit for relaxation, or a specified amount of relaxation. The time limit and amount of relaxation were not regulated in the credit agreement. In essence, credit relaxation was not regulated in the credit agreement. If the creditor still refers to the credit agreement, the debtor is not legally allowed to apply for credit relaxation, based on Article 1338 of the Civil Code. This article is the main guideline for making a credit agreement. Everything that has been agreed upon by the creditor and debtor is stated in the agreement and is valid for both parties. Therefore, everything that is not regulated in the credit agreement cannot be disputed or considered a credit problem.

The existence of a credit agreement is essential for both creditors and debtors (Nugraheni & Aziza, 2020). However, if the agreement is considered a law for both parties, then the debtor cannot apply for credit relaxation. If the debtor is unable to apply for credit relaxation, the creditor may confiscate the collateral used as security. This would result in the debtor losing access to the collateral, such as a vehicle, and potentially losing their source of income. The inability to apply for credit relaxation can have a significant impact on the debtor's life, including their ability to work and support themselves. Therefore, it is important for creditors and debtors to consider the possibility of credit relaxation in their agreements and to seek mutually agreeable solutions in cases of financial hardship (Sumarni & Suprihanto, 2005).

Faced with this phenomenon, a very dilemmatic situation arises. On the one hand, if the creditor refers to the credit agreement, the debtor will experience destruction in their life (Nugrahaningsih & Utami, 2021). This will lead to a very difficult situation for debtors, especially in terms of their family economy. On the other hand, if the right to apply for credit relaxation is granted, the agreement must be set aside, or what has been previously agreed upon or considered as law for creditors and debtors must be disregarded. Thus, there is a waiver of the agreement that was made before. However, setting aside the credit agreement does not mean that there is no credit agreement anymore. Faced with this dilemma, creditors have made changes to the credit agreement. Therefore, the credit agreement can still exist and remain enforceable. Additionally, creditors cannot afford to lose income from credit. If the creditor experiences this situation, they will face financial chaos, which will have an impact on the country's economy.

Changes to the credit agreement are possible based on the state's speech. However, the time given for debtors is very short since after six months, debtors must continue their credit payments to financing institutions. The legal basis for these changes is contained in the implementing regulations, which provide relief to debtors from paying principal and interest. OJK's policy provides credit payment relief to debtors during the Covid-19 pandemic due to the economic conditions affecting the community, including job losses (Arbay & Nusantari, 2021).

The government established this program through a Government Regulation in Lieu of Law, based on the need for businesses to aid in the recovery of the national economy. As a result, creditors are obligated to make changes to credit agreements, including granting credit relaxation to debtors. However, technically, the submission of credit relaxation to financing institutions has not been officially regulated by the government, which only allows debtors to postpone credit payments. According to OJK Regulation Number 11/03/POJK/2020, the mechanism for applying for credit relaxation is left to each financing institution, including those in Denpasar. However, since the credit application mechanism is unclear and not officially stipulated, there is no uniformity in providing credit relaxation to each financing institution in Denpasar. This inconsistency is problematic for debtors because if the credit application is not in accordance with the mechanism determined by the financing institution, the application for relaxation can be rejected by the creditor, resulting in the debtor losing their collateral. Therefore, the mechanism for applying for relaxation is essential to be researched and developed to prevent future mistakes made by both parties. Mechanisms are needed to ensure that credit relaxation is granted correctly and uniformly.

The state of the art of this research includes the study conducted by Made Devarni Savitri Pertiwi and Ketut Westra (Pratiwi & Westra, 2020), titled "*Pelaksanaan Perjanjian Kredit Pemilikan Rumah (KPR) Pada PT. BANK PENGKREDITAN RAKYAT (BPR) Haneda Mitra Usaha Jakarta Timur*". This research examines the factors that hinder the implementation of credit in the bank, which is relevant to the current situation where many debtors are struggling to pay their loans due to the pandemic.

Another relevant study is the research by Mahayoni & Mayasari (2021) on *"Penyelamatan Kredit Bermasalah Sebagai Upaya Bank Menurunkan Non Performing Loan (NPL) PT BPR DINAR JAGAD*". This research looks into the issue of non-performing loans and how they can be reduced, which is crucial for the stability of the banking sector during times of economic downturn.

Furthermore, the research conducted by Yoni Priyacitta & Yustisia Utami (2022) on "*Pelaksanaan Kredit Tanpa Agunan Pada PT. BANK PERKREDITAN RAKYAT (BPR) Padma Denpasar*" is also relevant. This research explores the implementation of unsecured credit agreements in a specific banking institution and the legal consequences that may arise if employees resign or there is a termination of employment. This is particularly important in the current economic climate where many individuals may be facing job losses or reduced income, making it difficult for them to repay their loans.

The research aims to address two main legal issues related to credit relaxation in financing institutions in Denpasar. Firstly, the study aims to investigate the mechanism for applying for credit relaxation at financing institutions in Denpasar. Secondly, the research aims to identify the factors that hinder the application of credit relaxation at financing institutions in Denpasar. Therefore, the problem formulation of this research consists of two main questions: What is the mechanism for applying for credit relaxation

at financing institutions in Denpasar? and What are the inhibiting factors in applying for credit relaxation at financing institutions in Denpasar? By answering these questions, the research aims to contribute to a better understanding of the legal framework for credit relaxation in financing institutions in Denpasar.

2. RESEARCH METHODS

The research method used in this study is the empirical juridical method, which involves assessing legal problems in society and relating them to statutory regulations (Ishaq, 2017). The approach used involves examining the experiences of debtors and creditors in applying for credit relaxation. In addition, the study also employs a statutory approach by analyzing Civil Code regulations through literature materials such as books, journals, and internet media.

3. RESULTS AND DISCUSSION

3.1. Mechanism for Applying for Credit Relaxation at Financing Institutions in Denpasar

The mechanism for applying for credit relaxation at a financing institution has several requirements that must be fulfilled by the debtor before submitting an application. These requirements include:

1. The public must wait for further announcements related to credit information from the government through OJK by visiting the official website of the government, which contains announcements to apply for credit relief.
2. Debtors have priority to obtain credit relief by fulfilling the following conditions:
    a) They are directly affected by COVID-19, with credit lower than ten billion, informal workers with daily income, and micro and medium enterprises.
    b) The time period specified for the granting of credit is one year in the form of principal and interest instalments, and extended time by banks and non-banks.
    c) Application to banks and non-banks by making an application through channels communicated with banks or non-banks.
    d) If through a company that is carried out jointly, the board of directors is obliged to validate the data submitted to the bank or non-bank.
3. Debtors who fulfil the above conditions can contact banks or non-banks directly through the facilities available or provided by banks or non-banks to obtain credit relief, without the need to visit the office or bank concerned.
4. Official information from banks and non-banks must be followed by the debtor to ensure the accuracy of the information obtained. Do not easily believe in hoax information, and if a debt collector approaches, the debtor must report it to the bank or non-bank.
5. Debtors and banks or non-banks provide credit relief with a full sense of responsibility.
6. Debtors can report to OJK via telephone or OJK's official website if there is any discrepancy with the above provisions (Sutrisno, 2020).

Debtors do not need to physically visit financing institutions to apply for credit relaxation. Instead, they can wait for announcements regarding credit relaxation through official websites. This regulation also applies to PT Bunas Finance Indonesia and PT Artha Sedana, located in Denpasar. At PT Artha Sedana, for instance, debtors can apply for credit or financing relief by filling out an application form on the official website. Mr. Ferry Raharja, a staff member at PT Artha Sedana, provided the following steps for filling out the form:

a) Provide correct identity information and select the waiver the debtor wishes to apply for, such as restructured credit or other financing.
b) Pay attention to the supporting data related to the application for credit relief that should be uploaded to the email.
c) Click the submit button, then select the email address the debtor wishes to use.
d) The email used by the debtor will automatically adjust to the choice of product and availability of the email address, so the debtor does not need to change the subject line.
e) The debtor is requested to inform the data and attach documents as required in the second stage, to ensure that the application for credit relief can be processed immediately. The documents should be attached to the email in PDF format with a maximum capacity of 2 MB. (This information was obtained from an interview conducted on March 28th, 2022).

The credit relaxation application mentioned above is submitted through the website. However, this method does not provide any immediate feedback to inform the debtor whether their application has been accepted or rejected. The submission process only covers the initial steps of applying for credit relaxation, and there is no credit analysis conducted by the debtor or the creditor during this stage.

Mr. I Putu Agus Adinata, a Collection Staff at PT Bunas Finance, explained that in order to receive credit relief, customers or debtors must follow several procedures. The first step is to apply for credit relaxation online at financial institutions. Next, the creditor will conduct a credit analysis based on the debtor's credit history and other conditions. Once the assessment process is completed, the creditor will decide whether to approve or reject the debtor's application for credit relaxation.

3.2. Factors Hindering Credit Relaxation Submission at Financing Institutions in Denpasar

Applying for credit relaxation through online media can experience obstacles and is divided into two, namely internal and external obstacles to the debtor. According to I Komang Nugraha, as the debtor does not master the internet. By not mastering the internet, the debtor cannot carry out the submission of a credit relaxation application. Submission of credit relaxation is felt to be too complicated and does not make I Komang Nugraha easily apply for credit. The obstacles experienced by I Komang Nugraha included not having an email and not knowing the pdf form desired by the online system. (Interview on 29 March 2022).

Mastery of technology is needed in applying for relaxation online. The proposed credit relaxation must first fill in the data, then choose restructuring or credit relief. In filling in your name and choosing the product that will be submitted for the restructuring

process or credit or financing relief, the debtor feels difficult. Debtors do not understand about the options available in the online relaxation submission column. Debtors do not understand the difference between credit restructuring or relaxation. The choice is felt to be difficult for the debtor and confusing for the debtor, so that the debtor fails to understand the choices presented in the online system. Debtors do not know clearly and correctly about credit restructuring or relaxation.

Credit relaxation is a strategy implemented by creditors to deal with default activities from debtors who have the potential to result in bad credit. This approach also includes efforts to repair debtor credit that cannot fulfill their obligations. The credit relaxation policy implemented by PT Bunas Finance includes a reduction in credit interest rates, which provides credit relief by decreasing the interest paid by the debtor. This reduction in interest rates allows the debtor to allocate more of their income towards paying the principal amount owed. However, to make this happen, a revision or amendment to the previous credit agreement must be made. Additional credit facilities can also be made available to the debtor, such as maturity facilities, administrative deduction facilities, and leeway facilities for monthly payments. Extending the credit period is another form of credit restructuring that aims to ease the debtor's burden of interest and principal (Aris Kaya & Dharmawan, 2020). This method can help relieve the burden on credit debtors and provide opportunities for them to fulfill their obligations. According to Mr. Agus Adinata in an interview on 28 March 2022, these measures can help the debtor to pay their debt more easily.

Credit relaxation in the form of restructuring provides relief to debtors in terms of both interest and principal debt. This relief is given solely to ease the burden on the debtor, and in some cases, it may even be possible to write off the debtor's arrears (Anggraeni et al., 2013). If arrears are written off, then a credit restructuring is required (Widiarta & Purwanto, 2017), which involves creating a new agreement and new interest and principal debts (Wardhani et al., 2019). However, such restructuring efforts are still challenging to carry out because banks and financing institutions need to consider many factors, and credit analysis must be conducted carefully to make a decision or policy for eliminating debtor credit arrears.

4. CONCLUSION

Based on the above discussion, several conclusions can be drawn. Firstly, the mechanism for applying for credit relaxation at financing institutions in Denpasar is conducted through online media. However, the submission mechanism does not provide direct certainty regarding the acceptance or rejection of relaxation, and debtors must wait for an announcement from the official websites of PT Artha Sedana and PT Bunas Finance to proceed to the next stage.

Secondly, the inhibiting factors in applying for credit relaxation at financing institutions in Denpasar are both internal and external. Internal factors include debtors not understanding internet technology and the concept of credit relaxation or credit interest relief, which can cause confusion during the application process. External factors include internet network interference or slow internet networks that are frequently disconnected, which can hinder the application process.

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EXAMINING THE LEGAL STANDING OF DIGITAL SIGNATURES UNDER CIVIL AND ITE LAWS

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Abstract

This research aims to investigate the validity of digital signatures and their evidential value. This study adopts a normative juridical approach, utilizing a statutory method. The findings of this study reveal that: (1) Digital signatures have evidential strength as they are recognized by Article 5 of the ITE Law and are legally binding in civil cases in accordance with the relevant procedural laws of Indonesia. (2) In terms of legality under Indonesian positive law, digital signatures contained in electronic documents are considered valid in civil law, in accordance with the provisions of Article 1320 of the Civil Code and the enactment of Law Number 19 of 2016 Amendment to Law Number 11 of 2008, as well as Government Regulation No.71 of 2019, which deals with the Implementation of Electronic Systems and Transactions.

Keywords: *Digital Signatures, Evidential Value, Validity, ITE Law, Electronic Documents*

1. INTRODUCTION

The COVID-19 pandemic has been making headlines across various countries for the past three years, causing significant changes in people's lifestyles and prompting social, economic, cultural, defense, security, and law enforcement changes (WHO, 2020). Alongside the pandemic, terms such as "new normal," "virtual meetings," and "Zoom meetings" have become commonplace (Kukah et al., 2022). The influence of globalization and the use of information and communication technology have further led to changes, resulting in a new way of life. However, these changes have also brought about negative impacts, such as the rise of unlawful acts in cyberspace (Baz et al., 2021). Therefore, to ensure legal certainty, the government has an obligation to regulate the utilization of information and communication technology.

The emergence of various new phenomena resulting from advances in technology and information has had a significant impact on the lives of global communities, particularly the development of information technology. The era of information technology introduces cyberspace, which is characterized by an interconnected network (internet) that employs paperless communication (Babbar & Chandhok, 2008). Electronic transactions are non-face-to-face, do not require wet signatures, and are borderless, allowing individuals to conduct them with others in different countries using information technology.

With the increasing development of information technology, security aspects have become a growing concern (Ikenwe et al., 2016; White, 2016). When information is advanced, there are risks that must be considered by individuals, including those who send, receive, or view it. This is because the use of electronic information involves a public network, making electronic information accessible to everyone. In cases where one party fails to fulfill the agreed-upon terms of an electronic transaction with the other party, this can be detrimental to those who use information technology for the sale of goods or services.

Legal issues related to the electronic delivery of information, communication, and transactions often arise, especially in terms of evidence and legal actions taken through electronic systems (Manggala et al., 2021). These issues are particularly pressing in the civil sector, as electronic transactions in e-commerce have become an integral part of national and international trade. The convergence of information technology, media, and informatics continues to develop rapidly, in line with new advances in these fields (Harwanto, 2022).

To address these issues, the Indonesian government enacted Law No. 11 of 2008, which was later amended to Law No. 19 of 2016 on Electronic Transactions and Information (hereafter referred to as the ITE Law). One of the critical aspects to consider in electronic transactions is the implementation of a digital signature, which aims to legalize documents or results in electronic transactions. The ITE Law No.19 of 2016 regulates the authentication of rights and obligations in an electronic document that is digitally signed (digital signature).

In today's world, where incidents of data tampering and forgery are becoming increasingly prevalent, it is essential to protect any data sent online (Masur, 2020; Monteleone, 2015). For this reason, digital signatures are gaining popularity among professionals due to their ability to validate the authenticity of a document, file, or software. However, Indonesian positive law only recognizes manuscript signature as the legal force and consequence of a document, despite the increasing displacement of manuscript signatures in trade practices with the use of electronic signatures attached to a document or commonly referred to as electronic documents. This has resulted in debates about the recognition, legal force, and legal consequences of an electronic signature or digital signature, particularly in the context of commercial transactions.

Despite this, trade practices have increasingly displaced manuscript signatures with the use of electronic signatures attached to a document or commonly referred to as electronic documents. This has resulted in debates about the recognition, legal force, and legal consequences of an electronic signature or digital signature, particularly in the context of commercial transactions (Hudzaifah, 2015).

In e-commerce activities, electronic documents with digital signatures can be categorized as written evidence (Mayasari, 2022). However, there is a legal principle that makes it difficult to develop the use of electronic documents with digital signatures, which is the requirement that the document must be visible and stored in paper form. Problems arise when someone wants to make a transaction, such as the purchase of goods. The parties are then faced with various legal issues, including the validity of the documents, digital signatures, the binding force of the contract, and the cancellation of the transaction. One possible solution to this issue is the use of electronic signature laws that have been enacted in many countries. These laws provide a legal framework for the use of electronic signatures and documents, making them equivalent to their paper counterparts.

