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THE ROLE OF INTERNATIONAL LAW IN PREVENTING AND ADDRESSING HUMAN TRAFFICKING FROM THE PERSPECTIVE OF THE RIGHT TO PRIVACY UNDER ICCPR

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Abstract

This research aims to explore the regulations and principles of human rights and the role of International Law in preventing and addressing human trafficking, with a specific focus on the Right to Privacy outlined in the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the study seeks to analyze the contribution of International Law to combat human trafficking from an ICCPR perspective. The act of trafficking violates various principles of international human rights, including the Right to Privacy as stipulated in Article 17 of the ICCPR. However, Article 17 also acknowledges that the right to privacy may be limited in cases of public interest or to safeguard the rights of others. The challenge lies in determining appropriate limitations on the right to privacy in specific situations, leading to norm vagueness. This research adopts a normative legal research method, incorporating a statutory approach relevant to the legal domain under examination, as well as conceptual and analytical approaches. The findings revealed that effective international cooperation is crucial in combating human trafficking. Nations must ensure that their domestic laws align with international legal standards for prevention and intervention in human trafficking. Adoption and implementation of pertinent international instruments such as the Palermo Protocol, an adjunct to the UN Convention against Transnational Organized Crime, and the Protocol on Combating Human trafficking are recommended for this purpose.

Keywords: *Human Trafficking, ICCPR, Right to Privacy*

1. INTRODUCTION

Human trafficking is a long-standing issue that has persisted throughout history, even finding mention in holy books. Today, it stands as one of the top five crimes globally, demanding urgent attention due to its far-reaching economic, political, cultural, and humanitarian repercussions. The other four crimes in this category are drug trafficking, illegal arms trafficking, intellectual property crimes, and money laundering (Suwardika, 2020).

The issue of human trafficking continues to be a serious problem that impacts various parts of the world. According to the 2020 Global Report on Human trafficking, released by the United Nations Office on Drugs and Crime (UNODC), women and children constitute 74% of the victims involved in trafficking.

The act of human trafficking is a grave and increasing concern, as indicated by information provided by the U.S. Department of Justice and the United Nations (Hutabarat et al., 2022). It is estimated that between 700,000 to four million individuals worldwide fall victim to trafficking, involving their sale, transportation, forced labor, and exploitation. Developing countries, particularly those with low incomes, are frequently the primary sources of trafficked individuals destined for more developed nations. As a

developing nation itself, Indonesia is not immune to this issue and plays a significant role as a "sending country" in the global trafficking network (Maharani & Atmadja, 2015).

The International Covenant on Civil and Political Rights (ICCPR) offers a crucial framework to address and prevent human trafficking. The ICCPR is an international treaty that protects essential civil and political rights and has been ratified by numerous countries, including Indonesia. It explicitly recognizes the rights of individuals to be free from slavery, sale, and forced labor under conditions of coercion. Article 8 of the ICCPR specifically condemns any form of slavery as a violation of human rights.

In addition, the ICCPR also provides for the right to protection from sexual exploitation and human trafficking. Article 9 of the ICCPR states that everyone has the right to liberty and security of person, including the right not to be arbitrarily detained or arrested without lawful cause. This can serve as the legal basis for countries to take action against human traffickers and provide protection for victims.

In the Indonesian context, the government has passed several laws related to human trafficking, such as Law No. 21/2007 on the Eradication of the Crime of Human trafficking. However, there are still challenges in the implementation of the law. Therefore, research on the role of international law from the perspective of the ICCPR in preventing and addressing human trafficking can contribute to improving the protection of victims of human trafficking in Indonesia and other countries worldwide.

The ICCPR contains several articles related to human trafficking, namely Article 8 on the right to personal liberty, Article 9 on the right to personal liberty and security, and Article 24 on the right to child protection. These articles guarantee that everyone has the right to liberty and security of person and should not be enslaved or forced to work under involuntary circumstances.

Additionally, the ICCPR also provides special protection for women and children from human trafficking, sexual abuse, and sexual exploitation. Article 23 of the ICCPR affirms that the family is the natural and fundamental unit of society, deserving protection by society and the state. Article 24 of the ICCPR further affirms that every child is entitled to special protection and care necessary for their physical, mental, moral, and social development.

The issue of human trafficking carries significant weight in international law due to its infringement upon fundamental human rights and its detrimental impact on both individuals and society as a whole. This illicit practice directly contravenes essential human rights principles, including the right to personal freedom, the right to be free from enslavement or coerced labor, the right to safeguard against sexual exploitation and trafficking, the right to privacy, and the right to specific protections for women and children (Widana, 2019).

Moreover, human trafficking is also a violation of various international treaties, such as the Palermo Convention on Transnational Organized Crime. The convention addresses trafficking in Article 3, which defines transnational organized crime; Article 5, which focuses on the prevention of transnational organized crime; Article 6, which concerns courts and jurisdiction; Article 9, which deals with international cooperation; and Article 11, which pertains to the protection of victims.

Besides that, in the UN Convention on the Elimination of All Forms of Discrimination Against Women, namely in Article 6 concerning Actions that must be taken by state parties; Article 9 concerning Nationality; Article 10 concerning Education;

Article 11 concerning Work; Article 12 concerning Health; Article 15 concerning Equality before the law and in economic and social life.

Also, in the UN Convention on the Elimination of All Forms of Discrimination Against Women, specifically in Article 6 on measures to be taken by state parties, Article 9 on nationality, Article 10 on education, Article 11 on employment, Article 12 on health, and Article 15 on equality before the law and in economic and social life. Additionally, the Convention on the Rights of the Child includes Article 19 on protection from violence, abuse, and exploitation, Article 32 on protection from economic exploitation and child labor, and Article 34 on protection from sexual abuse. The Palermo Convention states that human trafficking is a form of transnational organized crime and must be seriously combated by state parties. Meanwhile, the UN Convention on the Elimination of All Forms of Discrimination Against Women emphasizes that trafficking in women and girls for the purpose of sexual exploitation is a form of discrimination against women and must be eradicated.

The ICCPR provides concrete regulations regarding the protection of international human rights for everyone from the act of human trafficking. The act of trafficking violates several principles of international human rights enshrined in the ICCPR, one of which is the principle of the Right to Privacy, regulated in Article 17 of the ICCPR. This article states that "everyone has the right to protection against arbitrary interference with their private life, family, household, and communications, and against attacks on personal honor and reputation."

The article emphasizes the importance and urgency of protecting privacy as a fundamental right, and the state has an obligation to ensure this protection. Privacy protection encompasses various aspects of private life, such as personal information, correspondence, and private activities. States must also safeguard individuals from attacks on their honor and reputation.

Article 17 of the ICCPR also safeguards the right to privacy of trafficking victims. Victims of trafficking often endure violations of their right to privacy, such as abduction, confinement, forced labor, or sexual exploitation. Therefore, states should ensure that victims of trafficking receive adequate protection against violations of their right to privacy (Suryandari, 2019).

Although Article 17 of the ICCPR recognizes the right to privacy as a fundamental human right that must be protected, there are certain normative ambiguities that can pose challenges in its implementation. Some factors contributing to the vagueness of Article 17 of the ICCPR include: a lack of a clear definition of terms such as "private life," "family," "household," and "communications," which results in varied interpretations of the right to privacy. Additionally, there are limitations to the right to privacy, as Article 17 of the ICCPR acknowledges that it can be restricted in cases of public interest or to protect the rights of others. However, determining the appropriate limits to the right to privacy in specific situations can be subject to normative vagueness.