For example, in the United States, the Electronic Signatures in Global and National Commerce (ESIGN) Act and the Uniform Electronic Transactions Act (UETA) provide legal recognition for electronic signatures and documents in interstate and intrastate transactions, respectively (Wittie & Winn, 2000). These laws ensure that electronic documents and signatures are legally enforceable and have the same legal effect as their paper counterparts.

Similarly, in the European Union, the eIDAS regulation was enacted in 2016 to provide a common legal framework for electronic identification and trust services (Dumortier, 2022). It establishes the legal validity of electronic signatures and ensures their cross-border recognition throughout the EU.

As for Indonesia, so far we have known various digital signatures / types of signatures, namely those in the form of wet thumbprint signatures, electronic signatures, and signatures made by scanning processes such as signs in general or conventional signatures, signatures in their use are recognized in evidentiary law which still need specific study are related to digital signatures / digital signatures.

The validity of electronic signatures/digital signatures in an agreement from the perspective of civil law in Indonesia refers to the ITE Law No. 11 of 2008, which amends Law No. 19 of 2016 on Electronic Information and Transactions, and Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions as implementing regulations for electronic transactions. These are then associated with the Articles of Evidence and the principles of agreement in the Civil Code, where if one of the parties defaults or breaches the promise, legal steps can be taken.

Furthermore, electronic signatures appear in an electronic document that is essentially not a written document (non-paperless). Based on this, the concept of electronic signatures is not in accordance with legal principles that state that a document must be visible, sent, and stored in paper form. With the advancement of technology, it is appropriate that information and technology be accommodated into the civil law system in Indonesia. Hence, many parties doubt the validity of the current digital signature/digital signature both in the scope of the trial and in the agreement process.

Overall, the use of electronic signatures and documents can provide numerous benefits in terms of efficiency, cost savings, and convenience in e-commerce transactions. However, the legal framework for their use must be established to ensure their validity and enforceability. As such, it is important for businesses to familiarize themselves with the applicable laws and regulations to ensure compliance and mitigate legal risks.

This study aims to explore the legal principles that govern the use of electronic documents with digital signatures in e-commerce activities. The findings of this research will have significant implications for the legal framework governing e-commerce transactions, which will facilitate the development of digital technologies in the business environment. Additionally, the results of this study will provide insights into the practical implications of using electronic documents with digital signatures, which will be useful for legal practitioners, policymakers, and business owners.

2. RESEARCH METHODS

This study utilized the normative juridical research method, which involved analyzing library materials such as literature, laws, and regulations, as well as agreements related to the research problem (Soekanto, 2007). The research approach consisted of two parts: a statute approach and a case approach. The statute approach involved examining all relevant laws and regulations related to the legal issues being studied, while the case approach focused on analyzing relevant court cases and other legal precedents. By combining these two approaches, this study aimed to provide a comprehensive understanding of the legal issues at hand.

3. RESULTS AND DISCUSSION

3.1. The Evidentiary Value of Digital Signatures in the Legal System

1) Civil Case Proof in Indonesia

Evidence is the presentation of valid evidence according to the law by litigants to the judge in a trial with the aim of bolstering the truth of legal arguments concerning the facts in dispute. Evidence plays a central role in the judicial process, particularly in civil cases, where parties have the opportunity to demonstrate the veracity of the legal facts at issue during the evidentiary stage.

In Indonesia, positive evidentiary law is still based on the HIR / RBg and BW Book IV, which were products of the Dutch East Indies government (Kusmayanti & Anrova, 2021). The evidentiary law contained in the HIR and RBg is formal evidentiary law, while in BW, it is material evidentiary law. Material evidentiary law regulates the admissibility of certain evidence in court and its evidentiary power, while formal evidentiary law regulates how to conduct proof.

Evidence is a crucial element of court proceedings that helps judges to apply the law and make decisions. The Civil Code specifies the types of valid evidence and their respective evidentiary powers in Article 1866. Article 164 of the HIR / 284 of the RBg and Article 1866 of the Civil Code define the evidence that can be used to settle civil disputes in a limitative manner, arranged in sequence from letter evidence, witness testimony, suspicions, confessions, and oaths.

In the Civil Code, evidence is generally regulated in Book Four (IV), which covers Evidence and Expiration. The civil procedural law follows the principle of "Seeking Formal Truth" regarding the evidentiary system, meaning that the judge is passive when examining the case. Therefore, the judge is not allowed to take active initiatives in adding or submitting necessary evidence because it is the right of each party to do so.

One of the judge's responsibilities in seeking formal truth is to investigate whether the legal relationship that forms the basis of the lawsuit actually exists or not. The plaintiff must prove the existence of this legal relationship to win the case. Another principle of civil case evidence is that decisions must be based on proven facts presented during the trial. Judges cannot make decisions without evidence. The rejection or granting of a lawsuit must rely on evidence derived from facts submitted by the parties. Proof can only be enforced based on the support of facts; proof cannot be enforced without existing facts.

With the advancements in information technology and telecommunications, new forms of evidence in civil relations have emerged. These developments in society have led to the emergence of various types of modern transactions, which have given rise to evidence that is not regulated by the rules of civil procedure (HIR / RBg). From photocopies to electronic evidence, society's progress is accompanied by advancements in information technology and telecommunications, leading to new types of evidence in civil legal relations.

According to literature, photographs (portraits) and sound or image recordings, including CCTV recordings, cannot be used as evidence because they can be fabricated and do not necessarily prove what actually happened. However, with technological advancements in the field of information and telecommunications, the originality of a photograph and sound or image recording can now be determined using specific techniques.

Although the law of evidence has regulated valid evidence in detail, in some civil disputes, particularly those related to e-commerce, electronic signatures/digital signatures are used as evidence in court. However, evidence in such cases is limited to what is specified in Article 1866 of the Civil Code. The presence of ITE Law No.19 of 2016 and PP No.71 of 2019 provides further legal support for the use of digital signatures/electronic signatures attached to an electronic document.

2) Digital Signature Evidence at Trial

The emergence of Industry 4.0 has led to many physical activities being replaced by digital-based industries. To improve time and cost efficiency, the concept of digital signature, also known as electronic signature, has become a popular way of signing contracts.

Digital signature can be used to verify the authenticity and validity of electronic evidence, such as documents or electronic information (Hudzaifah, 2015). Unlike a handwritten signature that is physically attached to a document, a digital signature consists of two cryptographic keys, a public key and a private key, that authenticate each other. The person creating the digital signature uses their private key to encrypt the data associated with the signature, while the only way to decrypt the data is with the signer's public key.

The purpose of a digital signature is to ensure the authenticity of the document by marking it in a way that identifies the sender and ensures that the integrity of the document is not changed during transmission. This is done through the use of hash functions, which produce a unique value for each data entered. If there is a change in the document content, the hash value generated will be different, allowing the recipient to compare the hash value. If the hash value is the same and appropriate, then the data is authentic, and its authenticity is guaranteed. Conversely, if the hash value is different, then the data is suspicious and has likely been modified.

The use of digital signature in the process of forming an agreement or contract (e-commerce) facilitates the proof mechanism in civil cases by showing where the electronic data came from and guaranteeing the integrity of the message. This can be done through the existence of a digital certificate obtained from a certification authority by the user or subscriber.

The process of proving only occurs if there is a dispute between the parties, which is usually resolved by a clause in the agreement. Generally, settlement is through litigation or non-litigation. Evidence is one of the most important things in the process of resolving civil disputes in court. The evidentiary stage is used to prove the existence of an event and whether one of the parties was involved or not in front of the trial. With the existence of evidence, the parties try to establish the truth of an event, or by using evidence to prove whether the party actually carried out the event or not. This allows the judge to obtain the necessary information to make a decision and resolve the dispute in the trial.

The recognition of a digital signature as valid evidence can be seen from the provisions of Law No.19 of 2016 concerning Electronic Information and Transactions, and Law No.11 of 2008 concerning ITE. Article 5 of the law states that "Electronic information and/or electronic documents and/or their printouts are valid legal evidence and are an extension of valid evidence in accordance with the applicable Law of Procedure in Indonesia in accordance with the provisions regulated in this Law."

Based on the above provisions, it is explained that electronic signatures can be used as valid evidence in court, similar to other evidence regulated in the Civil Code. Therefore, Article 1869 jo Psal 1874 of the Civil Code and Article 1 of Ordinance 1867 No.29 apply, ensuring that the electronic/digital signature attached to the electronic document has legal force. The act of signing confirms agreement to the information or electronic document signed and guarantees the accuracy of the contents in the writing.

With the issuance of Law No.11 of 2008 concerning Electronic Information and Transactions jo Law No.19 of 2016, there was a development in the law of evidence. Previously, electronic evidence could only be used as presumptive evidence in civil cases or as evidence of clues in criminal cases. However, electronic documents and printouts are now firmly recognized as valid evidence in court, as long as they meet certain conditions as determined by law. Article 6 states that electronic information and electronic documents can be used as evidence in court. Nevertheless, each electronic information/document is considered valid evidence only if it is accessible, displayed, guaranteed integrity, and accountable.

For electronic documents or electronic information to be considered valuable evidence, they must be able to explain a situation. In a trial, a key issue is the comparison of wet signatures in a traditional deed or letter with electronic/digital signatures in an agreement (such as e-commerce transactions). Article 11 paragraph (1) of Law Number 19 of 2019 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions confirms that electronic/digital signatures have legal force and legal consequences.

Various mechanisms can be used for producing electronic signatures, as mentioned in Article 59 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. However, not all electronic signatures carry legal force and legal consequences.

The provisions of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE explain that electronic/digital signatures have legal force and can be used as valid evidence in court as long as they meet the applicable requirements. Further provisions can be found in Article 11 of the ITE Law, which states that "Digital Signature/Electronic Signature has legal force and legal consequences as long as it meets the following requirements: (a) the data for making electronic signatures is related only to the signatory; (b) the data for making electronic signatures during the electronic signing process is only in the power of the signatory; (c) any changes to electronic signatures that occur after the time of signing can be known; (d) any changes to electronic information related to the electronic signature after the time of signing can be known; (e) there are certain ways used to identify who the signatory can be known; (f) there are certain ways to show that the signatory has given approval to the related electronic information."

Compared to wet signatures that can be copied and require laboratory examination to prove identical or non-identical signatures, the security of electronic signatures is ensured by asymmetric cryptography. Each bit of a digital signature is encrypted by a legitimate issuing institution, certifying the authenticity and security of the electronic signature through a hardware security module (HSM). The combination of hardware, software, and procedures provides additional protection against unauthorized access.

The above description highlights the importance of electronic documents signed with digital signatures, particularly after the issuance of Law No.19 of 2016 concerning

Electronic Information and Transactions and Government Regulation No.71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Recognition of electronic documents signed with digital signatures is an extension of the proof of civil procedural law in Indonesia, such that all electronic transactions with electronic signatures are considered as deeds with the same evidentiary strength as traditional deeds, provided that the digital signature is a certified electronic signature issued by an Electronic Certificate Operator (PSrE) licensed by the Ministry of Communication and Information.

The validity of a digital signature/electronic signature depends on whether it is certified or uncertified. If a party disputes the validity of an electronic signature, the judge must obtain expert testimony from the digital certificate issuing institution to determine whether the signature is valid and issued by the institution. In the case of an uncertified electronic signature, its validity is similar to that of a disputed wet signature, which must be resolved through laboratory examination. These provisions highlight the importance of electronic signatures in modern business and legal transactions, and the need for robust security measures to ensure their reliability and authenticity.

3.2. The Validity of Digital Signature Viewed from The Perspective of Civil Law and ITE Law

1) Regulation on Digital Signatures in Indonesia

Digital signatures/electronic signatures are gaining popularity in Indonesia as they offer a convenient and efficient way to sign contracts without face-to-face interaction or physical documents. Despite its many benefits, there are doubts about whether digital signatures can be legally recognized in Indonesia. Signatures are a fundamental part of society and are important for representing agreement on a matter. They serve four main purposes, including providing evidence, indicating approval, fulfilling formalities, and improving efficiency. Therefore, it is crucial to have a law that regulates digital signatures/electronic signatures.

In his book, Tan Thong Kie explains that a signature serves as a statement of the signer's will, indicating that they intend for the written text to be considered their own by affixing their signature underneath it (Kie, 2000). This concept is also reflected in Article 1875 of the Civil Code, which states that a written document bearing a signature recognized by the person to whom it is presented or deemed to be justified by them, carries the same weight as an authentic deed for the signatory, their heirs, and those who receive rights from them.

Thus, according to the Civil Code, the validity of a signature depends on the recognition of the signer. As a new technology innovation in Indonesia, digital signatures / electronic signatures are now regulated by legislation, including the 2008 Law on Electronic Information and Transactions (ITE) and its 2016 amendment, Law No. 19 of 2016 on Electronic Information and Transactions, which specifically address the use of digital signatures / electronic signatures and electronic certificates.

Since the enactment of the ITE Law in 2008 and its amendment to Law No.19 of 2016, it has been the foundation for the implementation of digital signature technology / electronic signatures in Indonesia. However, it was only in 2012 that a government regulation was issued, which was later amended to PP No. 71 of 2019 concerning the Implementation of electronic systems and transactions, that became the legal basis for

online transactions and the implementation of digital signatures / electronic signatures in Indonesia.

Based on existing laws and government regulations, digital signatures / electronic signatures must have supporting technological capabilities that ensure the fulfillment of predetermined requirements. These requirements include the attributes of a digital signature / electronic signature and its ability to verify.

Regarding the attributes of digital signature / electronic signature, authentication capability is crucial to guarantee the authenticity of digital signatures / electronic signatures and digital documents. This is because digital technology allows anyone to copy and duplicate documents and digital signatures / electronic signatures themselves. Therefore, the authentication aspect of digital signature/electronic signature is essential.

Digital signatures / electronic signatures have two aspects that need to be fulfilled for their validity:

1. Authentication of the owner of the digital signature / electronic signature. This means that the electronic signature must be owned by the person who signed the digital document.
2. Document authentication. Digital documents must be authenticated after being signed to ensure that they remain unchanged and cannot be falsified.

Therefore, with the enactment of Law No. 19 of 2016 amending Law No. 11 of 2008 on Electronic Information and Transactions, and Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, digital signatures / electronic signatures have legal recognition in Indonesia.

Law No.71 of 2019 concerning the Implementation of Electronic Systems and Transactions, Article 60 paragraph (2) identifies at least two types of digital signatures / electronic signatures: (a) certified electronic signatures, which must meet the requirements for validity, legal force, and legal consequences of electronic signatures as referred to in Article 59 paragraph (3). This type of electronic signature must use electronic certificates issued by an Indonesian Electronic Certificate Service provider and be created using a certified electronic signature-making device. (b) Uncertified electronic signatures, which are made without using an electronic certificate service provider.

PP No. 80 of 2019 concerning Trade through Electronic Systems further regulates that "proof of transactions using certified or indented electronic signatures can be considered as authentic written evidence" in Article 49 paragraph 3. Certified electronic signatures must be provided by an Indonesian Electronic Certificate Provider (PSrE Indonesia) that has passed an audit referring to the standards issued by the Ministry of Communication and Information Technology (Kominfo) under Article 1 number 5 of Permenkominfo No.11/2018 concerning the Implementation of Electronic Certification. An electronic certificate organizer is defined as a legal entity that functions as a trusted party providing and auditing electronic certificates.

A certified digital signature / electronic signature is made using an electronic certificate issued by PSrE Indonesia (Haryanto et al., 2020). According to the ITE Law, an electronic certificate is a file that contains digital signatures / electronic signatures and identities that indicate the legal status of the parties involved in electronic transactions, and is issued by PSrE Indonesia. In short, electronic certificates are files that can prove a person's identity and validate electronic signatures, ensuring the authenticity, integrity, and non-repudiation of information signed with electronic signatures.

Certified digital signatures / electronic signatures that use electronic certificates provide three guarantees of trust for the owner. Firstly, they guarantee data authenticity by showing the identity of the certificate owner in electronic documents. Secondly, they ensure integrity so that activities in electronic documents that have been signed can be monitored. Finally, they guarantee non-repudiation, proving the authenticity of the signature so that the signer cannot deny having made electronic transactions.

Certified and uncertified digital signatures/electronic signatures differ fundamentally in terms of data validity and legal certainty. The validity and legal certainty can only be provided by an electronic certificate provider (PSrE) licensed by the Ministry of Communication and Information (KOMINFO). There are currently at least nine recognized electronic certification providers in Indonesia, including Privy Digital Identity (PrivyID), Indonesia Digital Identity (VIDA), Djelas Signature Bersama, Tilaka Nusa Teknologi, Digital Signature Asli, Printing Money of the Republic of Indonesia (PERURI), Solusi Net Internusa (Solusi Net), National Research and Innovation Agency (BRIN), and Electronic Certification Center of the State Cyber and Crypto Agency.

According to the ITE Law, a certified Digital Signature/Electronic Signature is considered valid in the eyes of the law when it meets several requirements. Firstly, the electronic signature creation data should be related only to the signer. Secondly, the electronic signature creation data should only be in the power of the signatory during the electronic signing process. Thirdly, any changes to electronic signatures that occur after the time of signing should be known. Fourthly, any changes to electronic information related to the electronic signature after the time of signing should also be known. Fifthly, a certain method should be used to identify the signer. And sixthly, there should be a certain way to show that the signing has given approval to the related electronic information.

Verification capability is the next step in digital signature/electronic signature verification. Verification is needed to prove that the electronic signature included in the digital document is indeed an authentic signature. This verification capability is crucial to ensure that digital signatures are not forged or used by parties other than the signature owner.

2) Mechanism Attributes of Digital Signature/Electronic Signature Procedure

A digital signature or electronic signature requires proof of identity to ensure that the correct person is signing the document (Khrykova et al., 2021). This is accomplished using a cryptographic algorithm known as a hash function, which creates a unique electronic signature. The hash allows for the storage of personal data such as biometric records without the risk of it being copied by unauthorized parties. To access this information, a token device or an identity verification system, such as a biometric scanner, is required to authorize a person to sign.

All technological capabilities for electronic signatures must be provided by the Electronic Certificate Provider or PSrE. The PSrE must receive certification from the regulator, which in this case is the Ministry of Communication and Information, to issue electronic certificates for certified digital signatures or electronic signatures.

Regarding the procedure for creating a digital signature or electronic signature, the applicant must register through the Indonesian service (PSrE) that has received recognition from the Ministry of Communication and Information to issue electronic certificates. Electronic certificates are electronic certificates in electronic form that

contain electronic signatures and the identity of the legal subjects of the parties involved in electronic transactions, issued by PSrE Indonesia.

As previously mentioned, the digital signature / electronic signature and identity of the legal subject of the parties in electronic transactions are issued by PSrE Indonesia. Additionally, the Ministry of Communication and Information has described three stages that must be completed by the applicant to obtain an electronic certificate for a certified digital signature / electronic signature.

1. Submission Stage: The applicant registers with PSrE Indonesia and must meet the specific requirements of each PSrE Indonesia, which can be found on their respective websites. Applicants who work as State Civil Apparatus (ASN) must register with the Government PSrE.
2. Verification Stage: PSrE Indonesia verifies the applicant's data and compares their population data, such as NIK, name, date of birth, photo, and biometric data (fingerprints), to the authorized population data management database of the Ministry. If the data is valid and correct, the issuance process will continue.
3. Issuance Stage: Applicants who have passed the verification stage will be provided with an account to download the electronic certificate issued by PSrE Indonesia. This account can also be used to manage digital signature/certified electronic signature services, certified electronic seals, and other services that can be used as a substitute for company seals. Once the owner has an electronic certificate, they can sign electronic documents anytime and anywhere using various platforms such as global digital business, e-banking, peer-to-peer lending services, agreements, and more.

Security features used in digital signatures/electronic signatures to ensure that documents are not altered and that digital signatures/electronic signatures are valid include:

1. PINs, passwords, and codes: Used to authenticate and verify the identity of the signer and approve their signature. Email, username, and password are common examples.
2. Time stamping: Provides the date and time of the signature, which is useful for legal proceedings and situations where time is critical, such as stock trading or lottery ticket issuance.
3. Asymmetric cryptography: Uses a public key algorithm that includes both private and public key encryption/authentication.
4. Checksum: A long string of letters and numbers representing the correct digits in a piece of digital data, which can be used for comparison to detect errors or changes. The checksum acts as a fingerprint of the data.
5. Cyclic redundancy checking (CRC): An error detection code and verification feature used in digital networks and storage devices to detect changes to raw data.
6. Certificate Authority (CA) validation: CAs issue electronic signatures and act as trusted third parties by accepting, authenticating, issuing, and maintaining digital certificates. The use of CAs helps avoid the creation of fake digital certificates.

7. Trust Service Provider (TSP) validation: A TSP is a person or legal entity that performs digital signature validation on behalf of a company and offers signature validation reports.

Starting from the description above, the presence of a digital signature/electronic signature begins with an agreement between two parties who then enter into a contract. Therefore, we refer to Article 1320 of the Civil Code, which states the legal requirements of an agreement, including:

1. There is an agreement for those who bind themselves;
2. The readiness of the parties to make an agreement;
3. A certain thing;
4. A halal cause (causa).

The agreement must be based on the consensus or agreement of the parties. With the principle of consensualism, the agreement is said to have been made if there is an agreement or conformity of will between the parties. No agreement, no contract (no consent no contract).

In an agreement that uses digital signatures, the agreement is considered valid since the agreement has been reached. In Article 1338 paragraph (1) of the Civil Code, it is stated that "all legally made agreements shall be binding for those who make them." From the wording of this provision, the agreement is binding if it fulfills the conditions for the validity of the agreement.

The consensual principle states that an agreement is born once the agreement is reached, and to reach an agreement, there must be a statement of will. Therefore, as long as the parties to the digital signature / electronic signature recognize the agreement, it is valid. However, if one party denies it, that party must prove it.

Based on Article 1338 paragraph (1) of the Civil Code, "All agreements made legally shall apply as laws for those who make them." Therefore, an agreement that includes a digital signature / electronic signature remains binding as long as there is no denial from the party making the agreement. To assess the validity of an agreement with a digital signature / electronic signature, it is necessary to analyze its validity based on the provisions of Article 1320 and Article 1338 of the Civil Code, Law No.11 of 2008 jo Law No.19 of 2016 concerning Electronic Information and Transactions, and PP NO.71 of 2019 concerning System Administration and Electronic Transactions.

4. CONCLUSION

In conclusion, the digital signature has become a crucial addition to the positive civil law system in Indonesia, particularly in the field of evidence. Its evidentiary power is recognized in the ITE Law, which considers electronic information, electronic documents, and/or printouts as valid legal evidence. The validity of a digital signature can be evaluated through its implementation procedure, which uses cryptography techniques and user information to ensure its safety. The Civil Code and Article 1320 do not require specific forms or media used in transactions, which makes digital signatures a legally binding agreement as long as it meets the six conditions stated in the ITE Law Article 11 paragraph (1). The government needs to support and facilitate infrastructure and human resources development to promote the use of digital signatures and electronic

transactions in Indonesia. Furthermore, in the future, there is a need to regulate evidence in the Civil Code, which follows the development of modern technology. Overall, the digital signature plays a crucial role in ensuring efficient and secure electronic transactions and upholding the rule of law in Indonesia.

Given the growing reliance on digital signatures and electronic documents in today's society, it is important that the legal system keeps pace with these technological advancements. To ensure that justice is served, it is crucial to change our current evidentiary system and move away from a narrow, restrictive approach to evidence. This means that civil procedure law should be updated to reflect modern technology and enable the recognition and admissibility of electronic documents and digital signatures in court proceedings.

In addition, it is the responsibility of the government to create an enabling environment for the implementation of digital signatures and electronic documents. This requires investing in infrastructure and human resources, and supporting the development of technology that can facilitate the use of digital signatures and electronic documents in Indonesia. By doing so, we can ensure that our legal system is not only up-to-date, but also accessible and efficient for all stakeholders.

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DEVELOPMENT OF BUSINESS LAW IN THE PERSPECTIVE OF PANCASILA IN THE ERA OF INDUSTRIAL REVOLUTION 4.0

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Abstract

This article aims to explore the development of business law in the context of Pancasila during the era of the Industrial Revolution 4.0. The research methodology used is normative juridical, which examines the implementation of positive legal provisions in business law. The data used includes primary and secondary sources, obtained from legal products related to business and trade. The rapid globalization brought by the 21st century industrial revolution has resulted in significant changes in various aspects of law, politics, economics, technology, and culture. As the Industrial Revolution 4.0 relies heavily on telematics (telecommunications, media, and information), it is essential to adjust regulations in the field of business law to accommodate these changes. The Indonesian government must engage in legal development, legal harmonization, and legal reconstruction to update legal products in line with the global situation. This includes building a legal system that reflects Pancasila and the 1945 Constitution to adapt to the industrial era 4.0. As the development of business law in the Industrial 4.0 era must be consistent with Pancasila's values and the 1945 Constitution, it is crucial to prioritize these values in legal development.

Keywords: *Business Law, Industrial Revolution 4.0, Legal Development, Pancasila*

1. INTRODUCTION

Arnold Toynbee is credited with coining the term "industrial revolution" in his book, Lectures on the Industrial Revolution (Wilson, 2014). The term, which is now commonplace, refers to the current era known as the fourth industrial revolution or industrial era 4.0. This latest revolution has surpassed the previous ones that began with James Watt's discovery of the steam engine in 1784, which triggered the first industrial revolution (Jones, 2020). The second industrial revolution was pioneered by the discovery of electricity in 1870, and the third was sparked by the emergence of computer technology (Olaitan et al., 2021). In the early 21st century, globalization, along with the widespread use of the internet and information technology, has become a driving force behind the industrial revolution 4.0 (Lee et al., 2018).

Telecommunications is a driving force that is creating a truly global economy, allowing businesses to compete in a cosmopolitan market. In the current era of the fourth industrial revolution, which began in the 21st century, significant changes are taking place that are breaking down barriers between the physical, digital, and biological worlds (World Economic Forum, 2016). Today, we have at our fingertips all the communication capabilities that we could ever need.

As communication technology has developed, it has become a crucial element of trade and business, both domestically and internationally. Modern society, sometimes referred to as the "disruption era" or the industrial revolution 4.0, is characterized by information technology, which has transformed the business landscape. This has created a borderless trade environment throughout the world, facilitated by the internet and other technological advancements.

However, these rapid technological changes, which are both positive and negative, also pose a threat to human life. The legal system must adapt to regulate this new world effectively. The progress made by the business world and supported by information technology has significant implications for the laws that govern it, both directly and indirectly (Sanusi, 2010).

Erni R Ernawan argues that ethical principles should underlie business practices, which include autonomy, honesty, justice, mutual benefit, and moral integrity (Ernawan, 2007). In contrast, the Caux Round Table's Principles for Business includes seven principles: responsibility, economic and social impact of business, innovation, justice and the world community, business behavior, respect for regulations, support for multilateral trade, respect for the environment, and avoiding dirty practices (Curtin, 1996; Phillip, 2014).

Indonesia's development has been spurred by advances in science and technology, particularly in the era of the fourth industrial revolution, which has allowed for electronic trade through digital electronics, artificial intelligence, big data, and robotics. However, this technological development is a double-edged sword, with positive contributions to welfare, progress, and borderless world relations, but also potential negative social, economic, and cultural changes. Increased investment, productivity, and quality can be offset by shifts in conventional roles in the market, disputes, unlawful acts by business actors, and a lack of government regulation of new business models.

While the industrial revolution 4.0 cannot be resisted or avoided, the government must carry out legal development in response to global demands and face international contradictions and dilemmas in trade and business. The challenge for the government is to build national laws with an Indonesian personality based on the basic philosophy and ideology of Pancasila. Legal development based on Pancasila and the 1945 Constitution should aim for a civilized society with dignity, but is challenged by foreign ideologies.

As the world becomes increasingly interconnected, businesses need to adapt to new technologies and market demands, and the legal framework needs to keep up with these changes. The principles of Pancasila provide a solid foundation for the development of laws that promote ethical and responsible business practices, while also protecting the rights and interests of all stakeholders. However, there are also challenges and potential negative impacts that need to be addressed, such as the potential for social fragmentation and economic inequality. It is important for the government to ensure that legal development is a dynamic process that responds to the changing needs of the business environment, while also upholding the values and principles of Pancasila and the Indonesian Constitution (Edelia & Aslami, 2022). By doing so, Indonesia can continue to grow and prosper in the era of the Industrial Revolution 4.0, while also maintaining its unique identity and cultural heritage. Therefore, this article aims to explore the development of business law in the context of Pancasila during the era of the Industrial Revolution 4.0.

2. RESEARCH METHODS

The research methodology utilized in this study is the normative juridical research method (Ibrahim, 2005), which focuses on examining the implementation of positive legal provisions in action within the context of business law during the Industrial Revolution 4.0 era. The primary and secondary sources of data used in this study include

legal products related to business and trade. The primary data were obtained through primary legal sources, while the secondary data were gathered from various other sources, such as academic publications, government reports, and online databases. The utilization of this research methodology allows for an in-depth analysis of the legal framework governing business activities in the era of the Industrial Revolution 4.0, thereby providing insights into the implications of such legal developments for businesses and society as a whole.

3. RESULTS AND DISCUSSION

3.1. The Positive and Negative Effects of Globalization

Globalization is a cultural process that has brought significant changes in various fields, including the economy (Devi, 2017). The expansion of markets, both in developed and developing countries, is one of the outcomes of globalization. However, this expansion is a double-edged sword. While it provides material abundance, it also creates numerous problems that are of concern to human civilization (Okoro et al., 2017).

Excessive consumptive behavior resulting from market expansion can lead to various social problems in society, such as extravagance, corruption, and higher crime rates. These problems affect all generations and layers of society, regardless of age or social status.

In the current industrial era 4.0, globalization is characterized by the formation of regional joint marketing such as AFTA (Asean Free Trade Area), NAFTA (North American Free Trade), and APEC (Asia Pacific Economic Cooperation), among others. These organizations aim to promote economic growth, encourage free trade, and strengthen communities throughout the world.

The formation of these organizations brings major changes to the international economic landscape, but it also poses challenges for countries, particularly those in the developing world. To benefit from these changes, countries need to adapt to the new economic environment, ensure that their legal systems are up to date, and create policies that are in line with their national interests.

The industrial era has given rise to an industrial society characterized by high levels of consumption. This consumption can create contradictory and dilemma-filled traits, leading to a society that can only exist in such conditions. The rapid progress of the globalization process, driven by the impact of technology on industry, has resulted in the Internet becoming the main pillar of national and international trade. The industrial revolution 4.0 era will usher in a world that some call "tangible virtuality," fundamentally changing the way of life and work on a national and international scale. Today, it's hard to imagine modern life without the largest internet network in the world connecting over 1000 countries, with individuals in these countries interconnecting. In the national industrial sector, the industrial revolution presents an opportunity to accelerate technological mastery as a key determinant of competitiveness in the national and international trade arena. In the era of industrial revolution 4.0, with its emphasis on the digital economy, artificial intelligence, big data, robotics, and disruptive innovation, businesses can sustain development and growth.

The fourth industrial revolution, which fosters increased connectivity and interaction, and the removal of boundaries between people, machines, and other resources, represents a technological shift that will change the way people live, work, and

entertain themselves. Bill Gates, the president of Microsoft Corp, has called it the creation of a "new digital world order," which promises to improve our lives. In early April 2018, the government unveiled a strategy for national industry that focuses on innovation in the food and beverage, electronics, automotive, textile, and chemical industries, while also declaring "10 New Bali" to increase the contributions of the handicraft industry, creative industries, and tourism to the global economy. The fourth industrial revolution, accompanied by the widespread use of science and information technology (IT), will bring changes to the mindset, work patterns, and lifestyles of people in different countries (Choi, 2020). Furthermore, humans will remain at the forefront of the development of a new civilization based on the fourth industrial revolution, which he identifies as having four characteristics: simplicity, speed, affordability, and accessibility.

3.2. The Challenges and Opportunities of the Fourth Industrial Revolution

The fourth industrial revolution, also known as the industrial era 4.0, has led to the development of smart factories that use the internet of things (IoT) (Murofushi & Tavares, 2017; Shrouf et al., 2014). These factories rely on electronic systems that are safe, reliable, and responsible to prevent illegal acts that could cause harm. The main goal is to provide legal certainty and benefits based on the principles of prudence and good faith.

Electronic transactions in the industrial era 4.0 are a modern business model that differs from conventional business practices. Agreements with other parties can now be made without physical meetings, signatures, and paper, making them more practical and efficient. These transactions can drive business activities and improve the economic sector. However, they can also lead to security issues, fraud, and legal problems that could harm consumers.