This research builds upon previous works, such as Nugroho (2018) examination of state responsibility in handling the crime of human, and Purba T. (2018) study on the legal protection of Indonesian workers in relation to human trafficking based on national and international law. While these prior studies address the issue of human trafficking from the perspective of international human rights, this research specifically focuses on

the problem of trafficking through the lens of the ICCPR, with a particular emphasis on exploring the vague norms outlined in Article 17.

The problem at hand involves determining the relevant regulations and human rights principles outlined in the International Covenant on Civil and Political Rights (ICCPR) that are applicable to the prevention and mitigation of human trafficking. Furthermore, it aims to explore the role of international law, with a particular focus on the right to privacy as stated in the ICCPR, in preventing and addressing human trafficking. These research objectives serve to enhance our understanding of human trafficking prevention and mitigation efforts within the context of the ICCPR and highlight the significance of international law in addressing this pressing issue.

2. RESEARCH METHODS

The research methodology employed in this study utilizes normative legal research methods to examine the Principle of the Right to Privacy, as outlined in Article 17 of the ICCPR. The author employs a statutory approach, interpreting relevant legislation within the specific legal context under investigation, in order to mitigate any potential ambiguities in the norms. Additionally, the study incorporates a conceptual approach and an analytical approach to further analyze the subject matter (Marzuki, 2015). In addition to primary research, secondary legal materials from previous studies conducted in the field are gathered and included in this study to provide a comprehensive analysis.

3. RESULTS AND DISCUSSION

3.1. Human Rights Rules and Principles Related to Preventing and Addressing Human Trafficking Under the ICCPR

The ICCPR sets international standards for the protection of civil and political rights. When a state ratifies the ICCPR, it becomes obligated to safeguard the human rights of its citizens, preventing violations committed by the state, as well as by individuals or groups. Moreover, states are required to ensure that the rights enshrined in the ICCPR are granted to all individuals without any form of discrimination, including race, gender, religion, and other grounds.

In addition, the ICCPR establishes complaint procedures for individuals who believe their rights have been violated by states that have ratified the covenant. These individuals have the opportunity to file a complaint with the United Nations Committee on Civil and Political Rights. This committee is responsible for examining complaints and providing recommendations to the concerned state (Agusman, 2019).

The ICCPR incorporates human rights principles in the prevention of human trafficking through various provisions:

1. Protection from discrimination: Article 2 of the ICCPR safeguards the right to be free from discrimination.
2. Protection against human trafficking: Article 8 of the ICCPR ensures protection against human trafficking.
3. Right to liberty and security of person: Article 9 of the ICCPR establishes the right to liberty and security of the individual.
4. Protection from inhuman or degrading treatment: Article 7 of the ICCPR safeguards individuals from inhuman or degrading treatment.

5. Recognition as an independent person with equal dignity: Article 16 of the ICCPR recognizes the right to be regarded as an independent person with equal dignity.
6. Protection against child abuse and exploitation: Article 24(1) of the ICCPR specifically protects the rights of children against violence and exploitation.
7. Equality before the law: Article 26 of the ICCPR ensures the right to equality before the law.
8. Freedom from inhuman and degrading treatment: The right to freedom from inhuman and degrading treatment is protected under Article 7 of the ICCPR.
9. Right to privacy and respect for private life: Article 17 of the ICCPR safeguards the right to privacy and respect for private life (Farhana, 2010).

The ICCPR upholds the principle that everyone should be protected from trafficking, placing an obligation on states to take measures for prevention, addressing practices, and providing protection and support to victims. These actions include:

1. Encouraging reporting and monitoring.
2. Improving legal protections for victims.
3. Increasing international cooperation.
4. Enforcing laws and enhancing supervision.
5. Strengthening cooperation with the private sector.
6. Promoting the recovery and reintegration of victims.
7. Addressing the underlying factors contributing to trafficking (Nuraeny, 2022).

Human rights regulations and principles, as viewed through the lens of the ICCPR, establish that states bear the responsibility to safeguard human rights, including the right to be free from trafficking. To effectively combat human trafficking, states must take concrete actions such as enhancing international cooperation, enforcing laws, intensifying surveillance, fostering collaboration with the private sector, promoting victim recovery and reintegration, raising awareness and providing education, and addressing the root causes of trafficking (Kurniawan & Prabowo, 2019).

However, addressing the practice of human trafficking poses obstacles due to its cross-border nature and involvement of multiple parties, including traffickers, victims, and governments. This complexity makes combating and tackling human trafficking a challenging task (Kurniawan & Prabowo, 2019).

To overcome these challenges, it is crucial for governments, civil society, and international organizations to join forces and enhance awareness, allocate resources, and improve coordination in combating trafficking. It is imperative to establish and enforce comprehensive laws and regulations while ensuring effective law enforcement to prevent and address trafficking. Despite the numerous obstacles, it is vital to persist in efforts and strengthen cooperation to tackle this issue effectively.

Strengthening international cooperation and facilitating the exchange of information and experiences are key strategies to address these challenges. Additionally, adopting a holistic and human rights-based approach can significantly contribute to addressing trafficking in a comprehensive manner (Diantini & Widianto, 2019).

Addressing trafficking is of utmost importance as it directly relates to fundamental principles of human rights and social justice. When an individual becomes a victim of trafficking, their human rights are violated, including their right to liberty, freedom from

inhuman or degrading treatment, right to health, and right to education. Such violations undermine key human rights principles, including the right to dignity and liberty. Furthermore, trafficking also perpetuates social injustice, particularly as many victims originate from impoverished and vulnerable backgrounds. Therefore, efforts to prevent and address trafficking are essential to uphold and protect human rights and promote social justice (L. A. Sari & IP, 2010).

In addition to the principles of human rights and social justice, it is crucial to uphold other key principles in combating human trafficking, such as prevention and elimination, victim protection, perpetrator prosecution, and international cooperation. These principles must be approached holistically and with a sustained effort to ensure that victims receive comprehensive and consistent protection, while striving to make trafficking an entirely unacceptable crime that is eradicated.

It is essential to bear in mind that addressing trafficking is a long-term process that demands patience and unwavering determination to achieve significant outcomes. However, by persisting in our efforts and strengthening cooperation, there is hope that we can effectively address the issue of trafficking and provide adequate protection for victims.

3.2. The Position of International Law in Preventing and Overcoming Human trafficking from the Perspective of the Right to Privacy in the ICCPR

International Law, along with the ICCPR, plays a vital role in effectively preventing and addressing human trafficking. International Law provides a robust legal foundation for countries to combat human trafficking. Key instruments of International Law pertaining to trafficking include the Palermo Convention on Combating Transnational Organized Crime and the Palermo Protocol to Prevent, Suppress, and Punish Human trafficking. Notably, the Palermo Protocol establishes a legal framework for states to prevent and address human trafficking.

In the realm of preventing and addressing human trafficking, the role of International Law and the ICCPR is pivotal in providing an effective global legal framework. The ICCPR itself sets international standards concerning human rights, encompassing the right to be free from enslavement or treatment as a slave, the right to liberty and security of person, the right to protection from discrimination, and the right to decent work.