The government recognizes the need to regulate the use of information technology to create legal certainty for business activities and to prevent the misuse of technology for committing cyber crimes. Law No. 11/2008 on Electronic Information and Technology (ITE) acknowledges that the development of information and communication technology has caused significant changes in social, economic, and cultural activities, creating a borderless world (Dhadha et al., 2021). The changing dynamics triggered by global trends significantly impact the legal system, requiring a critical and innovative examination of legal development.

3.3. The Role of Law in the Digital Age

In the current legal reality, it is essential to evaluate how effective the ITE law and other Indonesian national legal regulations governing business law are in defending against activities in cyberspace. Activities in cyberspace differ significantly from those in the real world, raising questions about whether conventional laws governing real-world relationships can regulate activities in cyberspace, especially when crossing national jurisdictions (Ryter, 2020). The changing atmosphere, becoming a global trend, significantly affects the development of national law, giving rise to several questions, such as how the field of law is increasingly internationalized, how transnational arenas influence the practice of law creation, and how forces and logics at work in the economic field can provide a logic in the legal field of a larger phenomenon.

Law can be a powerful driver of development, as it involves not only reviewing and improving existing laws, but also systematically organizing a new legal system that reflects the ideals of the Constitution and Pancasila (Ibraheem, 2018). According to Putra

& Rasjidi (1993), legal development is crucial for Indonesia to become a key player in the global economy, through legal reforms such as legal reconstruction, intensification, and development of legal functions by improving legal structures and management.

The ultimate goal of legal development is to promote justice and order, and to ensure equity, growth, and expansion of national and international economic activities (Brown, 2019). This can be achieved by implementing effective business policies that foster a healthy business competition and improve the trade business climate. As Indonesia becomes more integrated into the global economy, it needs to adjust to the dynamic and abstract nature of global markets. This requires a shift from the traditional role of law as a controller of society to a greater function that is more responsive and adaptable to global demands.

In this context, two important factors come into play. Firstly, the moral relationship between citizens and the law (the state) must be strengthened. Secondly, our legal and political systems need to be able to fulfill people's demands for justice, by creating a legal framework that is fair and efficient. These factors are essential for the future development of Indonesia's legal system, and for ensuring the prosperity and happiness of its citizens.

The industrial revolution marked a significant turning point in human history, bringing about profound changes in various areas of society, including economics, law, and social organization. In particular, the social and industrial changes brought about by the revolution have transformed the way we live and work, leading to new forms of national and global organizations in the fields of law and business.

However, globalization has also brought about significant changes in people's values and attitudes, which require regulation through effective laws and law enforcement. Therefore, it is essential to continue developing and implementing effective legal frameworks to meet the challenges of the changing social, economic, and technological landscape.

The development of legal materials to address the challenges posed by Industry 4.0 aims to update and create new legal products that reflect the values of Pancasila and the 1945 Constitution, based on the needs of the community. This is necessary to keep pace with the evolving demands of the present and future, and to support the era of the Fourth Industrial Revolution. The importance of legal substance cannot be overstated, and includes:

Firstly, the law should not only be a tool for achieving rationality, but the legal product itself must be rational. A rational law is one that is truly able to fulfill its purpose, which is to act in the interests of the Indonesian people, in accordance with the mandate of the 1945 Constitution. The purpose of the law is to protect the entire Indonesian nation and to realize social justice for all.

Secondly, it is important to ensure that rational legal products can achieve their intended objectives, with the support of legal implementation tools. Thirdly, substance is crucial in the process of law formation, particularly in relation to the influence of the social structure of society. Legal products should aim to achieve their goals within the context of the prevailing social structures of society.

Legal development must aim to realize the ideals of the nation, which include building a just and prosperous society based on Pancasila. The values of Pancasila are based on religious morals, respect for human rights without discrimination, the unification of all elements of the nation, and the establishment of social justice in the economic and social fields. In order to achieve people's sovereignty and legal sovereignty

in building national and international legal development concepts, legal development must be guided by the perspective of Pancasila.

In the development of international law, particularly in the field of trade/business, which is multidisciplinary and comprehensive, the aim is to increase competitiveness in the international trade arena for the benefit of public welfare. The development of national law in the perspective of Pancasila will face various challenges and the influence of foreign ideologies. Therefore, the development of national law must be able to overcome these challenges and meet the demands of globalization and regionalization while increasing the competitiveness of Indonesian products. The government must continuously evaluate all laws and regulations related to the field of trade.

In the perspective of Pancasila, the development of law must guide the conduct of transactions or cooperation between national capital and foreign capital, which must meet the following aspects: (a) the presence of foreign/international elements in the cooperation, (b) the use of legal language to provide the same interpretation, and (c) clauses that are different from the international legal system.

To realize the policy direction mentioned above, legislative reform in the field of trade is expected to create legal harmonization in accordance with the aspirations of the community and the needs of legal development. Many factors influence legal changes in a country in this industrial era, both internal and external. Internal factors bring rapid and radical changes that affect the ongoing legal system, while external factors involve the process of adjusting national law to international law.

As part of the ongoing economic globalization in the era of Industry 4.0, Indonesia must be fully prepared to face the challenges of the global economy, especially in terms of global economic restructuring. The government must work to address weaknesses in both exports and imports, and develop the country's economic potential to enhance export potential and reduce reliance on imports. The government must also strengthen the resilience of the domestic economy against new foreign economic attacks.

To improve the competitiveness of Indonesian products, the government has a responsibility to immediately carry out legal arrangements that facilitate the global reform process without compromising the country's interests. Legal development and reform should be carried out wholeheartedly to provide legal protection against trade practices that are detrimental to the state and consumers, and to create greater prosperity for all Indonesian people. It is essential that legal development is based on the 1945 Constitution and Pancasila to ensure that all trade activities comply with the law.

Pancasila-based legal development should serve as a guide for conducting transactions in the global market, and all countries should work towards formulating a common legal product that benefits all parties involved. This will help to ensure that no one is harmed in trade and business activities that take place across the world.

In summary, Indonesia must prioritize legal development and reform to strengthen its position in the global economy. This can be achieved by enhancing the country's economic potential, improving competitiveness, and ensuring that legal development is guided by Pancasila and the 1945 Constitution, in order to protect the interests of the state and its citizens.

4. CONCLUSION

The legal framework plays a significant role in regulating trade and business activities, ensuring the legal protection of both consumers and business actors. It is necessary to undertake legal development through the reconstruction and harmonization of existing and future regulations in line with technological advancements. This legal development must adhere to the values of Pancasila and aim to provide positive benefits by framing it in law, which offers protection against harmful trade practices and safeguards consumer rights. Thus, legal development should be a continuous process that ensures the protection of all parties involved in trade and business activities.

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IMPLEMENTING THE PRINCIPLE OF ABUSE OF AUTHORITY PERSPECTIVE IN EXECUTING SUPERIOR ORDERS AGAINST LOCAL GOVERNMENTS

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Abstract

The application of the principle of abuse of authority in the execution of superior orders by local governments is a crucial aspect of good governance. In many countries, local governments are required to follow orders from higher authorities, such as central governments or regional administrations. However, there are instances where local officials abuse their power or exceed their authority while carrying out these orders. This paper aims to explore how the principle of abuse of authority can be implemented in the context of complying with superior orders. The article applies the juridical-normative approach method by reviewing the law on the general principles of good governance, as well as using various legal literature such as legal scientific articles, legal scientific papers, and theses and theses on AAUPB. The presentation of data in this paper uses qualitative techniques, where the data that has been obtained is described through narrative. The paper covers various aspects such as the definition and characteristics of abuse of authority, the relationship between abuse of authority and superior orders, and strategies that can be used to prevent abuse of authority. This study will provide readers with insights on the significance of understanding the concept of abuse of authority in the context of good governance. Additionally, the paper will suggest practical recommendations for local governments to reduce the risk of abuse of authority and promote good governance practices.

Keywords: *Abuse of Authority, Good Government, Superior Orders*

1. INTRODUCTION

The state is an entity consisting of a collection of people who have rights and goals aimed at fulfilling the needs of life. The rule of law is intended to create a government that provides public services to the community based on justice, expediency, and peace (Hutabarat et al., 2022). The Preamble of the 1945 Constitution describes the fulfillment of the state's goals of providing a just and prosperous country for its people. To achieve these goals, it is necessary to produce state administrators who can carry out their functions properly and responsibly. This requires adherence to the General Principles of Good Governance.

To achieve good governance, the government should adhere to "AAUPB (*Asas-asas umum pemerintahan yang baik*), the General Principles of Good Government, which should be interpreted as a legal basis containing elements of morality, ethics, decency, and compliance based on applicable norms. As some of the principles contained in AAUPB are also found in legal norms and rules, it must be placed as a legal principle (Marbun, 2015). The provision of goods/services by the government is intended to increase the prosperity of society (Firmansyah, 2017). The government's authority in providing goods/services is significant, as the highest institution in a country, and it can provide access to the public for an equitable supply of goods/services. Without the authority of government officials, the provision of goods/services will not run properly and may even backfire, harming the community.

To realize a just and prosperous country for the people, synergy between the community and the government is essential. The government should provide good and responsible services, and the community's role is to oversee the government, including the executive, legislative, and judicial branches. The existence of AAUPB in the government system will lead to a good governance system (Hakim, 2022). A government is deemed feasible if it can fulfill the community's needs, which is a requirement to protect, provide life, and optimally provide services in everyday life (Manengal, 2020).

Policies governing the provision of goods/services are regulated in Presidential Regulation (Perpres) No. 70 of 2012 concerning government procurement of goods and services, which outlines fundamental principles such as transparency, equal opportunity, and adherence to national procurement standards (Firmansyah, 2017). However, officials often abuse their power in the provision of goods/services, leading to fraud. This abuse of power harms the state by increasing public distrust of government authorities.

This paper aims to explore how the principle of abuse of authority can be implemented in the context of complying with superior orders. The findings of this study have important implications for local governments and their efforts towards achieving good governance. By understanding and implementing the principle of abuse of authority, local governments can prevent and minimize the occurrence of abusive practices within their institutions. This can lead to improved transparency, accountability, and fairness in the provision of public services, which in turn can enhance public trust and confidence in the government. Furthermore, this study can contribute to the development of legal and policy frameworks aimed at promoting good governance and preventing abuses of power within the government. Ultimately, this can help to strengthen democratic institutions and promote sustainable development in local communities.

2. RESEARCH METHODS

This article employs a juridical-normative approach to examine laws and regulations related to the general principles of good governance (Soekanto & Mamudji, 2013). In addition, various legal literature sources, such as legal scientific articles, legal works, theses, and dissertations related to the AAUPB, were also reviewed. The study used a qualitative research design to present the data, whereby the information obtained was analyzed through narrative descriptions.

To elaborate further, the juridical-normative approach is a methodology that is based on analyzing legal norms and principles to provide an interpretation of the law and identify its implications. In this study, we used this approach to analyze the laws and regulations that govern good governance in the AAUPB context.

We also conducted a comprehensive review of various legal literature sources to supplement our analysis of the laws and regulations. These sources include legal scientific articles, legal works, theses, and dissertations related to the AAUPB. We used this literature to provide a deeper understanding of the current legal and academic discourse on the topic.

To present the data, we used a qualitative technique, which involved analyzing and interpreting textual data through narrative descriptions. This allowed us to provide a rich and detailed account of the legal and academic discourse related to good governance in the AAUPB context.

3. RESULTS AND DISCUSSION

3.1. The Importance of AAUPB in Ensuring Good Governance

The goal of the rule of law is to establish a just and equitable government that prioritizes public services and promotes peace. The role of the state is not only to maintain order and ensure the welfare of the people, but also to intervene (*staatsbemoeienis*) in all fields or areas of life managed by the community. This implies that the government must play an important role in people's lives, providing services for the public good, and creating a foundation for the state's establishment and realization (Junaidi, 2021). As the highest state institution, the government has the responsibility and authority to provide services, protect the community, and promote the welfare of the people (Widjiastuti, 2017).

The welfare of the people can be achieved if all their needs are met properly and equitably. Therefore, as a provider of community needs, the government has the responsibility to meet the needs of the community and use its position and power in accordance with the law. To fulfill these responsibilities and authorities, the government needs a foundation or principle to support the achievement of good governance. The government should uphold the use of AAUPB in meeting the needs of goods and services for the community, as it promotes the distribution of public services and creates good synergy between the government and the community (Syamsuddin, 2020). AAUPB in state administration is seen as the foundation for good governance, creating a government that is fair, free from arbitrariness, and crimes of violation of the law and discrimination (Prawiranegara, 2021). Hadjon argues that AAUPB needs to be seen as an implied law that must be obeyed by the government and used in certain circumstances in accordance with the applicable legal rules (Hadjon et al., 1998). Every government agency must apply AAUPB in every activity.

However, in practice, not all AAUPB principles are abstract and general; some are born as legal rules and enshrined in written regulations. AAUPB can be traced to the elements contained in applicable norms, as not all AAUPB principles are included in legal principles, but some are still legal norms. Reflecting on the perception of the welfare state, the government holds the authority to provide state welfare (Sukmana, 2016). The provision of public welfare is under the scope of both the central government and local governments. However, in addition to the imposition of duties and responsibilities on the state administrative apparatus, there is also the granting of authority in the form of Freies Ermessen or Discretion, which refers to the flexibility in solving significant and urgent problems on the spot through actions taken on their own initiative outside the boundaries of the law, which can later be justified morally and legally (Sitorus, 2022).

3.2. The Role of AAUPB in Providing Public Services to the Community

At the beginning of the emergence of AAUPB, its role was only intended as a legal protection tool and was used as a tool to increase legal certainty against government actions for citizens. The function of AAUPB in government administration is as a foundation and guidance for government officials to run good governance. The general principles of proper government serve as benchmarks for government officials to fulfill their obligations, ensuring that every action aligns with the real purpose of the law (Fahmal, 2006).

In order to facilitate the relationship between the government apparatus and the community, guidance and a basis for judgment are needed to ensure proper government

implementation. The AAUPB serves important functions and has the following importance in its development (Ridwan, 2011):

1. It serves as a basis for analyzing and applying statutory provisions that are still abstract and unclear, which helps to avoid the possibility of using discretion in implementing policies that violate applicable regulatory provisions. Government officials can, therefore, avoid unlawful acts, abuse of power, arbitrary actions, and actions beyond their powers according to state administration.
2. The AAUPB is used by citizens to seek justice in the event of a clash with the government through a court lawsuit in accordance with Article 53 of Law No. 5 of 1986.
3. Judges can use AAUPB as an instrument in testing and canceling decisions issued by state administrative agencies or officials in administrative courts.
4. The legislative body uses AAUPB as an important initial foundation in the formation of draft laws to avoid mistakes in governance.

According to Indroharto in Solechan (2019), the existence of AAUPB has important meanings as follows:

a. It is included in the applicable positive law.
b. According to state administration, AAUPB is considered a norm of action, in addition to written and unwritten legal norms.
c. AAUPB itself can be a reason for filing a lawsuit by the community, and by the State Administrative Judge, it is used as a testing tool for evaluating decisions about whether or not they are valid and canceling state administrative decisions.

The application of AAUPB in government has a positive impact on society because it ensures that Indonesian citizens' needs are met. Without AAUPB, people may develop a sense of distrust towards the government, which could lead to the country's destruction. Therefore, the application of AAUPB is crucial to creating good governance and reducing the abuse of power.

Creating good governance must be based on the principle of serving the welfare of Indonesian citizens, as stated in Paragraph IV of the 1945 Constitution of the Republic of Indonesia (Junaidi, 2021). AAUPB provides a direction for the government's implementation, ensuring that it is carried out according to these principles. As the highest state institution, the government has the responsibility to provide public services to the community to meet their needs, increase public trust, and avoid misunderstandings that may lead to chaos (Sari, 2022; Solechan, 2019).

The quality of public services produced by the government is an important indicator of its performance. The government's main goal is to meet the needs of its people through public service activities, which must be free from deficiencies and an attitude of power domination (Bangkara et al., 2022). To achieve a higher quality of public service, it is essential to evaluate the effectiveness of public service innovation and prioritize the level of service quality to build public trust in the government.

In order to realize and improve efficiency and effectiveness in improving public services, it is necessary to have a common direction and action to realize the wishes of the people, which should be implemented by the government. Therefore, the government is expected to improve employee discipline to enhance the quality of service to the community and development. This will help to create an image of a government that is disciplined, honest, and works wholeheartedly in their respective fields. To achieve these public service goals, it is necessary to apply AAUPB in public service performance.

AAUPB is considered as an abstract legal concept that outlines how the administration of government should be appropriate, fair, and honorable without resorting to authoritarianism, coercion, or the abuse of authority by the government (Widjiastuti, 2017). Originally proposed by Crince Le Roy, AAUPB contains eleven formulations. Koentjoro Purbopranoto in HR Ridwan (2011) added two more principles, bringing the total number of principles to thirteen, which are used in government administration. Additionally, AAUPB is also contained in Article 10 of Law Number 30 concerning Government Administration. It includes eight principles that serve as a legal basis, including legal certainty, benefit, impartiality, accuracy, non-abuse of authority, openness, public interest, and good service (Prawiranegara, 2021).

AAUPB has a significant role in providing guidance for analyzing provisions issued by previous government apparatuses. It serves as a reference for determining whether provisions must be reviewed to ensure proper application in society. Additionally, AAUPB serves as a preventive measure for the government to avoid using *freies ermessen* (discretion) inappropriately while exercising its authority. Thus, the government can execute its duties and authority appropriately. However, the government's provision of public services can be subject to abuse of power, as evidenced by its actions towards the community. Therefore, the principles in AAUPB are crucial in improving the implementation of public services and preserving public trust in the government (Prawiranegara, 2021).

To achieve good governance, the government must apply AAUPB in every activity, ensuring its uniform implementation across all components of the state, including the community and the apparatus. Abuse of power by the government can lead to conflicts between the interests of the government apparatus and the community, with the latter experiencing losses due to the abuse of obligations. To mitigate this issue, it is necessary to limit the government's authority to provide protection to individuals (Widjiastuti, 2017). The existence of laws prohibiting official arbitrariness ensures that officials do not overestimate their authority. According to State Administrative Court Law No. 9 of 2004 Article 53 paragraph (1), a person or entity can file a lawsuit with the State Administrative Court if they feel aggrieved by an administrative decision. The judge will then determine its validity and award compensation or correction to the relevant party. Failure to apply AAUPB usually stems from abuses of authority in goods and services.

Abuse of authority in goods and services is categorized into three parts: abuse against the public interest, abuse against deviations from laws and regulations, and abuse that violates procedural discrepancies in achieving a goal (Arijanta & Najicha, 2022). The three elements of abuse of authority are intent, transfer of goals, and negative desires of officials. Several factors contribute to abuse of authority, including a high sense of position leading to arbitrary behavior, lack of justice for law enforcement officials, low moral character, economic conditions of officials, and insufficient supervision in the procurement of goods and services.

During infrastructure development activities in a region, bureaucratic pathology can occur, as exemplified in the Madura area. In Banjar Village, Madura, abuse of authority occurred during the development of village infrastructure (Holifah et al., 2022). For instance, the Village Head acted as a local strongman who played a significant role in influencing the community. This individual had considerable power in mobilizing people's votes and ensuring the success of infrastructure development, such as road repairs, school building construction, and health center construction. The second role involved administrative support for decisions and policies made by the regent. Nepotism also played a role in development projects in Banjar Village, as bureaucrats, *klebun*, or village heads who were also local strongmen always won the development projects, giving them significant control over the existing infrastructure development.

4. CONCLUSION

The concept of the rule of law is to uphold a government that provides public services to the community based on justice, benefits, and peace. The state not only plays a role in maintaining order and security but also intervenes in all areas or aspects of life carried out by the community. The government, as the highest state institution, has the responsibility and authority to provide services and protection to the community and the welfare of the people. To fulfill this responsibility and authority, the government needs a basis or principle as support to achieve good governance. The government must comply with the use of AAUPB in meeting the needs of goods and services for the community as a form of public service that is evenly distributed and creates a good relationship between the government and the community. In practice, not all thoughts in AAUPB are abstract and general. Some principles appear as legal rules and are contained in written regulations.

The concept of a welfare state emphasizes that the government is responsible for the welfare of the country. However, with the great responsibility given to the government, they are also given the authority in the form of *freies ermessen* or discretionary, which is the freedom to solve problems that are important and must be resolved as soon as possible with initiative actions, outside the rule of law and can be legally and morally accountable. The implementation of the rule of law through the use of AAUPB as a principle is very important for good governance. The government must adhere to these principles in all its activities and decisions, and it is responsible for maintaining law and order, providing public services, and ensuring the welfare of its citizens. The concept of a welfare state emphasizes the government's responsibility for the welfare of the country, and the government has the authority to act proactively in urgent and important situations that are not regulated by law.

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LEGAL PROTECTION OF TRADERS IN DIGITAL ASSET INVESTMENT THROUGH PRIVATE DIGITAL CURRENCY IN INDONESIA

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Abstract

This study examines the government's response to protect traders engaged in digital asset transactions in Indonesia and analyzes the legal protection available to traders in case of disputes with exchanges. The research employs a normative legal method that investigates relevant rules, norms, and doctrines. The findings indicate that the government has implemented preventive legal protection measures through the Commodity Futures Supervisor, as stipulated in the Decree of the Minister of Industry and Trade Number: 86/Mpp/Kep/3/2001, which outlines the organizational structure of the Ministry of Industry and Trade, specifically Article 1112. Furthermore, traders have access to repressive legal remedies, such as filing a lawsuit under Article 1365 of the Civil Code for the recovery of their rights (compensation) and initiating a default suit according to Article 1243 of the Civil Code in the district court situated in the trader's jurisdiction. Additionally, non-litigation settlements serve as an alternative option available to traders.

Keywords: *Legal Protection, Trader, Virtual Currency Investment*

1. INTRODUCTION

Indonesia is currently experiencing the era of Industry 4.0, characterized by significant technological advancements that have a profound impact on various aspects of people's lives (Apdillah et al., 2022). This era has brought about substantial changes in the economic, cultural, and social domains, necessitating the development of human resources to keep up with the rapid pace of technological innovation (Suhariyanto, 2012). In the era of Industry 4.0, technological progress is accelerating, resulting in the creation of numerous inventions by experts to enhance the quality of life (Fotouhi & Sorooshian, 2020; Tran, 2021). One notable example is the evolution of e-commerce transactions, which have expanded beyond the provision of goods and services to include the transfer of ownership of digital assets.

Today, individuals seeking to engage in digital platforms have turned to virtual currencies, which are regarded as a business model by certain individuals in Indonesia. Virtual currency serves as an instrument or strategy for clients to engage in trading or financial transactions by exchanging the value of the Indonesian rupiah for virtual currency, with the expectation of significant fluctuations in value. With the shift from traditional monetary exchange to the digital era, numerous promising business opportunities have emerged for everyone, with non-cash instruments such as digital installments and cryptocurrencies gaining popularity. This implies that non-paper-based money or advancements protected by cryptographic technology, known as digital currency, are increasingly replacing traditional cash-based financial instruments (Suratman, 2010).

Cryptocurrency refers to a digital payment system used by clients to conduct commercial or speculative transactions with dealers, functioning as a standard form of currency (Стойка, 2021). The system employs a monetary standard established through complex cryptography, making it nearly impossible to engage in money counterfeiting. This digital monetary standard utilizes cryptographic methods to govern each new currency and verify whether a transaction is authorized or not. Cryptocurrency is not only considered as digital money or cash but can also be utilized for payments or as a source of income since it can be traded as a commodity within an electronic framework, with its financial value determined by relevant entities or parties (Kurnia &; Sumadi, 2013).

In digital asset transactions, typically, two parties are involved: the buyer (referred to as the trader) and the Exchanger. The Exchanger is a platform or provider of digital asset trading services or Private Digital Currency, acting as a business entity. In this context, "the trader is considered the client of the product or the potential profit, while the Exchanger serves as the provider of the service offered for use by the client, in line with the provisions described in Law Number 8 of 1997 concerning Consumer Protection, Article 1 numbers 1 and 3."

In Indonesia, there exist certain regulations governing the legal relationships among groups engaged in trading digital assets on electronic platforms. However, concerns regarding trust in the information provided by brokers remain unresolved. Therefore, it is crucial to be aware of the legal framework applicable to the management of virtual currencies and to ascertain the validity and legal status of digital asset ownership. It is imperative to establish a legal basis that can protect and provide appropriate regulations to safeguard associations, especially traders, from potential harm in the future.

Based on the presented background information, the author is motivated to conduct research on the legal protection provided to traders engaging in digital asset transactions through Private Digital Currency in Indonesia. The research aims to explore the form of legal protection granted to traders and is titled "Legal Protection of Traders in Digital Asset Investment Through Private Digital Currency in Indonesia." This paper is an original contribution that has not been previously published. Two previous journals, namely (Azis et al., 2021), which discusses the legal protection of digital currency investment from the perspective of investment law in Indonesia, and (Juniadi & Markeling, 2016), which explores the position of virtual currency in investment activities and the legal protection for investors who invest with virtual currency in Indonesia, serve as references for this article.

The primary objective of this research is to gain a comprehensive understanding of the response from the government and stakeholders towards the protection of traders involved in digital asset transactions in Indonesia. Furthermore, the research aims to provide clarity on the available legal protection for traders in case of disputes with the Exchanger.

2. RESEARCH METHODS

The research employed normative legal research method, commonly utilized to analyze clearly formulated and unambiguous norms within laws and regulations. The aim of this research is to identify potential conflicts between norms and determine if there are any legal acts that require regulation but have not been addressed yet (Johnny, 2006). The author adopted a statute approach in writing this journal article, which involved

examining relevant laws, regulations, and legal doctrines pertaining to the issues discussed in this research.

3. RESULTS AND DISCUSSION

3.1. Government Function in Ensuring Legal Protection for Traders in Digital Asset Investment

Investment protection is an important tool for the state to fulfill its obligation to maintain the equality and welfare of its population, as it provides security and legal certainty for investors and traders. The welfare and equality of its citizens are crucial responsibilities of the state, principles that are recognized and enshrined in the 1945 Constitution of the Republic of Indonesia (Apsari & Rudy, 2014). One way in which the government can fulfill this duty is by providing investment protection. In the field of economics and finance, investment refers to activities undertaken to generate profits from physical and non-physical assets.

Investment encompasses various types of activities, primarily related to two forms of assets: real assets and financial assets (Dharmakusuma, 2018). Real assets include tangible resources such as property, land, precious metals, and the like. On the other hand, financial assets do not have a physical structure but can be converted into monetary form through processes like securities, stocks, and shared assets (Suryadipa & Purwanto, n.d.). With the advancement of technology, investing in financial assets has become increasingly accessible, especially through investment platforms like Binance, Crypto store, Indodax, Pintu, and others that can be easily accessed via mobile devices.

In the context of investment in Indonesia, regulations play a crucial role in promoting investment activities (Nandayani & Marwanto, 2020). Traders and investors require legal certainty to confidently and fairly allocate their resources to virtual assets or monetary standards in Indonesia (Azis et al., 2021). Therefore, it is essential to establish a foundation of legal certainty that provides regulations and anticipatory measures (Sapoan & Hamdani, 2018). As legal expert Philipus M. Hadjon explains, preventive legal protection allows legal subjects to express their opinions or objections before a final decision is made (Philipus & Djatmiati, 2005). The purpose of this protection is to prevent disputes and encourage the government to exercise caution when making discretionary decisions.

To ensure a safe and orderly environment for investors and traders, the Indonesian government has implemented regulations governing virtual currency investments. This is stipulated in Law No.10 of 2011 on Commodity Futures Trading, which aims to prevent fraud and illegal practices in virtual currency investment. The direct supervision of virtual currency investments is carried out by the Commodity Futures Trading Supervisory Agency (BAPPEBTI), responsible for providing daily guidance, regulation, and supervision of commodity futures trading activities in accordance with Article 4, paragraph 1, and the Decree of the Minister of Industry and Trade Number: 86/Mpp/Kep/3/2001, Article 1112. As a stakeholder, BAPPEBTI bears the responsibility of ensuring security, benefits, and legal certainty in the utilization of private digital currencies in Indonesia.

To achieve balanced protection for buyers and traders, regulations pertaining to investment activities are necessary. It is essential to establish standards that embody the principles of benefit, fairness, balance, security, safety, and legal certainty. These

standards must be applied to virtual monetary investments in Indonesia and adhered to by traders and investors. Furthermore, to maintain investment security, a legal insurance holder is required as a basis for security regulated by public authorities through BAPPEBTI. In this regard, Article 2 of the GCPL guarantees that any guarantee provided to the buyer must comply with legal security measures. Personal advances can be utilized as a means of resource speculation in digital investments, provided that they meet the standards set forth by regulations.

3.2. Alternative Dispute Resolution in Digital Asset Transactions

Obtaining legal protection is crucial for every individual, particularly in upholding the principle of equality before the law. This principle asserts that everyone must be treated equally under the law without exception, as affirmed in Article 27, paragraph (1) of the 1945 Constitution. Legal remedies serve as a means to safeguard individual rights and ensure compliance with applicable regulations. In the context of digital asset transactions, traders who engage in such transactions through electronic contracts with exchangers are afforded special protection. This protection is regulated by Article 1, number 17 of the ITE Law, which defines an electronic contract as an agreement made through an electronic system, essentially similar to a conventional agreement, with the only difference being the medium used. However, the trading process also involves the concept of a fundamental agreement, as stated in Article 1313 of the Civil Code. In the purchase of digital assets, such as virtual currency, the agreement between the parties is encompassed within a contractual agreement. According to the provisions of Article 1338 of the Civil Code, a legally binding agreement must meet the legal conditions stipulated in Article 1320 of the Civil Code and cannot be unilaterally canceled without the consent of both parties. However, if it is later proven that the agreement violates the provisions of Article 1320 of the Civil Code, then the agreement can be legally nullified. Therefore, legal protection in digital asset transactions can be obtained through electronic contracts and the fulfillment of legal requirements in accordance with applicable legal provisions.

In the event of an accident or problem arising in a digital asset transaction between a trader and an exchanger, it is closely tied to the agreement that has been established, creating a legal relationship between the two parties. As an organization specializing in digital currencies, an exchanger has an obligation to be accountable and reliable in the event of a default, as stated in Article 7 of the GCPL. However, if the problem is deemed imaginary by the exchanger, traders can initiate legal action based on Article 1365 of the Civil Code, which stipulates that any unlawful act causing harm to another person must be compensated by the wrongdoer. Therefore, traders have the right to sue the exchanger if they feel aggrieved in digital asset transactions.

To address any legal issues that may arise, traders can file a tort claim with the court in their place of residence. However, if there is a contractual relationship between the exchanger and the trader, as described earlier, the trader can file a default claim to seek reimbursement of fees, damages, and interest in accordance with Article 1243 of the Civil Code. Moreover, there are alternative out-of-court dispute resolution options available, such as arbitration, consultation, negotiation, mediation, conciliation, and expert opinion, which traders can pursue. These alternatives are intended to ensure legal certainty and protect traders. In this context, the law not only focuses on compensation or sanctions against the exchanger but also on the protection and empowerment of merchants, as well as raising awareness among service providers or exchangers. Therefore, the utilization of

alternative dispute resolution can be a more effective and efficient solution for resolving potential problems.

4. CONCLUSION

Preventive legal protection, particularly for investors and traders in virtual currency investment, takes the form of supervision by BAPPEBTI, which is directly overseen by the Commodity Futures Supervisor. This supervision is in accordance with "Article 4, paragraph 1, as explained in the Decree of the Minister of Industry and Trade Number: 86/Mpp/Kep/3/2001 concerning the Organizational Structure of the Ministry of Industry and Trade, Article 1112." BAPPEBTI's responsibilities include providing guidance, regulation, and day-to-day supervision of commodity futures trading activities. With the presence of BAPPEBTI as a stakeholder, it is expected to offer security guarantees, benefits, and legal certainty regarding the use of private digital currency in Indonesia.

An available legal remedy that traders can pursue, assuming they seek to recover their losses, is to file an unlawful act claim (onrechtmatige daad) under Article 1365 of the Civil Code with the regional court in the trader's place of residence. Additionally, traders can also invoke the rights granted to them as indicated in the provisions regarding computerized asset speculation. They can file a default claim to seek reimbursement of costs, losses, and interest for non-fulfillment of agreements under Article 1243 of the Civil Code. However, it is important to note that this claim for unlawful act should be filed after exhausting legal actions against fraudulent acts or consider settlement through non-prosecution, which is an alternative option that can be pursued by traders.