The ICCPR serves as a regulatory framework for member states, outlining the civil and political rights that they must safeguard. These rights include the right to liberty and the right to be free from slavery or enslavement, which are closely connected to the issue of human trafficking. International Law, on the other hand, establishes global standards that countries must adhere to in their efforts to combat trafficking. For instance, the Palermo Protocol provides guidelines for preventive measures, criminal actions, and victim protection in dealing with trafficking.

Furthermore, active participation in international cooperation is crucial for countries in their endeavors to prevent and address trafficking. Collaboration among governments, international organizations, and non-governmental organizations at regional and global levels plays a significant role in this regard (L. A. Sari & IP, 2010).

Regarding the right to privacy, Article 17 of the ICCPR specifically recognizes and upholds this fundamental human right. It asserts that everyone has the right to be protected from arbitrary interference with their private life, family, household, and

communications. Article 17 underscores the importance of privacy as an essential individual right that deserves protection and respect from the state.

The right to privacy is enshrined in Article 17 of the International Covenant on Civil and Political Rights (ICCPR), an international human rights treaty established by the United Nations in 1966. According to Article 17 of the ICCPR, every individual has the right to be safeguarded against arbitrary interference with their private life, family, household, and communications, as well as protection against attacks on personal honor and reputation.

This article underscores the significance of privacy as a fundamental and pressing right that necessitates protection, with the state bearing the responsibility to ensure this protection. Privacy encompasses various facets of private life, including personal information, correspondence, and private activities. Moreover, individuals must be shielded from assaults on their honor and reputation (Diantini & Widianto, 2019).

In practice, the right to privacy often remains a complex issue within the realm of human rights. Interpretations and protections of this right continue to be debated among different countries and international organizations. Nonetheless, the right to privacy articulated in the ICCPR establishes a foundation for advocating for a clearer and more robust right to privacy for individuals worldwide (R. P. Sari & Kurniawan, 2018).

Article 17 of the ICCPR lacks a precise definition of the terms "private life, family, household, and communications," resulting in varying interpretations of the scope of the right to privacy. Moreover, the article acknowledges that the right to privacy may be limited in certain circumstances, such as when there is a public interest or a need to protect the rights of others. However, determining the appropriate boundaries of the right to privacy in specific situations can lead to ambiguity.

Several factors contribute to this normative ambiguity in Article 17 of the ICCPR. Firstly, different cultures and perspectives on privacy exist across countries, which can influence how Article 17 is interpreted and applied within each jurisdiction.

Secondly, variations in the contexts and conditions in which the right to privacy is invoked can further contribute to normative ambiguity. For instance, during emergency situations or when national security is at stake, governments may argue that privacy restrictions are necessary in the interest of public safety. However, any such restrictions must be proportionate and not infringe upon the rights recognized in the ICCPR.

Thirdly, normative ambiguity can arise in the context of personal data collection, processing, and usage by private companies and other organizations. With society's increasing reliance on digital technologies and services, personal data can be collected and processed without clear consent from individuals, leading to questions about privacy protection.

Efforts are needed to address the ambiguity surrounding the norms outlined in Article 17 of the ICCPR by establishing clearer criteria and limits for the exercise and restriction of the right to privacy. This can be achieved through consistent and contemporary interpretation of the ICCPR by authorized bodies, as well as the development of comprehensive international regulations and standards pertaining to privacy and personal data protection.

States have a responsibility to ensure that their existing laws and regulations effectively safeguard individuals' privacy rights and that these provisions are properly

enforced. Furthermore, countries should establish accessible avenues, such as courts and other mechanisms, for individuals to address privacy rights violations and seek resolution.

Regarding human trafficking, protecting the privacy rights of individuals is crucial in preventing illicit trafficking practices and safeguarding victims from further harm. When investigating and prosecuting traffickers, states must ensure that victims' privacy rights are respected and upheld.

Countries should take measures to prevent victims of human trafficking from being unduly exposed during court proceedings or investigations, and they should refrain from widely disseminating victims' personal information. Additionally, countries must ensure that the identities of trafficking victims remain confidential, thereby shielding them from heightened threats or harm (Nurahman, 2019).

On the other hand, countries should strengthen international cooperation to effectively combat human trafficking and ensure secure and lawful exchange of necessary personal data for investigation and prosecution purposes. However, it is essential to conduct such data exchange while respecting individuals' privacy rights and protecting the personal data of human trafficking victims.

In this context, the role of states is pivotal in maintaining the protection of privacy rights throughout the prevention and response to human trafficking. Countries should collaborate and coordinate their efforts to establish improved international standards and frameworks that safeguard the privacy rights of trafficking victims and effectively prevent human trafficking.

For instance, in Indonesia, there is a law in place specifically addressing the prevention and handling of human trafficking, known as "Law Number 21 of 2007 concerning the Eradication of the Criminal Acts of Human trafficking." This legislation encompasses provisions on criminalizing human trafficking, prevention measures, and protection for victims of trafficking.

Indonesia has not only ratified several international conventions related to human rights but has also implemented regulations that address the prevention and handling of human trafficking. Some of these international conventions include the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Palermo Protocol on Combating Human trafficking (Yusitarani, 2020).

Additionally, there are specific provisions within the Indonesian Criminal Code (KUHP) that can be applied to address the crime of human trafficking. These provisions include:

1. Article 88 of the Criminal Code, which prohibits individuals from engaging in human trafficking or benefiting from such activities. The punishment for this offense can result in imprisonment for a maximum of 15 years and a fine of up to Rp7.5 billion.
2. Article 89 of the Criminal Code, which deals with the crime of kidnapping. This provision can also be applied in cases of human trafficking, as trafficking often involves abduction or forcibly taking individuals. The punishment for kidnapping can range from a maximum imprisonment of 20 years to life imprisonment.
3. Article 76A of the Criminal Code, which addresses the crime of torture. This provision can be applied if the perpetrator subjects the victim of trafficking to acts of torture. The maximum penalty for this offense is imprisonment for up to 12 years (Puspitasari et al., 2018).

By having these laws and provisions in place, Indonesia aims to effectively combat human trafficking, ensure the prosecution of offenders, and provide justice and protection for victims.

4. CONCLUSION

Norm ambiguity in Article 17 of the ICCPR can be influenced by several factors. Firstly, cultural differences and varying perspectives on privacy across countries can impact the interpretation and application of Article 17. Different views and values related to privacy may lead to variations in understanding and implementation of this provision among nations. Secondly, norm blurring can arise due to the diverse situations and contexts in which the right to privacy is applied. During emergencies or when national security is at stake, governments may argue that limitations on privacy rights are necessary to safeguard the public interest. However, any such restrictions must be proportionate and in line with the rights recognized in the ICCPR. Thirdly, norm blurring can occur within the realm of personal data collection, processing, and utilization by private companies and organizations. The increasing reliance on digital technologies and services raises concerns about the collection and processing of personal data without clear consent, creating challenges for privacy rights.

Victims of human trafficking often endure severe violations of their right to privacy, including abduction, forced labor, sexual exploitation, and being held against their will. It is essential for states to ensure that their national laws align with international legal standards in preventing and responding to human trafficking. This can be achieved by adopting and effectively implementing relevant international instruments such as the Palermo Protocol to the UN Convention against Transnational Organized Crime and the Protocol on Combating Human trafficking.

By addressing norm ambiguity, upholding privacy rights, and implementing comprehensive legal frameworks, states can better protect individuals from human trafficking and uphold their right to privacy, ultimately contributing to the prevention and eradication of this grave human rights violation.

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BENEFICIAL OWNERSHIP: TRANSPARENCY AS AN EFFORT TO PREVENT AND ERADICATE MONEY LAUNDERING AND ITS IMPACT ON INVESTMENT MARKETS

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Abstract

Transparency plays a crucial role in the prevention and eradication of money laundering, a significant threat to financial system stability and economic integrity. This study aims to analyze the significance of beneficial ownership in achieving transparency, particularly in the context of preventing and eliminating money laundering. It explores the impact of transparency on the investment market and identifies necessary efforts and policies to enhance transparency. Transparency is a critical factor for investors in making informed decisions and reducing risks within the investment market. Using the normative juridical method, this study reveals that disclosing information about beneficial owners has a positive effect on preventing and combating money laundering crimes. Improved transparency enables more effective identification of risks and violations, leading to appropriate preventive measures. Furthermore, greater transparency positively influences the investment market, as investors tend to trust and feel motivated to invest in an environment where information about ownership and asset utilization is readily accessible. This fosters investor confidence, strengthens market integrity, and promotes economic growth. Effective transparency necessitates collaboration among authorities, financial institutions, and participants in the investment market. Implementing clear and robust regulations is crucial, alongside fostering corporate awareness and fostering a strong commitment to transparency.

Keywords: *Beneficial Ownership, Investment, Money Laundering, Transparency*

1. INTRODUCTION

Based on research conducted by the Financial Action Task Force (FATF), an international organization focusing on global efforts to eradicate money laundering, it has been found that the underreporting of beneficial owners in Indonesia has been exploited by criminals to conceal their identities and launder the proceeds of their illegal activities. Money laundering crimes (ML) pose a significant threat to the social, political, and economic fabric of communities, nations, and states, especially in an era of technological advancement where national boundaries are increasingly blurred (Hutabarat et al., 2022).

Various types of money laundering patterns involving corporations have been identified. These patterns include the utilization of shell companies, foreign trusts, complex corporate structures, merging legal assets with illicit proceeds, identity misuse of close associates, and trade-based money laundering. Additionally, a new modus operandi has emerged involving professional money launderers in the establishment and management of corporations (PPATK, 2019).

The importance of corporate awareness regarding the transparency of beneficial ownership information has reached a critical level. In a complex and dynamic investment market, transparency and integrity are vital principles that uphold investor confidence, safeguard shareholder rights, and ensure compliance with relevant regulations. One fundamental aspect of such transparency and integrity is the clear and accurate disclosure of beneficial ownership in investments.

Beneficial ownership refers to the individual or entity that truly owns and controls an asset or entity, even if legal ownership is registered under someone else's name (Elliffe, 2009). Their interests encompass voting rights, income rights, and involvement in strategic decision-making. However, the disclosure of beneficial owners is often lacking transparency, providing opportunities for fraudulent practices, money laundering, and questionable financial activities (Gilmour, 2020; Vail, 2017).

By implementing Recommendations 24 and 25 of the Financial Action Task Force on Money Laundering (FATF), the risk of money laundering can be significantly mitigated. These recommendations mandate countries to ensure that authorities have access to sufficient, accurate, and timely information about the beneficial ownership, asset sources, and activities of corporate entities. This information proves invaluable for law enforcement agencies in identifying the parties responsible for corporate activities.

FATF Recommendations 24 and 25 serve as guidelines for Indonesia, an observer in FATF, to address cases of money laundering and terrorist financing (ML/TF) by implementing beneficial ownership transparency in corporations. FATF defines beneficial ownership as the owner or ultimate controller of a customer or individual involved in a transaction. It encompasses individuals who exercise ultimate effective control over legal entities or other arrangements, focusing on those who actually wield control.

FATF Recommendation 24 emphasizes the importance of transparency and beneficial ownership of legal persons. Countries should take measures to prevent the misuse of legal entities for money laundering or terrorist financing. They should ensure that competent authorities have access to adequate, accurate, and timely information on the beneficial ownership and control of legal persons. Countries that permit bearer shares, nominee shareholders, or nominee directors should effectively address the risks associated with such practices. Furthermore, countries should consider facilitating financial institutions and designated non-financial businesses and professions (DNFBPs) in accessing beneficial ownership and control information, as outlined in Recommendations 10 and 22 (FFAT, 2012).

Recommendation 25 suggests that countries should implement preventive measures to deter the misuse of agreements for ML (money laundering) and TF (terrorist financing). This includes facilitating access to beneficial ownership and control information.

This study aims to analyze the role of beneficial ownership transparency in preventing and combating ML/TF and its impact on investment markets. It will examine the policies and regulations necessary to enhance beneficial ownership transparency and evaluate the effectiveness of such transparency in preventing and detecting ML/TF cases in the investment market. The research endeavors to provide a better understanding of the significance of beneficial ownership transparency, its contribution to combating money laundering, and its role in establishing a healthy and trustworthy investment environment.

2. RESEARCH METHODS

The research utilized the Normative Juridical method to analyze legal regulations related to transparency and beneficial ownership in the prevention and eradication of money laundering crimes (Johnny, 2006). This method involved evaluating existing regulations, identifying any shortcomings or gaps, and providing recommendations for improvement or change.

In the implementation of the Normative Juridical method, legal documents such as laws, regulations, court decisions, and other relevant materials were analyzed. The content of existing laws was examined, comparing them with best practices or relevant international standards to assess their effectiveness in achieving transparency objectives. Additionally, an analysis of court decisions involving money laundering cases and beneficial ownership was conducted.

A comparative approach was employed to compare regulations across different countries or regions. Furthermore, a literature study was conducted to gather relevant references and support the arguments presented. The analysis of these findings served as the foundation for providing policy recommendations or proposing regulatory improvements to enhance transparency in the prevention and combat of money laundering.

Moreover, the research had the potential to include interviews with legal experts, authorities, financial institutions, or investment market participants. These interviews aimed to obtain practical viewpoints and additional information regarding the implementation of regulations and the challenges encountered in achieving desired levels of transparency.

By utilizing the Normative Juridical method, the research aimed to provide an in-depth analysis of the legal and regulatory aspects concerning transparency and beneficial ownership in the context of preventing and combating money laundering (Soekanto & Mamudji, 2013).

3. RESULTS AND DISCUSSION

3.1. Beneficial Ownership Overview and Arrangements

The concept of beneficial ownership originated in countries that follow the common law system. Under this system, two types of property ownership exist: legal ownership and beneficial ownership (Firdaus, 2022). Beneficial ownership refers to parties who meet the criteria for ownership without requiring legal recognition (Tiono & Sadjiarto, 2013).

The term "beneficial ownership" first emerged in England and was further developed within trust law. In the United Kingdom, two types of ownership are recognized: legal ownership and beneficial ownership (Mee, 1993). In the concept of beneficial ownership, a trustee or fiduciary plays a role as a property manager, not for personal benefit but for the benefit of the beneficiary or *cestui que trustent* (de Willebois et al., 2011).

A beneficial owner is an individual who possesses the authority to appoint or dismiss directors, board members, management personnel, supervisors, or overseers within a corporation (Firdaus, 2022). They have the ability to control the corporation and are entitled to directly or indirectly receive benefits from the corporation. They are the actual owner of the corporation's funds or shares and meet the criteria outlined in the Presidential Regulation.