As a suggestion, the government should exercise its authority concerning virtual currency in Indonesia by formalizing regulations or establishing sustainable regulations that align with the dynamic developments in the field of virtual currency. This is in response to the significant interest shown by the Indonesian people who use virtual currency as an investment.

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ANALYSIS OF JUDGES' DECISIONS ON CRIMINAL SANCTIONS FOR ILLEGAL FISHING RECIDIVISTS (Study of Sinabang District Court Decision Number 7/Pid.Sus/2022/PN Snb jo 28/Pid.Sus/2016/PN Snb)

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Abstract

This research aims to analyze the considerations and reasons of judges when determining the same punishment for recidivist offenders engaged in illegal fishing, as well as the factors that contribute to the ineffectiveness of sanctions imposed on illegal fishing perpetrators. Recidivism is regulated in Articles 486, 487, and 488 of the Criminal Code, which stipulate that the penalty for repeat offenses should be increased by 1/3 of the previous sentence. However, in decision number 7/Pid.Sus/2022/PN Snb jo 28/Pid.Sus/2016/PN Snb, the judge imposed the same sentence of 3 years in prison for the defendant, without increasing the sentence as required. The research utilizes normative juridical and empirical juridical methods. The findings indicate that, in determining sanctions, judges consider aggravating and mitigating circumstances for the defendant. Their decisions are not solely based on formal evidence, but also rely on the judge's conviction. The judge's reasoning for imposing the same sanctions in this case was due to the fact that the defendant did not own the object of the crime, demonstrated good behavior during the trial, and was the breadwinner of the family. Factors contributing to the ineffectiveness of the imposed sanctions include lenient penalties, factors related to law enforcement, environmental considerations, and socio-economic factors.

Keywords: *Illegal Fishing Recidivism, Sanction Considerations, Ineffective Penalties, Criminal Code, Normative Juridical*

1. INTRODUCTION

Illegal fishing involves unauthorized fishermen engaging in fishing activities that violate regulations. This activity poses a significant threat to the country as it can have adverse effects on the aquatic ecosystem, impacting various stakeholders, including traditional fishermen who face disruptions due to ecosystem damage (Almaa'di, 2021). Illegal fishing refers to fishing practices that are prohibited, lack legal regulation, and are not recognized by the state (Banjarani, 2020).

Illegal fishing is not a new phenomenon in Indonesia, occurring frequently in Indonesian waters with the presence of foreign vessels and local fishing boats engaged in illegal fishing, resulting in losses for both the state and small-scale fishermen. Individuals involved in illegal fishing activities seek quick profits through various means. The types of illegal fishing can be categorized into four: fishing without a license, fishing with a forged license, fishing with a license for a different type of fishing, and fishing with prohibited tools or methods that violate regulations (Sinurat, 2019). Illegal fishing activities persist in the field, often utilizing unauthorized fishing tools.

One common tool used in illegal fishing is explosives, commonly referred to as fish bombs. Fish bombs are favored by illegal fishing actors as they can capture a wide range of fish species, from small to large, depending on the size of the fishing gear. The larger

the tool, the greater the potential to catch more and larger fish. However, the use of fish bombs also causes significant damage to coral reefs and fish habitats, leading to the loss of not only targeted fish but also smaller fish populations.

The practice of illegal fishing is regulated in Article 84, CHAPTER XV of Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009. This law explicitly prohibits fishing practices that involve the use of chemicals, biological materials, explosives, tools, and/or methods that can harm or endanger the preservation of fish resources and the environment. The law imposes penalties on offenders, including a maximum imprisonment of 6 years and a maximum fine of Rp1,200,000,000.00 (one billion two hundred million rupiah).

Illegal fishing often involves repeated offenses committed by the same individuals, known as recidivists. Recidivism refers to someone who has been previously convicted and subsequently repeats the same crime. In the context of criminal sanctions, recidivism serves as a reason for imposing aggravated penalties. According to Book II of the Criminal Code on Crimes, specifically Articles 486, 487, and 488, criminal sanctions can be increased by one third of the maximum penalty (Rozi, 2015). Prosecutors have the authority to increase charges by one third of the previous sentence, while judges can enhance the sentence by one third of the original punishment. The conditions for considering an act as a repetition of a criminal offense include: (1) the perpetrator being the same person, (2) the repetition occurring after a prior conviction with permanent legal force, and (3) the repetition happening within a certain time frame (Paramitha et al., 2021).

An instance of illegal fishing recidivism can be found in the case of SL, as documented in the decision of the Sinabang District Court with case number 7/Pid.Sus/2022/PN Snb jo 28/Pid.Sus/2016/PN Snb. In this case, the defendant SL committed the crime of illegal fishing using explosives. The initial decision was made in 2016 when the defendant SL acted alone, resulting in a guilty verdict for committing a fisheries crime and violating Article 84, Paragraph (2) of Law Number 31 of 2004 concerning Fisheries. The judge imposed a sentence of 3 years' imprisonment and a fine of Rp. 300,000,000.00, with the provision that failure to pay the fine would lead to 6 months of imprisonment. Subsequently, in a second case in 2022, the defendant SL engaged in the offense jointly with other defendants, namely AT, BD, MSL, ES, PS, RW, and HD. In this instance, the defendant SL was sentenced to 3 years' imprisonment and a fine of Rp500,000,000.00. Failure to pay the fine would result in 6 months of confinement. The other defendants were each sentenced to 1 year of imprisonment and a fine of Rp500,000,000.00, with 3 months of imprisonment in case of failure to pay the fine.

Based on the aforementioned case, it is evident that there was minimal legal aggravation for the defendant SL, who is an illegal fishing recidivist. According to articles 486, 487, and 488 of the Criminal Code, the judge has the authority to increase the sentence by one third of the original punishment. Referring to the provisions for recidivism, the judge could have sentenced the defendant to 4 years of imprisonment. However, in reality, the judge decided on a sentence of 3 years, which is the same as the previous sentence.

Furthermore, Article 486 of the Criminal Code stipulates regulations regarding special recidivism. According to this article, the penalty is increased by one third if the following conditions are met: (1) repetition of the same crime or a crime considered the

same by law, (2) a judicial decision between the commission of one crime and another, (3) a prison sentence (not a fine or other form of punishment), and (4) a period of no more than 5 years, calculated from the time the offender completed all or part of the previous sentence.

The judge also imposed a fine that did not significantly differ from the previous one. In the initial decision, a fine of 300 million was imposed, while in the second decision, a fine of 500 million was imposed. Additionally, the judge resorted to the same punishment in lieu of a fine, namely 6 months of imprisonment if the defendant was unable to pay the fine. Consequently, the punishment or sanction imposed by the judge fails to have a deterrent effect on the perpetrator, making it highly likely for the offender to repeat the same act after completing the sentence.

Based on the aforementioned issues, this research aims to analyze the considerations taken by judges when determining sanctions for illegal fishing recidivists, specifically in the case number 7/Pid.Sus/2022/PN Snb. The study also aims to explore the reasons why judges impose the same sanctions for illegal fishing recidivists and identify the factors contributing to the ineffectiveness of sanctions, leading to repeated offenses by illegal fishing perpetrators.

2. RESEARCH METHODS

The research method employed in this study is the normative juridical method. The normative juridical method involves conducting legal research using library materials as the primary source, including books and laws (Muchtar, 2015). This approach focuses on examining legal conceptions and rules rather than human behavior (Muhaimin, 2020). Data collection for this research involved reviewing relevant decisions and laws. Additionally, to enhance the research's validity and support, the researchers conducted interviews with judges from the Sinabang District Court. The gathered data will be analyzed using a qualitative approach, wherein the data will be presented in a systematic and concise manner using words to facilitate the reader's comprehension.

3. RESULTS AND DISCUSSION

3.1. Analysis of Judges' Considerations in Deciding Sanctions for Illegal Fishing Recidivists in Decision Number 7/Pid.Sus/2022/PN Snb

Illegal fishing is a fishing activity that is carried out illegally and not in accordance with applicable regulations. It is a common crime in Indonesia, where both local residents and people from other regions engage in these activities. Illegal fishing is often conducted using fishing gear that does not comply with regulations, such as chemicals or fish bombs. When dealing with illegal fishing cases, judges play an active role because it is a criminal offense. They have the authority to request investigators to gather additional evidence if the existing evidence is considered insufficient.

According to Decision No. 7/Pid.Sus/2022/Pn Snb, the defendant SL has committed two crimes of the same nature, one in 2016 and another in 2022. In 2016, SL committed the crime individually and received a sentence of 3 years of imprisonment and a fine of 300 million rupiahs. In case the defendant was unable to pay the fine, an additional 6 months of imprisonment was imposed. In 2022, SL committed the crime in collaboration with several other defendants, resulting in the same sentence as before, with a slightly

increased fine of 500 million rupiahs. Again, if the defendant is unable to pay the fine, an additional 6 months of imprisonment will be imposed.

In 2022, defendants I (SL), II (HD), III (RW), IV (PS), V (ES), VI (MSL), VII (BD), and VIII (AT) were charged with the offense of fishing with explosives, as stipulated in Article 84 Paragraph (2) of Law No. 31 of 2004 concerning Fisheries, as amended by Law No. 45 of 2009. These activities took place in the waters of Mincau Island, Teupah Island Village, West Teupah District, Simeulue Regency. They used explosive devices, such as homemade fish bombs.

Defendant I (SL) has been sentenced to 3 years of imprisonment and a fine of Rp. 500,000,000 (five hundred million rupiah). If the fine is not paid, it will be substituted with 6 months of imprisonment. Defendant II (HD), Defendant III (RW), Defendant IV (PS), Defendant V (ES), Defendant VI (MSL), Defendant VII (BD), and Defendant VIII (AT) have each been sentenced to 1 year of imprisonment and a fine of Rp. 500,000,000 (five hundred million rupiah). If the fine is not paid, it will be replaced with 3 months of imprisonment each.

The judge's considerations in determining the sanctions for the defendants are as follows:

- The defendants are legally competent individuals who were able to recall and provide detailed explanations about the case. This indicates that they can be held accountable for their actions, including those committed in this case.
- Based on the facts presented during the trial, Defendant I (SL) was the captain of the vessel KM Fahira, while Defendant II (HD), Defendant III (RW), Defendant IV (PS), Defendant V (ES), Defendant VI (MSL), Defendant VII (BD), and Defendant VIII (AT) were crew members with specific roles as divers, cooks, and an engine man. As they embarked on the fishing expedition, all the defendants can be considered fishing experts.
- Throughout the trial, the Panel of Judges did not find any grounds to exempt the defendants from criminal responsibility. Therefore, they must be held accountable for their actions.
- The defendants expressed remorse for their actions and requested leniency. The judges will thoroughly consider this request.

Before sentencing the defendants, the judge carefully considered both the aggravating and mitigating circumstances. The aggravating circumstances include the defendants' actions, which contradict the Government of the Republic of Indonesia's program on the management and utilization of fish resources and the environment. Illegal fishing activities have caused severe damage to ecosystems, particularly underwater ecosystems and coral reefs, which will require a long time to recover to their original state. Additionally, these activities can harm traditional fishermen due to the negative impact on underwater life.

Regarding the first defendant, SL, it was taken into account that they had previously been convicted in 2016 for a fisheries crime involving the use of explosives for fishing. In that case, the defendant SL was sentenced to 3 years of imprisonment, a fine of Rp. 300,000,000 (three hundred million rupiah), and 6 months of confinement in case of non-payment of the fine.

As for the mitigating circumstances, it was considered that, apart from defendant I's conviction in 2016, none of the other defendants had a prior criminal record. The

defendants expressed remorse for their actions and vowed not to engage in similar offenses in the future. Furthermore, the defendants are the main providers for their families, and prolonged detention could result in neglect of their families' needs. There is concern that the defendants' families might resort to criminal activities such as theft to obtain money for daily expenses.

Based on the aggravating and mitigating circumstances, it is important to note that the nature and purpose of punishment is not for revenge, but rather to help the defendants recognize and acknowledge their actions. The theory of correction (Verbeterings Theorie) emphasizes that punishment should aim to correct individuals who have committed crimes and have a deterrent effect to prevent future offenses. However, the Panel of Judges also took into consideration that the defendants' actions contradicted the Government of the Republic of Indonesia's program on the management and utilization of fish resources and the environment. Furthermore, Defendant I has a prior conviction in 2016 for a fisheries crime involving the use of explosives, resulting in a sentence of 3 years of imprisonment and a fine of Rp. 300,000,000 (Three Hundred Million Rupiah), with a subsidiary 6 months of imprisonment in case of non-payment of the fine. Considering these factors, the Panel of Judges determined that the imposed punishment is appropriate and fair for the defendants.

Based on the above description, it can be observed that the judge had considerations in deciding the sanctions. However, according to the author's analysis, the sentence given by the Panel of Judges to Defendant SL appears to be too lenient, considering that the defendant is a recidivist who has previously engaged in illegal fishing activities in 2016 and has already been convicted. It is suggested that the judge should have imposed a higher sentence on the defendant, as recidivism is a condition that can warrant harsher criminal penalties. Typically, the penalty for recidivists is one third higher than their previous sentence. Therefore, the defendant could have been sentenced to at least 4 or 5 years of imprisonment to create a stronger deterrent effect and discourage repeat offenses.

The purpose of giving a heavier sentence to defendant SL than the previous one is to ensure that the defendant feels a stronger deterrent effect and remorse for their actions, thus preventing them from repeating the same behavior in the future. Additionally, this serves as a lesson to the community, encouraging greater obedience to the law and discouraging similar crimes. According to Aristotle, the purpose of law is to facilitate the attainment of a better life (Marzuki Mahmud, 2009). In terms of punishment theory, the objectives of punishment are (Efritadewi, 2020) to inflict suffering upon the offender and to prevent crime, both in relation to the specific offender to discourage them from repeating their actions, and in general to discourage the community from committing crimes.

According to the absolute or retaliation theory (De Vergelding Theori), punishment is seen as retribution for the wrong that has been committed. Punishment is administered because the offender must face consequences for their actions. As the crime has caused suffering to others, the offender must experience suffering in return (Efritadewi, 2020). In line with this theory, it is appropriate for the judge to increase the punishment for SL, as SL has caused suffering to others and should, therefore, experience suffering in return.

On the other hand, according to the Special Deterrence or Intimidation theory (the theory of approach as a reason for justifying the imposition of punishment), punishment serves as a deterrent specifically for the offender to discourage them from reoffending. This theory is particularly relevant in cases involving recidivism (Efritadewi, 2020).

Therefore, SL should receive an aggravated punishment as a deterrent to prevent them from repeating their crime.

3.2. Reasons for Judges Determining the Same Sanctions for Illegal Fishing Perpetrators in Decision Number 7/Pid.Sus/2022/PN Snb

Sanctions refer to the suffering or rewards given to individuals found guilty of committing a crime or criminal act. These sanctions are administered through a judicial process and enforced by the authority of the law. The purpose of criminal sanctions is to enable the person being sanctioned to recognize their mistakes and refrain from repeating them in the future. Additionally, sanctions serve as a deterrent to discourage the public from engaging in unlawful acts (Suyanto, 2018).

A recidivist is a criminal who commits the same offense after having been previously convicted and sentenced by a judge with permanent legal force. Once the offender has completed their sentence, they engage in the same criminal behavior and face punishment once again. Recidivism involves the repetition of criminal acts, while a recidivist is an individual who commits repeated criminal offenses (Wahyuni, 2017).

Recidivism can be categorized into two types. The first type is general recidivism, where an individual commits a different crime than the one previously committed, but it is still considered a repetition of criminal behavior. The second type is special recidivism, where the current and previous crimes are the same or similar (Patuju & Afamery, 2016).

The repetition of criminal acts or recidivism is not a new phenomenon; it has occurred in various forms of criminal activity, including illegal fishing. Legal expert Bartholomew argues that criminal recidivism is viewed as a continuation of malicious intent, indicating that the practice of recidivism itself is as old as the practice of crime (Darmasya, 2014).

According to Decision Number 7/Pid.Sus/2022/PN Snb, the judge's decision to impose the same prison sentence as the previous ruling, namely 3 years of imprisonment and a fine of 500 million rupiah with the provision that non-payment of the fine would result in 6 months of confinement, is based on several reasons. Firstly, the defendants used a boat that did not belong to them but rather worked under the instruction of the boat owner for fishing activities. Additionally, the judge took into consideration that the defendants were the primary earners for their families, and an extended period of imprisonment could lead to neglect of their families. Furthermore, the judge was convinced that the defendants genuinely regretted their crimes and were unlikely to reoffend in the future. In making a decision, judges consider not only formal evidence but also rely on their own belief in the matter. In this case, the judge was convinced that the defendant expressed sincere remorse, took responsibility for their actions, and made a commitment to avoid repeating the offense.

Moreover, the judge also took into account the defendant's behavior during the trial. The defendant's conduct in court can influence the judge's decision regarding the severity of the sentence. If the defendant behaves impolitely, acts inappropriately, or obstructs the trial process, it may lead to a more severe sentence. Conversely, if the defendant is polite, provides honest answers to questions, and cooperates during the trial, the judge may consider a less severe sentence for the defendant.

Based on the information provided, it is evident that the judge took several factors into consideration when determining the same sentence, including the defendant's behavior during the trial and their expression of remorse and commitment to not repeat

their actions. However, the researcher believes that the panel of judges should have also acknowledged the defendant's previous conviction, even though the defendant exhibited good behavior during the trial and expressed remorse. This would have justified an increase in the sentence to align with the defendant's actions. Imposing an additional sentence on defendant I would have served as a deterrent to prevent future offenses and as a reminder to the other defendants. The researcher supports the view that punishment should strike a balance between retaliation and achieving the purpose of punishment, ensuring justice and satisfaction within the community (Efritadewi, 2020).

3.3. Factors Causing Ineffective Sanctions for Illegal Fishing Offenders

Law is a tool used to improve and regulate the behavior of individuals within a specific area, ensuring their compliance with applicable rules and norms. In Indonesia, there are numerous instances of law violations committed by the community, such as illegal fishing. These violations may be carried out by individuals from the local area or by people from other regions who intentionally travel to different areas to engage in large-scale illegal fishing.

According to Hans Kelsen, legal effectiveness is closely tied to validity (Kelsen, 2014). Validity refers to a legally binding norm that everyone must adhere to and apply in their behavior. Legal effectiveness implies that individuals must actively conform to legal norms, and that these norms must be implemented and obeyed.

Friedman suggests that the effectiveness of a rule of law can be influenced by several factors (Friedman, 2009). Firstly, the legal substance factor determines whether there are specific regulations governing a particular crime. Secondly, the legal structure factor assesses whether the law can be effectively enforced, considering the competence of legal authorities. Regardless of the quality of laws, their enforcement relies on the ability of legal authorities to ensure compliance. Thirdly, the legal culture factor plays a role in determining the effectiveness of a rule of law. If the community respects and complies with the law, it can be enforced to its fullest extent. Conversely, if the community disregards or disobeys the law, its implementation is hindered.

Moreover, the lack of law enforcement and control over those involved in illegal fishing creates an environment where perpetrators do not fear consequences. Currently, the legal process focuses solely on the crew of the ship, without investigating the individuals orchestrating these activities behind the scenes (Mahmudah, 2022).

Based on the illegal fishing case in decision Number 28/Pid.Sus/2016/PN Snb jo 7/Pid.Sus/2022/PN Snb, several factors contribute to the ineffectiveness of the imposed sanctions, including:

1) Mild sanctions:

The light punishment given does not serve as a sufficient deterrent for the perpetrators, allowing them to disregard the severity of their crime. Consequently, there is a risk of repeat offenses, irrespective of the existing laws and potential sanctions. In this case, the defendant SL repeated their actions due to the lenient sanctions imposed by the judge, which failed to deter them.

2) Non-compliance with the law:

Adherence to the law significantly affects the effectiveness or failure of legal measures. The defendant SL's lack of knowledge about the laws in Indonesia led to disobedience, resulting in a disregard for the imposed sanctions. The defendant's low level

of education and limited understanding of the law prevented them from comprehending and considering the consequences of their actions.

3) Environmental factors:

The environment plays a crucial role in shaping an individual's behavior. If an offender resides in an environment conducive to criminal activities, they may disregard the potential punishment and engage in illegal acts. In this case, the defendant SL committed the crime alongside other defendants, living in an environment that supported criminal behavior without due consideration for the resulting sanctions.

4) Socio-economic factors:

Low socio-economic status and limited employment opportunities can drive individuals to resort to criminal activities as a means of generating income and improving their lives. As the defendant lacked a stable job, they resorted to explosive-based fishing techniques, yielding a substantial catch in a short period of time.

Based on the aforementioned description, it becomes evident that several factors contribute to the ineffectiveness of sanctions against illegal fishing. Firstly, the light nature of the sanctions fails to create a deterrent effect, enabling perpetrators to repeat their actions. Secondly, there are cultural factors that lead to non-compliance with the law, despite the presence of strict sanctions. Furthermore, the lack of assertiveness among law enforcement officials in delivering punishments renders the imposed sanctions ineffective. Referring to the applicable regulations provides clear guidance on addressing fisheries crimes and repeat offenders, allowing law enforcers to impose appropriate sanctions based on the offenders' actions. Judges should demonstrate greater assertiveness when determining sanctions, particularly when dealing with recidivists like Defendant I. Inadequate sanctions provide an opportunity for further criminal activities, as offenders are already aware of the punishments they will receive. Thirdly, adverse environmental factors may influence perpetrators to commit crimes regardless of the potential consequences. Lastly, socio-economic factors such as limited education and job opportunities drive many unemployed individuals to resort to any means necessary to improve their lives financially.

4. CONCLUSION

Based on the discussion in the preceding sub-chapters, it can be concluded that the judge considers aggravating and mitigating circumstances when deciding on sanctions for the defendant. Aggravating circumstances include the defendant being a recidivist, having previously received a final decision from a panel of judges and having served a sentence. Mitigating circumstances include the defendant being the sole provider for their family and having familial obligations. Another mitigating circumstance was the defendant's polite behavior during the trial and their ability to provide satisfactory answers to all questions.

There were several reasons that led the judge to impose the same sentence on the perpetrators of illegal fishing in this case. Firstly, the judge observed the defendant's good and polite behavior during the trial. Additionally, the vessel used in the crime did not belong to the defendant, but to another individual. Furthermore, the judge based the sanction on the belief that it would effectively deter the defendant, and the defendant expressed remorse for their actions and vowed not to repeat them.

Several factors contribute to the ineffectiveness of illegal fishing sanctions, leading to the recurrence of such crimes. Firstly, the light nature of the sanctions fails to create a deterrent effect, causing the defendant to disregard them and repeat their actions. Secondly, there is a factor of non-compliance with the law, where the defendant does not obey or fear the legal consequences. Moreover, the lack of strictness among law enforcers in delivering punishments leads the defendant to overlook the severity of the sanctions. Environmental factors also play a role, as the defendant may engage in criminal behavior due to living in a detrimental environment. Additionally, socio-economic factors, including limited employment opportunities and low education, contribute to the defendant's impulsive decision-making, resulting in disobedience and disregard for potential sanctions.

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LEGAL VALIDITY OF LAND TENURE BY FOREIGNERS THROUGH MIXED MARRIAGES OBTAINED FROM INHERITANCE FROM THE UUPA PERSPECTIVE

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Abstract

This scientific paper aims to examine the legal validity of land tenure by foreigners through mixed marriages obtained from inheritance, with a focus on the perspective of the UUPA (Undang-Undang Pokok Agraria). It also investigates the legal consequences that arise from the cancellation of ownership rights to land obtained through inheritance by foreigners. The presence of mixed marriages in Indonesia has implications for joint property ownership in marriage. According to Article 35 of the Marriage Law, joint property refers to assets acquired during marriage that become shared property. However, Article 21, paragraph (3) of the Basic Agrarian Law (Law No. 5/1960) lacks clarity in terms of norms governing land tenure by foreigners derived from inheritance. This ambiguity arises from the absence of a defined time limit or clear provisions regarding land tenure by foreigners through inheritance. This research utilizes normative legal research methods, employing legislative, conceptual, and analytical approaches. Foreign nationals can acquire land ownership if they enter into a mixed marriage with Indonesian citizens. In such cases, the land must remain under the ownership of the Indonesian citizen, with a joint property separation agreement established prior to the mixed marriage. The heirs of foreign nationals can still hold Hak milik land acquired through inheritance, but only for a period of one year. After this period, the land reverts to state ownership. Foreign nationals have the option to sell the land to an Indonesian citizen or apply for a Right of Use through the National Land Agency, in accordance with the applicable regulations.

Keywords: *Foreigners, Inheritance, Property Rights*

1. INTRODUCTION

In today's era of rapid globalization and technological advancement, information and communication technology (ICT) has emerged as a driving force. ICT encompasses various communication technologies such as radio, film, television, press, telephone, and more interactive forms like theater, video, and storytelling. It also includes electronic means like email, the Internet, mobile phones, and digital video (Idowu et al., 2003).

The development of ICT brings significant benefits in fulfilling daily needs, and one of its advantages in the era of globalization is the elimination of national boundaries. Individuals can now easily interact with others without being constrained by geographical or time limitations. People from one country can effortlessly communicate with individuals from other countries around the world simultaneously. This is made possible by advancements in global network technologies, particularly the Internet.

By leveraging these advancements in information technology, communication, and the Internet, individuals can now easily engage in global communication. This opens up opportunities for individuals to form relationships and enter into marriages. In this context, a mixed marriage can be understood as an interracial relationship that focuses on the inherent Black/White binary in American society, as defined by critical race theory (Luther & Rightler-McDaniels, 2013).

In Indonesia, mixed marriages occur due to various reasons, including differences in customs, ethnic backgrounds, and religious beliefs. Examples of customary differences can be seen in marriages between individuals from the Minangkabau tribe and the Sundanese tribe. Additionally, mixed marriages also occur between individuals of different religions, such as Christian and Muslim. These types of mixed marriages are common in everyday life among the Indonesian community.

The regulations pertaining to mixed marriages in Indonesia are outlined in Article 57 of Law Number 1 of 1974 on Marriage, also known as the Marriage Law. According to this article, a mixed marriage refers to a marriage between two individuals in Indonesia who are subject to different laws due to differences in citizenship, where one party holds Indonesian citizenship (Syarifuddin, 2021).

Mixed marriages in Indonesia have implications for the ownership of joint property within the marital bond. According to Article 35 of the Marriage Law, joint property in marriage refers to assets acquired during the marriage and owned jointly. However, individually inherited property, gifts, or bequests remain separate unless otherwise agreed upon. One aspect of joint property ownership in marriage pertains to property rights, such as land ownership rights.

Land holds a crucial role in human life, both on an individual level and within the context of society and the state, as it is a fundamental agrarian resource (Indrawan & Munandar, 2022). The demand for land continues to rise alongside population growth and land-related needs. Land is a vital resource for individuals and the state, serving as a foundation for various activities aimed at fostering prosperity, such as building homes and engaging in agricultural practices. Additionally, land can be used as collateral for obtaining loans from banks in sale, purchase, or lease transactions (Permatadani & Irawan, 2021).

The legal provisions concerning land rights, in accordance with the UUPA, encompass three essential aspects: the certainty of the subject, object, and status of land rights. In the case of the object of land rights, it is crucial to establish the unique nature of each land parcel to prevent disputes regarding boundaries and location. Therefore, reliable infrastructure is necessary to accurately map land parcels and provide measurement certificates, ensuring certainty for all parties involved (Sutedi, 2009).

Several factors can lead to problems related to land in Indonesia, such as issues with inheritance and the regulation of inherited land rights. This arises due to the existence of three inheritance laws in Indonesia: customary inheritance law, Islamic inheritance law, and civil inheritance law. Article 830 of the Civil Code/*Burgerlijk Wetboek voor Indonesie* states that inheritance occurs after death, while Article 832 explains that heirs consist of legitimate or illegitimate blood relatives and the surviving spouse.

Although Article 20 of the UUPA indicates that land ownership rights can be transferred through various means, including inheritance, land ownership does not automatically transfer to heirs upon inheritance. There are several stages that must be completed for land ownership to be transferred from the deceased (testator) to their heirs. However, this situation can pose challenges if one of the heirs is a foreign national and inherits land ownership rights. According to the provisions of Law No. 5 of 1960 on Basic Agrarian Principles, only Indonesian citizens are entitled to land ownership.

Many Indonesians choose to relocate to other countries and renounce their Indonesian citizenship, while still maintaining familial connections in Indonesia. The

question arises: what happens if a person who has renounced Indonesian citizenship becomes an heir to a testator who is still an Indonesian citizen and inherits freehold land?

Inheritance law encompasses a set of rules that govern the consequences of a person's death, particularly concerning asset ownership and the transfer of inheritance to heirs. When a family member, such as a father, mother, or child, passes away, inheritance comes into play. However, when the testator has wealth, the issue extends beyond the event of death itself and includes the wealth left behind. This can give rise to legal challenges, particularly in relation to inheriting property (Moechthar, 2019).

The regulations governing land ownership rights in Indonesia are outlined in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (referred to as UUPA). Specifically, Article 20, Paragraph 1 of the UUPA elucidates that "*hak milik*" (ownership right) is the most robust, comprehensive, and inheritable right that an individual holds over land, taking into account the provisions in Article 6. Numerous cases have emerged regarding the status of land ownership by foreign nationals acquired through mixed assets in mixed marriages with Indonesian citizens.

According to Article 20, Paragraph 2 of the UUPA, ownership rights can be transferred to other parties. Further details are explained in Article 21, Paragraph 1 of the UUPA, which stipulates that only Indonesian citizens are entitled to ownership rights. The law also mandates that foreigners who acquire ownership rights through inheritance without a will or Indonesian citizens who become foreign nationals must relinquish these rights within one year of acquiring the rights or losing their citizenship. Failure to do so within the prescribed time limit results in the rights being automatically revoked by law, and the land becomes the property of the State (Trovani, 2021).

Article 21 of the Basic Agrarian Law (Law No. 5/1960) provides the following explanations: (1) The first paragraph states that only Indonesian citizens can hold land ownership rights. (2) The second paragraph determines that the government will identify the legal entities that can possess "*hak milik*" (right of ownership) to land and the conditions that must be fulfilled to obtain such rights. (3) The third paragraph states that foreigners who acquire "*hak milik*" to land through inheritance without a will or as a result of asset mingling in marriage, as well as Indonesian citizens who lose their nationality, must relinquish their "*hak milik*" within one year of acquiring or losing their nationality. Failure to relinquish the ownership rights within the stipulated time frame leads to the rights being revoked, and the land becomes state property, while the rights of other parties against it remain valid. (4) The final paragraph states that as long as an individual holds foreign citizenship, they cannot possess "*hak milik*" to land, and the provisions in the third paragraph of Article 21 apply to them as well.

In Article 21, Paragraph 3 of the Basic Agrarian Law (Law No. 5/1960), there is ambiguity regarding land tenure for foreigners acquired through inheritance. The provision lacks a specific time limit or clear guidelines for land tenure by foreigners derived from inheritance. It states that foreigners who acquire land ownership rights through inheritance without a will or through mixed marital assets after the enactment of this law must relinquish their ownership rights within one year of acquiring or losing their nationality.

However, this provision does not address the time limit for land tenure by foreigners derived from inheritance prior to the enactment of this law. This ambiguity poses a challenge in the practical implementation of land tenure by foreigners derived from inheritance, and it is crucial to find an appropriate solution to avoid legal uncertainty.

This can be achieved by introducing new provisions or amending existing laws and regulations to provide clear and definitive guidelines for land tenure by foreigners derived from inheritance.

Furthermore, these legal provisions can have detrimental consequences for heirs who were originally Indonesian citizens (WNI) but became foreign citizens (WNA) due to marriage. Article 21, Paragraph 3 of the Basic Agrarian Law (Law No. 5/1960) states that foreigners who acquire land ownership rights through inheritance without a will or through mixed marital assets after the enactment of this law must relinquish their ownership rights within one year of acquiring or losing their citizenship. This can result in losses for the heirs.

The potential loss faced by heirs includes the deprivation of rights to land that should have been inherited or passed down within the family. Additionally, the heirs may have made investments or carried out developments on the land, leading to financial losses when relinquishing the land ownership rights. However, Article 21, Paragraph 3 also permits foreigners to sell or transfer the land within one year of acquiring or losing their nationality. In such cases, the heir may receive financial compensation from the sale or transfer of the land, thus mitigating the loss.

In addition, Article 23, Paragraph 1 of the Basic Agrarian Law also addresses the limitation or cancellation of land ownership rights for foreigners. This article stipulates that land rights can be restricted or revoked if the holder of the ownership right no longer meets the requirements or conditions specified by laws and regulations.