Furthermore, according to Article 1, point 20 of the Financial Services Authority Regulation Number 12/POJK.01/2017, a beneficial owner is defined as any person who is entitled to and/or receives specific benefits related to a customer's account. They are the actual owner of funds and/or securities held with the Financial Services Authority,

have control over the customer's transactions, authorize transactions, control a corporation or other legal arrangement, and/or act as the ultimate controller of transactions conducted through a legal entity or based on an agreement.

According to Presidential Regulation No. 13/2018, a corporation refers to an organized group of individuals and/or assets, whether in the form of a legal entity or not. This includes various types of corporations such as limited liability companies, foundations, associations, cooperatives, commodity partnerships, firm partnerships, and other similar entities.

A clear and comprehensive understanding of beneficial ownership holds significant importance for several reasons. Firstly, it ensures transparency and accountability within corporate structures. Identifying beneficial owners is a crucial aspect in combating financial crimes (Thomas & Dancy, 2020). By identifying the individuals or entities that ultimately benefit from a company's operations and assets, we can uncover potential conflicts of interest, illicit activities, or unethical practices.

Secondly, understanding beneficial ownership is critical in the fight against financial crimes like money laundering, corruption, and tax evasion. When the true owners of assets or funds are concealed through complex ownership structures or offshore entities, it becomes challenging for authorities to trace and prevent illicit financial activities. By exposing beneficial ownership, we can enhance the effectiveness of anti-money laundering (AML) measures and strengthen the integrity of the financial system.

Thirdly, beneficial ownership information is essential for promoting fair competition and preventing market abuse. It assists in identifying instances of market concentration, anti-competitive practices, or monopolistic behavior by revealing hidden relationships between companies and individuals. This knowledge enables regulatory agencies to enforce competition laws and ensure equal opportunities for all market participants.

Fourthly, understanding beneficial ownership is crucial for investor protection. Investors require knowledge of who controls and benefits from the companies they invest in to make informed decisions. Transparency in beneficial ownership allows investors to assess potential risks, evaluate the credibility and integrity of the entities they engage with, and build trust and confidence in the market. This attracts both domestic and foreign investors.

Lastly, effective regulation and policymaking necessitate a thorough understanding of beneficial ownership. Governments and regulatory bodies can analyze data on beneficial owners to identify regulatory gaps, assess the effectiveness of existing measures, and design appropriate policies to address emerging challenges. This facilitates evidence-based decision-making and supports the development of a robust regulatory framework.

The qualifications of beneficial owners of corporations can be categorized into general qualifications and certain qualifications. According to Presidential Regulation of the Republic of Indonesia Number 13 of 2018, which pertains to the implementation of recognizing beneficial owners of corporations in the context of preventing and eradicating money laundering and financing terrorism, general qualifications include individuals who have the authority to appoint or dismiss directors, board members, management personnel, supervisors, or overseers within the corporation. They possess the ability to control the corporation and are entitled to directly or indirectly receive benefits from the corporation. They are also the actual owners of the corporation's funds or shares.

On the other hand, certain qualifications refer to individuals who meet the specific criteria outlined in Presidential Regulation Number 13 of 2018 concerning the application of recognizing beneficial owners of corporations in the context of preventing and eradicating money laundering and financing terrorism.

The presence of anonymity allows for various illicit activities to be concealed from law enforcement authorities, such as tax evasion, corruption, money laundering, and financing terrorism. For instance, in the case of money laundering, complex operations and transactions are conducted to create the illusion that money derived from illegal sources, such as drug trafficking or tax evasion, possesses legitimate origins.

Enhancing the transparency of legal entities and financial structures is crucial for safeguarding the integrity and transparency of the global financial system (Demianyshyn & Kostetskyi, 2023). Preventing the misuse of these entities for illegal purposes, such as corruption, tax evasion, and money laundering, aligns with the G20's objective of promoting growth through private sector investment. Anonymous companies facilitate corrupt and criminal financial transactions, and they are involved in 70 percent of grand corruption cases reviewed by the World Bank. They represent one of the oldest methods for moving, laundering, and utilizing illicit funds.

The transparency of beneficial ownership is directly linked to the effectiveness of a jurisdiction's Anti-Money Laundering (AML) systems and their critical role in preventing, detecting, prosecuting, and penalizing financial crimes. Consequently, it is vital for a jurisdiction's resilience against money laundering and terrorist financing threats.

The regulations pertaining to Beneficial Ownership are governed by the following:

a. Presidential Regulation (*Perpres*) Number 13 of 2018: This regulation outlines the principles for recognizing beneficial owners of corporations in the context of preventing and eradicating money laundering crimes and financing terrorism.
b. Regulation of the Minister of Law and Human Rights Number 15 of 2019: This regulation specifies the procedures for implementing the principles of recognizing beneficial owners of corporations.
c. Regulation of the Minister of Law and Human Rights Number 21 of 2019: This regulation delineates the procedures for supervising the implementation of the principle of recognizing beneficial owners of corporations.
d. Financial Services Authority Regulation Number 23/POJK.01/2019: This regulation pertains to amendments made to the Financial Services Authority Regulation Number 12/POJK.01/2017, which focuses on the implementation of anti-money laundering and countering the financing of terrorism programs in the financial services sector.

These regulations collectively establish the framework and guidelines for identifying and disclosing beneficial ownership information, as well as ensuring compliance with anti-money laundering and counter-terrorism financing measures within the financial services sector.

The stipulation and implementation of Presidential Regulation No. 13/2018 on the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Preventing and Eradicating the Criminal Acts of Money Laundering and the Criminal Acts of Financing Terrorism will not hinder investment and ease of doing

business, particularly in company formation. This is because the requirement for beneficial ownership information is not mandatory for obtaining approval from the competent authority to establish a company. On the contrary, this regulation will promote the establishment of companies that uphold high integrity and are free from money laundering and terrorism financing activities. It signifies the era of Indonesian companies that prioritize integrity.

The authorized agency is responsible for overseeing the implementation of the principle of recognizing beneficial owners as stated in Article 23 of Presidential Regulation Number 13 of 2018. Supervision by the authorized agency is carried out in accordance with the law, based on an evaluation of the risks associated with money laundering and terrorism financing. The authorized agency collaborates with the Financial Transaction Reports and Analysis Center to conduct supervision in accordance with legal provisions. If necessary for supervision purposes, the authorized agency may coordinate with relevant institutions within its authority.

Transparency regarding reported and recorded beneficial ownership by corporations, as stipulated in the Presidential Regulation and the Minister of Law and Human Rights regulation, is considered crucial for building trust and fostering cooperation with other corporations, agencies, or institutions. Both legal and non-legal entity corporations are required to comply with these provisions. Article 14, paragraph (1) of Minister of Law and Human Rights Regulation Number 15 of 2019 emphasizes that any person, including the government, law enforcement agencies, and other competent authorities, may request information about the beneficial owners of a corporation from the Minister. This data has been submitted to the Notary Officer and recorded through the AHU Online system. Notaries, as officers responsible for collecting and reporting data related to beneficial owners in a corporation, bear the heavy responsibility of disclosing information about beneficial owners. The Minister of Law and Human Rights regulation also imposes sanctions on notaries who are dishonest in filling out the reporting form regarding beneficial owners (Kanwil NTT, 2020).

3.2. Overview of Money Laundering Crimes

Money laundering is a criminal activity where the perpetrator seeks to conceal or alter the origin of illicit funds in order to make it difficult for law enforcement to trace (Abel Souto, 2022). The laundered money can then be used for either legitimate or illegitimate purposes.