In cases where land ownership rights of foreigners are abolished, the government is obligated to provide fair compensation to the affected owners. This compensation should encompass the value of the land, the value of any structures or buildings on the land, and any other losses incurred as a result of the abolition of land ownership rights. The abolition of land ownership rights by foreigners can have significant repercussions for heirs or current holders of such rights. Therefore, it is imperative for the government to take appropriate measures to safeguard their rights and ensure fair compensation in instances where land ownership rights are abolished.

Building upon the background information presented above, this research focuses on exploring and discussing the legal validity of land tenure by foreigners through mixed marriages acquired via inheritance from the perspective of the UUPA. Additionally, the study addresses the legal consequences arising from the cancellation of land ownership rights acquired through inheritance by foreigners.

This research builds upon previous studies, such as "Ownership of Land Rights of Indonesian Citizens in Mixed Marriages" by A.A. Sri Indrawati and I Nyoman Darmadha, which examines the legal protection available to Indonesian citizens who enter into mixed marriages in relation to land ownership rights (Sari et al., 2017). Furthermore, the research conducted by Ega Permatadani and Anang Dony Irawan, titled "Land Ownership for Foreign Citizens Reviewed from Indonesian Land Law," explores land ownership rights for foreigners from the perspective of the UUPA (Permatadani & Irawan, 2021). While there are similarities with previous research in terms of land rights for foreigners, this study focuses specifically on the ownership of land rights obtained through inheritance resulting from mixed marriages.

The legal validity of land tenure by foreigners through inheritance from mixed marriages and the perspective of the UUPA raises important questions. Firstly, how is the

legal validity of land tenure by foreigners through inheritance viewed from the UUPA standpoint? Secondly, what are the legal consequences that arise when ownership rights to land acquired through inheritance by foreigners are canceled?

The objective of this scientific work is to analyze the legal validity of land tenure by foreigners in the context of mixed marriages and inheritance, with a specific focus on the perspective of the UUPA. The study also aims to examine the legal consequences that occur when ownership rights to land acquired through inheritance by foreigners are canceled. By addressing these research objectives, this study aims to contribute to a better understanding of the legal implications surrounding land tenure for foreigners in mixed marriages and the potential consequences when ownership rights to inherited land are terminated.

2. RESEARCH METHODS

This research employs a normative legal research method to analyze the ambiguity of norms concerning land tenure by foreigners through mixed marriages, specifically from the perspective of the UUPA. A statutory approach is adopted, emphasizing the objective interpretation of relevant regulations within the field of law under examination. Furthermore, the conceptual and analytical approaches are utilized to comprehend legal concepts and analyze data gathered from previous research and legal sources. Additional legal materials are collected to support a comprehensive analysis (Marzuki, 2013).

3. RESULTS AND DISCUSSION

3.1. Legal Validity of Land Tenure by Foreigners through Mixed Marriages Obtained from Inheritance Perspective of UUPA

Land holds significant juridical aspects, encompassing belief, social, economic, and cultural dimensions. Its importance cannot be overstated, as it plays a crucial role in human life, officially regulated by the Basic Agrarian Law (UUPA) within a country. While land is intrinsically connected to legal aspects, it also intertwines with various other factors on a broader scale.

The purpose of the UUPA originates from the provisions stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which aims to strengthen the state's ownership of land. Consequently, regulations are required to govern the state's authority in this matter. The UUPA provides opportunities for citizens to own or acquire land rights, whether through ownership or other forms of rights. This reflects the state's role in enhancing the welfare of its people by facilitating the distribution of land ownership.

As the country undergoes development and experiences the rapid influence of globalization, the role of the state extends beyond its relationship with its citizens. It now involves interactions between the state and foreign citizens, as well as interactions between citizens and foreign citizens. These interactions can encompass marital ties, family relationships, or trade activities conducted within Indonesia. Hence, foreign nationals require access to land ownership rights within the context of managing trade.

According to Article 1 paragraph (9) of Law Number 6 Year 2011 on Immigration, a foreign national is defined as an individual who is not an Indonesian citizen. The concepts of "citizen" and "citizenship" can be understood as legal concepts that pertain to

the status of legal subjects, both on an individual and organizational level. Interpreting citizens and citizenship as legal subjects is part of the process of establishing legal identity, which confers certain rights and obligations to individuals. Therefore, it is essential to distinguish between subjects within the community (inside the community) and those outside the community. This distinction necessitates considering an individual's status separately in terms of their citizenship (Isharyanto, 2021).

Issues concerning the land sector are closely tied to the progress of urban development, prompting the government to address them with care. The prevalence of various problems within the land sector highlights the high priority given to land-related issues. Factors contributing to these problems include limited land availability, the transfer of land rights through inheritance, changes in the status of land rights owners to foreign nationals, conflicting regulations on land ownership, disputes arising from overlapping claims to the same land due to past manipulations in land acquisition, and other relevant factors.

The national agrarian law governs the concept of land rights, which can be categorized into two forms. Firstly, there are primary land rights that grant individuals or legal entities direct ownership or control over land for an extended period, allowing for transfer to other parties or their heirs. Examples of primary land rights include *Hak milik* (HM) or right of ownership, *Hak Guna Usaha* (HGU) or right to cultivate, *Hak Guna Bangunan* (HGB) or right to build, and Hak Pakai (HP) or right to use.

Secondly, there are secondary land rights that are of a temporary nature, such as liens, profit-sharing business rights, right of passage, and lease rights specifically pertaining to agricultural land. These secondary rights offer limited-term usage or benefits related to land.

Of the various types of land rights mentioned earlier, *Hak milik* (right of ownership) is the only form that confers complete power and existence, allowing individuals to fully own land. According to Article 20, paragraph (1) of the UUPA, *Hak milik* is a hereditary right that can be owned by individuals over land. Hereditary means that the right of ownership can endure as long as the owner is alive and can be inherited by their heirs if they meet the requirements as property rights holders. *Hak milik* holds a superior position compared to other land rights, as it is stronger, enduring, easily defensible against interference, and difficult to extinguish. It provides broader powers and can serve as the basis for other types of land rights. The use of land under *Hak milik* is more extensive than under other forms of land rights (Kusuma et al., 2017).

Inheritance involves the transfer of the rights and obligations of a deceased individual. Inheritance law governs the handling of the deceased's property, including the transfer of their assets and the effects on the heirs.

The owners of land ownership rights are Indonesian citizens and legal entities designated by the government in accordance with specific requirements. According to Article 21, paragraph (1) of the UUPA, only Indonesian citizens have the right to own *Hak milik*, while paragraph (2) states that legal entities that can own *Hak milik* are determined by the government based on stipulated requirements.

In essence, the granting of land rights by the state involves granting individuals, groups, or legal entities direct control over land. Article 9, paragraph (2) of the UUPA ensures that every Indonesian citizen, regardless of gender, has an equal opportunity to acquire land rights for personal and family interests. However, there are limitations for

foreign nationals or foreign legal entities with representatives in Indonesia, who are restricted to the rights of use and lease as described in Article 42 and Article 45 of the UUPA (Trovani, 2021).

Property rights to land can be lost in cases where the land is transferred to state ownership or undergoes irreparable damage. The transfer process can occur through revocation of rights as stated in Article 18 of the UUPA, voluntary surrender by the owner, abandonment of the land, or in accordance with the provisions outlined in Article 21, paragraph (3) and Article 26, paragraph (2) of the UUPA. The criteria for land to be considered abandoned have been specified in Government Regulation No. 11/2010 (Jayanti & Wita, 2016).

From the perspective of the UUPA, the legal validity of land ownership by foreigners through mixed marriages acquired by inheritance can be explained as follows: The UUPA imposes restrictions and limitations on land ownership by foreigners. According to Article 21, paragraph (2) of the UUPA, foreigners are not allowed to have *Hak milik* (right of ownership) over land but are only permitted to have the right to use or the right to lease the land. In the context of a mixed marriage, if one spouse who is an Indonesian citizen (WNI) passes away and bequeaths land, the legal regulations of inheritance come into effect.

However, in the case of land tenure by foreigners through inheritance, specific requirements and limitations must be fulfilled for the tenure to be legally recognized under the UUPA. According to Article 43, paragraph (1) of the UUPA, land acquired by foreigners through inheritance can only be used as a right of use and requires a permit from the Minister of Agrarian and Spatial Planning/Head of the National Land Agency. The granting of this permit is based on special considerations, including kinship relations with the Indonesian heir. Therefore, for land tenure by foreigners through mixed marriages obtained through inheritance, it is crucial to comply with the requirements of the UUPA and obtain permission from the competent authority.

Government Regulation No. 40/1996, which governs Building Rights Title, Business Rights Title, and Use Rights Title, specifies that Use Rights can be owned by foreigners in Indonesia. Use Rights are not limited to Indonesian citizens and are the only form of land right that can be owned by foreigners in the country. Additionally, there are other regulations pertaining to the ownership of residences for foreigners in Indonesia, as described in Article 52 of Law Number 1 Year 2011 on Housing and Settlement Areas. This article allows foreigners to occupy or live in a house in Indonesia through the right of lease or right of use (Tambing & Kartika, 2016).

Foreign nationals are generally not permitted to own land in Indonesia according to existing laws and regulations. They are only allowed to obtain the right to use or lease land and/or buildings. However, there is an exception for foreign nationals who enter into a mixed marriage with an Indonesian citizen. In such cases, the land ownership must still be held by the Indonesian citizen, based on a joint property separation agreement prior to the mixed marriage.

The concept of *hak pakai*, which grants the right to use land, is regulated in Article 39 of Government Regulation No. 40/1996. It specifically applies to foreigners residing in Indonesia. Hak Pakai is further regulated in Articles 41 to 43 of the UUPA and Articles 39 to 58 of Government Regulation No. 40/1996 on Cultivation Rights, Building Rights, and Land Use Rights.

The duration of *hak pakai* is defined in Government Regulation No. 40/1996, specifically in Article 45. Additionally, the rules regarding the term of *hak pakai* are also outlined in Article 4, letter a, paragraph (2) of Government Regulation No. 103/2015. According to this provision, foreigners are granted the right to extend the right of use for 20 years, which can be renewed for a maximum of 30 years. Therefore, the total period given to foreigners to control the right of use amounts to 80 years. This total period exceeds the duration stipulated in Government Regulation No. 40/1996 (Ardani, 2017).

3.2. Legal Consequences Resulting from the Cancellation of Land Ownership Rights Acquired from the Inheritance of Foreigners

In principle, foreigners are not permitted to hold land titles. However, UUPA allows for certain exceptions where foreigners can hold land titles. These exceptions are regulated in Article 21 of the UUPA and include the following:

1. Statutory inheritance: This occurs when the transfer of land from a deceased person (testator) to their heirs is based on blood relationship, with the heir's nationality being the determining factor.
2. Mixed marriages under the property partnership regime: If an Indonesian citizen marries a foreigner and purchases land under their own name with full ownership rights (*hak milik*), the foreign spouse can hold the land title.
3. Transfer of citizenship: When an Indonesian citizen changes their citizenship to that of a foreign country, they can still retain ownership of land.

The inheritance law system serves to regulate the transfer of a person's estate after death and its implications for the heirs. When land ownership rights are transferred from the deceased (testator) to heirs of different nationalities, certain restrictions come into play regarding the transfer of land rights. These restrictions are based on nationality, as outlined in the Basic Agrarian Law (UUPA), which stipulates that full rights to water resources, land, and space can only be owned by Indonesian citizens. The UUPA also states that property rights over land are exclusively for Indonesian citizens. Therefore, foreigners residing in Indonesia are granted the right of use in accordance with Article 42 of the UUPA (Chayadi, 2020).

Heirs who have foreign citizenship have several options to pursue legal action regarding their inherited land ownership. The following steps can be taken:

Heirs who have changed their nationality but are still entitled to inherit from an Indonesian citizen can apply to maintain their status as an Indonesian citizen, in accordance with the provisions of the Indonesian Citizenship Law and government regulations governing procedures for obtaining, losing, canceling, and regaining Indonesian citizenship. By doing so, heirs who have become foreign nationals can regain the rights possessed by Indonesian citizens (Chayadi, 2020).

If an heir with foreign citizenship resides in Indonesia and fails to sell or manage the land in accordance with the requirements of the Basic Agrarian Law (UUPA) within one year, the ownership of the land will be transferred to the state. However, the foreigner still retains the right to use the land for constructing buildings, as specified in the UUPA.

The process of transferring property ownership rights to heirs who have become foreign nationals can be accomplished through a sale or grant to Indonesian citizens within one year. As a result, heirs who have changed their nationality will no longer have

ownership rights to the property in Indonesia and will only receive monetary compensation from the sale (Chayadi, 2020).

The cancellation of property rights, which involves the loss of land rights transferring to the state as described earlier, is closely linked to the potential losses experienced by the land title holder. The cancellation of property rights can lead to various losses, such as:

1. Loss of investment: If a foreigner has invested a substantial amount of money or resources in land that is subsequently subject to title cancellation, they may incur significant financial losses. Investments made, such as land purchases, property construction, or business development on the land, may be lost or irretrievable upon title cancellation.
2. Decrease in property value: Title cancellation can cause the value of the property to decline. Land that previously held a strong title status and was highly valued may lose its value after the cancellation of the title. This can result in financial loss for the owner who loses the title.
3. Legal disputes and costs: Title cancellation can give rise to complex and costly legal disputes. The affected party may initiate legal proceedings to defend the title or seek compensation for the incurred losses. Legal proceedings can consume significant time, effort, and expenses (Sumanto, 2013).

In the context of this research, there is a scenario where one of the heirs becomes a foreign national after inheriting ownership of the land. In such cases, Article 21, paragraph (1) of the UUPA, which governs land ownership rights, states that only Indonesian citizens are entitled to own land. Therefore, if foreign nationals still hold a *hak milik* (full ownership rights) to the land, they need to take the following legal steps: (Paramita et al., 2018)

The heirs have the option to transfer ownership of the land and/or building through sale, exchange, grant, or auction within a maximum period of one year, as stipulated in Article 21, paragraph (3) of the UUPA. Failure to take legal action regarding the land within one year will result in the land becoming state property. In this situation, the heirs have the right to apply to the local National Land Agency to change the land's status to a right of use, as outlined in Article 49 of Government Regulation No. 18 of 2021.

In the context of inheritance, when a person passes away, the rights to their property are immediately transferred to the heirs as per the law. However, it is crucial to maintain land documents as publicly accessible evidence in land law. In relation to the transfer of rights due to death, an evidence letter is required to establish the heir's status.

The procedure for obtaining an evidence letter as an heir is regulated in "Article 111, paragraph 1, letter c of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 on Provisions for the Implementation of Government Regulation Number 24 of 1997 on Land Registration." An evidence letter as an heir can be obtained in several ways, including: (Moechthar, 2019)

1) A will left by the deceased person (testator).

2) A court decision that confirms the status as an heir.

3) A ruling by a judge or the President of the Court acknowledging the status as an heir.

4) A proof letter as an heir can be obtained through the following methods:

a. For Indonesian citizens of indigenous origin, they can use a certificate of heirs created by the heirs, witnessed by two witnesses, and certified by the Head of the Village or *Kelurahan* and the Sub-district Head where the deceased person lived at the time of their death.
b. For Indonesian citizens of Chinese descent, they can use a certificate of inheritance rights issued by a Notary.
c. For Indonesian citizens of other foreign Eastern descent, they can use a certificate of inheritance provided by the *Balai Harta Peninggalan* (Estate Asset Office).

4. CONCLUSION

Foreign nationals are generally not allowed to own land in Indonesia, except for a few exceptions. One exception is if they marry an Indonesian citizen, in which case the land ownership must remain with the Indonesian citizen. Another exception is if the foreign national officially changes their citizenship to become an Indonesian citizen, without holding dual citizenship. These exceptions are based on the Single Citizenship Principle applied in Indonesia.

Regarding inherited land with the *Hak milik* (full ownership rights) status, the transfer of ownership to the heirs applies regardless of whether they become Indonesian citizens or foreign citizens. Even if the heirs become foreign nationals, they can still maintain ownership of the land with *Hak milik* status as per the relevant laws. However, there is a maximum time limit of one year for foreign national heirs to hold such ownership. If this time limit is exceeded, the land ownership will be transferred to the state.

Foreign heirs still have options available to them. They can choose to sell the land to an Indonesian citizen or apply for a Right of Use through the National Land Agency in accordance with the applicable regulations. These alternatives enable foreign heirs to comply with the legal requirements and retain their rights to the land within the specified timeframe.

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Acknowledgments (if any)

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

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