Money laundering offenses are typically committed by individuals of high social status due to the organized and cross-border nature of the crime. Criminalizing money laundering is crucial for preserving the stability and integrity of Indonesia's economic and financial system. However, one of the challenges in combating money laundering is the increasing complexity of methods employed, necessitating stringent law enforcement measures to address this issue.

Given Indonesia's high market potential, it becomes a vulnerable area for money laundering practices. The government acknowledges the significance of preventing money laundering in the country and has taken steps to address it, such as enacting amendments to the Money Laundering Law, which led to the establishment of the Financial Transaction Reports and Analysis Center (PPATK).

Money laundering has the potential to disrupt economic stability and compromise the integrity of the financial system, as well as pose a threat to social, national, and

constitutional values based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In Indonesia, the crime of money laundering is regulated by Law Number 8 of 2010. According to Article 1 of this law, money laundering encompasses any act that fulfills the elements of a criminal offense as outlined in the legislation. Additionally, Law Number 15 of 2002, which addresses the crime of money laundering, defines it as "the act of placing, transferring, paying, spending, granting, donating, entrusting, bringing abroad, exchanging, or engaging in other actions involving assets that are known or reasonably suspected to be the proceeds of criminal activities, with the intention to conceal or disguise the origin of these assets so that they appear legitimate."

3.3. The Role and Impact of Lack of Transparency of Beneficial Ownership Information on the Investment Market

The transparency provided by beneficial ownership plays a crucial role in the investment market. In many democratic government systems, information transparency is considered essential for overseeing government policies and programs, and it has a positive impact on various aspects of social, political, economic, and legal life (Salle, 2017). The implementation of regulations concerning beneficial ownership transparency holds significant importance as it can influence economic growth and foster a healthy competitive environment.

Data on beneficial owners serves as a valuable reference for taking action on transactions and business relationships to prevent money laundering in the financial services sector (Zigo & Vincent, 2021). It also acts as a supervisory measure to prevent the banking sector from being exploited for money laundering or the concealment and distribution of criminal proceeds. In asset recovery, having the ability to trace assets and proceeds of crime back to their true owners is crucial. Similarly, in dealing with money laundering cases, a valid, comprehensive, and easily accessible database of beneficial owners plays a pivotal role in enhancing the effectiveness of case handling and enabling the pursuit of the main perpetrators who benefit from the illicit activities.

By having accurate information on beneficial owners, law enforcement agencies can more effectively combat money laundering and recover assets connected to criminal activities. This database facilitates the identification of the true owners of assets and enables focused investigations targeting the individuals who derive benefits from criminal proceeds.

Transparency plays a crucial role, particularly in terms of beneficial ownership, as it helps foster investor confidence. The primary need of investors is to enhance their trust and assurance. When investors have access to clear information regarding the identity, ownership, and interests of beneficial owners, they tend to be more trusting and comfortable with their investments. This creates an environment of trust, reducing the risk of fraud or manipulation. By promoting beneficial ownership transparency, investors gain confidence that they are investing in entities that uphold integrity and responsible business practices. Consequently, this can boost investor confidence and cultivate long-term relationships between investors and companies.

Furthermore, transparency in beneficial ownership strengthens the integrity of investment markets (Grosman, 2022). When there is sufficient transparency, it becomes easier to detect and take action against illegal practices or market manipulation by competent authorities. This ensures the maintenance of fair, open, and efficient markets.

Beneficial ownership transparency allows investors to gain a better understanding of a company's ownership structure, fostering healthy and equitable competition in the investment market. With equal access to relevant information, investors can make informed investment decisions. They can also conduct thorough risk analysis and make smarter investment choices. Transparency also serves to mitigate the risk of market abuse or manipulation that could potentially harm investors.

The application of transparency is vital for meeting regulatory and legal requirements in the investment market. Parties with reporting obligations, such as public companies or financial institutions, must ensure the disclosure of relevant information about beneficial owner holdings in compliance with applicable regulations.

Other roles that have a positive impact on combating money laundering and benefit investors include the following:

Firstly, transparency regarding beneficial owners increases the effectiveness of prevention and combat against money laundering. It becomes challenging for criminal offenders to conceal the proceeds of their illicit activities when the ownership information is transparent. This strengthens the efforts to prevent and eliminate money laundering, as authorities and institutions can trace the origin of suspicious funds more easily.

Secondly, transparency reduces both reputational and legal risks for companies. By openly disclosing the beneficial owners, companies can uphold their integrity and avoid involvement in unlawful practices. This safeguards their reputation and mitigates the legal risks associated with money laundering activities.

Thirdly, transparency facilitates risk analysis for investors. By knowing the beneficial owners of an entity, investors can conduct thorough risk assessments. They can evaluate potential conflicts of interest, involvement in illegal activities, or unethical business practices. This transparency empowers investors to make informed, risk-based investment decisions.

Fourthly, by identifying the beneficial owners of a company, investors can detect and avoid potential risks linked to illicit or unethical practices. This enables them to make well-informed and relevant investment choices, minimizing the risk of financial loss.

Fifthly, transparency regarding beneficial owners fosters more transparent and trustworthy investment markets. This can enhance market liquidity by attracting more investors who have confidence in the market's integrity and the companies they invest in.

Lastly, transparency reduces vulnerability to market manipulation. By disclosing beneficial owners, practices such as insider trading or the unauthorized use of confidential information can be minimized. Investors gain improved access to relevant information, enabling them to make better-informed decisions.

Overall, transparency in beneficial ownership plays a crucial role in preserving the integrity, trust, and efficiency of investment markets. It contributes to the creation of a fairer, more dependable, and sustainable investment environment.

In addition to the aforementioned positive impacts of transparency, there are negative consequences resulting from the absence of beneficial ownership information transparency in the investment market. Beneficial owners who lack transparency and integrity, particularly those involved in money laundering offenses, can have detrimental effects, including the erosion of trust and reputation. When beneficial owners lack transparency and integrity, it undermines the trust of investors and other participants in the investment market.

The lack of transparency in beneficial ownership has a significant impact on the investment market. These impacts include investor mistrust. The absence of transparency can breed skepticism among investors. Investors may hesitate to invest if they are uncertain about the true identity and interests of the beneficial owner. This can disrupt capital flows and hinder the growth of the investment market. Additionally, the lack of transparency provides opportunities for beneficial owners to exploit and manipulate the investment market. They can exploit complex ownership structures to manipulate share prices, harm other investors, or unlawfully utilize insider information.

Furthermore, the absence of transparency can impede the growth of a robust investment market. Unclear or poorly identified beneficial ownership can disrupt fair competition and impede equal access for all investors. This can put small or institutional investors at a disadvantage, as they may lack access to relevant information. Moreover, the lack of transparency creates an opportunity for money launderers and perpetrators of financial crimes to conceal their illicit funds through investments.

Beneficial ownership that cannot be easily traced facilitates these illegal practices and undermines the integrity of investment markets. The absence of transparency can destabilize investment markets. Uncertainty surrounding the ownership and interests of beneficial owners can create market turbulence, impact share prices, and generate unhealthy volatility. As a result, investors are harmed, and confidence in investment markets is undermined.

To uphold the stability and integrity of investment markets, it is crucial to enhance beneficial ownership transparency. This can be achieved through stricter regulations, clear reporting requirements, effective information exchange mechanisms between competent authorities, and rigorous enforcement. These measures can help mitigate the negative impact caused by a lack of transparency.

4. CONCLUSION

This study emphasizes the vital role of transparency in disclosing beneficial owners in the prevention and eradication of money laundering crimes (ML). By providing accurate information about the beneficial owners of an entity, the risk of misuse for money laundering activities can be significantly reduced. Moreover, this transparency has a positive impact on investment markets, enabling investors to access clearer information and make more informed decisions.

To ensure effective and sustainable transparency, it is crucial to implement regulations and policies that support beneficial ownership transparency. This necessitates collaboration among governments, financial institutions, and regulators. Countries must strengthen their Anti-Money Laundering (AML) systems by adhering to international standards and fortifying existing legal frameworks.

Understanding beneficial owners is of utmost importance in promoting transparency, combating financial crime, protecting investors, and facilitating effective regulation. As a result, the demand for beneficial ownership transparency is expected to safeguard trustworthy beneficial owners and prevent the exploitation of entities for money laundering purposes. By improving legal frameworks and engaging stakeholders through socialization, we can cultivate an investment environment that is more transparent, fair, and resilient to illicit financial practices.

Socialization emerges as a crucial policy tool to enhance understanding, awareness, and trust in beneficial ownership transparency. It fosters a deeper appreciation among corporations, authorities, financial institutions, and the general public for the significance of disclosing beneficial ownership and preventing corporate abuse in money laundering. The positive impacts of socialization include nurturing a culture of transparency, bolstering investor confidence, improving risk assessment, identifying investment opportunities, and encouraging responsible and transparent business practices.

In summary, socialization emerges as a powerful policy tool with a transformative potential for beneficial owners and investors, fostering a more transparent and equitable investment market while mitigating corporate abuse in money laundering.

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JURIDICAL STUDY ON CRIMINAL ACTS OF ONLINE TOGEL GAMBLING

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Abstract

Online gambling has gained popularity worldwide as a major entertainment industry. However, this growth has also brought about concerns regarding criminal activities such as fraud, money laundering, and illegal gambling operations. This study aims to analyze the considerations of judges in sentencing online gambling crimes and proving online togel gambling crimes. The research adopts a normative juridical approach (legal research) to examine the application of rules or norms in positive law using a statute-based approach. The analysis reveals that Article 303 and Article 303 Bis of the Criminal Code are utilized to address online gambling crimes, particularly online togel gambling. Although Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2011 regarding Electronic Information and Transactions can serve as a legal basis, it was not applied in this case. When deciding a criminal case, judges must take into account various factors, including ensuring that the actions charged meet the formulation of the offense and are in violation of the law, assessing the defendant's ability to be held accountable, and considering any justifications presented. Furthermore, the judge should also consider objective requirements, such as a complete indictment, case submission letter, and the case file. In the context of online togel gambling, evidence is evaluated using the theory of the Negative Legal System, which mandates at least two valid pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code, in conjunction with the judge's own belief. Despite the availability of the Information and Electronic Transactions (ITE) Law as a legal basis, this study demonstrates the continued reliance on Article 303 of the Criminal Code for such cases, indicating that the principle of lex specialis derogat legi generali (specific laws override general laws) does not apply.

Keywords: *Crime, Togel Gambling, Online Gambling*

1. INTRODUCTION

In Indonesian positive law, gambling is categorized into two types: online gambling (network) and ordinary gambling. The specific regulation for online gambling is outlined in Article 27, paragraph 2 of Law number 11 of 2008 concerning Electronic Information and Transactions. Ordinary gambling, on the other hand, is generally governed by Article 303 of the Criminal Code. Gambling encompasses various games such as “dice, blackjack (twenty-one), *jemeh*, *kodok-ulo*, roulette, baccarat, *kemping keles*, *kocok*, *keplek*, *tambola*, and others.” However, certain games like dominoes, bridge, *ceki*, *peidan*, etc., which are primarily used for entertainment, are not considered gambling.

The application of criminal liability for gambling should prioritize legal principles. A principle serves as the foundation for thinking, opinions, and actions (Kurniawan et al., 2022). Principles in law and regulation formation refer to the basis used in compiling laws and regulations (Nababan, 2021). In Article 63, paragraph 2 of the Criminal Code (KUHP), the principle of *Lex specialis* Derogate *Lex generalis* is stated. This principle of legal interpretation states that a special law (*lex specialis*) takes precedence over a general law (*lex generalis*).

Article 303, paragraph (3) of the Criminal Code defines gambling games as those that rely on luck for winning, and where cleverness and habitual involvement increase the chances of winning (Saragih et al., 2018). It also encompasses betting on race or game outcomes that do not involve the participants directly, as well as other games. A detailed explanation of Article 303, paragraph (3) is provided in the Explanation of Article 1 of Government Regulation Number 9 of 1981, which pertains to the Implementation of Law Number 7 of 1974 concerning Gambling Control.

To address the pressing concerns related to gambling, the New Order government era implemented Law Number 7 of 1974 concerning Gambling Control, which aimed to tackle the issue head-on. This legislation recognized the inadequacy of existing penalties outlined in the Criminal Code (KUHP) for gambling offenses and stressed the need for their augmentation. The gravity of gambling transgressions was clearly acknowledged as they were reclassified as crimes, leading to more severe punishments (Mestre-Bach et al., 2018). Previously, the penalties for gambling ranged from a maximum of one month to three months of imprisonment (Article 542, paragraph 1 and 2) under the Criminal Code. However, with the introduction of Law No. 7 of 1974, these penalties were substantially increased to a maximum of four years (Article 542, paragraph 1) and six years (Article 542, paragraph 2) respectively.

Furthermore, Article 1 of Law No. 7 of 1974 explicitly emphasizes that all forms of gambling offenses are regarded as crimes under the jurisdiction of this law. The legislation recognizes that gambling activities fundamentally contradict religious principles, social decency, and the moral values enshrined in Pancasila, the philosophical foundation of the Indonesian state. Moreover, it highlights that gambling poses significant threats to the livelihoods and well-being of both the community and the nation as a whole (Lakoro et al., 2020). By addressing the inherent dangers of gambling through more stringent penalties and legal measures, the government aimed to safeguard the interests of the society, nation, and state, fostering a more wholesome and prosperous environment for all.

The proliferation of "*togel*" (a form of lottery in Indonesia) in society reflects the failure to build rationality among the public (Handrio & Widowaty, 2022). This has made life more speculative, characterized by intrigue, suddenness, and unpredictability. Consequently, life is wagered through numbers. Irrationality has grown due to the diminishing culture of hard work and discipline in society. The dominant attitude among the public is the desire for quick wealth and fame. Politicians have already taught how to live a comfortable and suddenly affluent life. The current mentality displayed by the public is focused on achieving wealth without accomplishments. For politicians, this is considered normal, as being a political actor is seen as an investment to gain economic power. This is what fosters gambling because people seek positions by spending significant amounts of money but lack achievements and concepts. This cultivates a flourishing culture of speculative concepts. On the other hand, society itself allows for the proliferation of irrational things.

The application of regulations against online gambling perpetrators is still based on the same provisions as conventional gambling, namely Article 303 and Article 303 bis of the Criminal Code (Gaurifa, 2022). However, it is widely known that there are specific laws governing online gambling offenses, particularly Article 27, paragraph (2), and the corresponding penalty stated in Article 45 of Law No. 11 of 2008 concerning Electronic Information and Transactions. The imposition of severe penalties for gambling crimes is

necessary to create a deterrent effect on perpetrators and other members of society, preventing the occurrence of gambling offenses (Lakoro et al., 2020). Therefore, the role of the court, especially prosecutors and judges, is expected to be wiser, fairer, and more discerning in charging and imposing criminal sanctions on online gambling offenders. This should not only consider the perspective of the perpetrators but also the perpetuation of the criminal act, as gambling can lead to other criminal activities when individuals become obsessed with it.

Based on the aforementioned background, two main issues can be identified: (1) How do judges consider sentencing online gambling crimes? (2) How is the proof of online *togel* gambling crime established? This research aims to make a valuable contribution to the field of criminal justice by exploring the judicial decision-making process regarding sentencing for online gambling crimes and examining the methods employed to establish evidence in cases related to online "*togel*" gambling. By shedding light on these crucial aspects, this study seeks to enhance our understanding of the legal framework surrounding online gambling offenses and provide insights that can inform and improve future legal practices and policies in addressing such crimes.

2. RESEARCH METHODS

The research method employed in this study involved conducting legal research to identify legal rules, principles, and doctrines relevant to the legal issues under investigation (Soekanto & Mamudji, 2006). A normative juridical approach was utilized, focusing on examining the application of rules and norms within positive law. The research followed a statute-based approach, aiming to analyze primary legal materials and secondary legal sources.

Data collection for this study involved a comprehensive review and analysis of relevant legal materials. The primary legal materials utilized in this study included the following legislation that was in force during the research period:

1. Law No. 1/1946 on the Regulation of Criminal Law.
2. Law Number 8 of 1981 concerning the Criminal Procedure Code.
3. Law Number 7 of 1974 concerning the Control of Gambling.
4. Law Number 11 of 2008 concerning Electronic Information and Transactions.

To complement the analysis, secondary legal materials such as literature books, legal dictionaries, and legal journals were also consulted. These sources provided additional insights and perspectives on the legal issues under examination.

The data collection process involved the following steps:

1) Identification of relevant legal materials: The researcher conducted a thorough search and identification of primary legal materials, including statutes, regulations, and court decisions, that were directly related to the research topic.
2) Collection of secondary legal sources: The researcher gathered secondary legal materials, such as literature books, legal dictionaries, and legal journals, to supplement the analysis and provide additional perspectives on the legal issues.
3) Evaluation and analysis of legal materials: The collected legal materials were carefully reviewed and analyzed to extract key information and identify

relevant legal principles and doctrines.

4) Documentation of findings: The researcher documented the findings from the analysis of legal materials, including relevant legal provisions, case summaries, and scholarly interpretations.

By employing this comprehensive data collection process, the study aimed to ensure a thorough exploration of the legal framework and principles relevant to the research topic. The collected data served as the foundation for the analysis and conclusions presented in the study, contributing to the existing body of knowledge in the field of law.

3. RESULTS AND DISCUSSION

3.1. Considerations of Judges in Sentencing Online Gambling Offenders

In Indonesia, there are several regulations governing gambling, including both traditional and online forms. The penalties for gambling offenders in Indonesia are determined by the applicable laws and regulations, which specify the articles under which the perpetrators are prosecuted. Online gambling offenders can be charged under Article 27, Paragraph (2) of the ITE Law No. 11 of 2008, and Article 45, Paragraph (2) of the ITE Law No. 19 of 2016. On the other hand, perpetrators of *togel* gambling can be charged under Article 303, Paragraph (1) of the Criminal Code, which specifically addresses *togel* gambling.

The government has revised the punishment outlined in Article 303, Paragraph (1) of the Criminal Code for *togel* gambling offenses. The maximum imprisonment term has been increased from 2 years and 8 months to 10 years, and the maximum fine has been increased from Rp. 90,000 to Rp. 25,000,000. Regarding gambling in general, the punishment for offenders was previously addressed in Law Number 7 of 1947 concerning Gambling Control, where the legislation provided explanations regarding the penalties imposed on perpetrators.

Material criminal law refers to criminal law that includes rules defining punishable acts, conditions for imposing penalties, and provisions regarding punishment (Hutabarat et al., 2022). The regulation of material criminal law is outlined in the Criminal Code. Article 303 and Article 303 Bis of the Criminal Code are separate from "Article 27, Paragraph (2) of Law Number 11 of 2008 and Article 45, Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions." This distinction arises because the maximum criminal sanctions for online gambling offenders under Article 303 and Article 303 Bis of the Criminal Code are up to 10 years in prison, whereas Article 27, Paragraph (2) of Law Number 11 of 2008 and Article 45, Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions impose a maximum penalty of 6 years. Consequently, this leads to differences in the length of potential imprisonment.

Article 303, Paragraph (1) to 2e, and Article 303 Bis, Paragraph (1) to (2) of the Criminal Code are as follows:

Article 303, Paragraph (1):

"Any person who intentionally offers or provides opportunities for gambling to the public or intentionally participates in an enterprise for that purpose, whether or not an

agreement exists or any means are used, shall be punished with a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs."

2e:
"Intentionally provides or gives the opportunity to play gambling to the public or intentionally participates in an enterprise for that purpose, even if there is or is not an agreement or in any way to use that opportunity."

The elements of gambling according to Article 303, Paragraph (1) of the Criminal Code consist of two elements:
a. Subjective elements, which involve intentionally committing a criminal offense.
b. Objective elements, which include offering or providing opportunities for gambling games, making a livelihood, or participating in an enterprise.

Article 303 Bis, Paragraph 1:
"Any person who participates in gambling on a public street or near a street or in a place visited by the public, unless the competent authority has granted a license to conduct such gambling, shall be punished with a maximum imprisonment of four years or a maximum fine of ten million rupiahs."

(2):
"Any person who participates in gambling on a public street or near a street or in a place visited by the public, unless the competent authority has granted a license to conduct such gambling."

The elements of gambling according to Article 303 Bis of the Criminal Code consist of objective elements:
a. Whoever.
b. Participation in playing gambling.
c. On or at the side of a public road or in a place open to the public.

The crime of gambling through internet facilities (online) is governed by legal provisions in the Criminal Code, specifically "Article 303 and Article 303 Bis." However, there are also legal provisions addressing gambling through internet facilities (online) in "Article 27, Paragraph (2) of Law Number 11 of 2008 and Article 45, Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions" (Azania & Mircahya, 2013; Lakoro et al., 2020; Rossa et al., 2020).

The police have primarily relied on socialized efforts to prevent and control *togel* gambling. These efforts involve community cooperation and aim to prevent and combat *togel* gambling, which remains prevalent in Indonesia. The preventive and repressive measures implemented are as follows:

1. Preventive efforts (prevention)

Preventive efforts are aimed at averting the emergence and spread of gambling in society. The goal is to discourage individuals from engaging in gambling crimes. Examples of preventive measures include providing legal counseling to the community, establishing teams involving intelligence to monitor locations commonly used for *togel*

gambling, reinforcing religious beliefs among individuals, and conducting community patrols and supervision.

2. Repressive efforts (countermeasures)

Countermeasures refer to actions taken against individuals who have engaged in unlawful activities, with the objective of helping them reform and prevent recurrence of their actions. These efforts may involve gathering information from the public, conducting investigations, carrying out ambushes, imposing penalties or punishments on offenders, and providing guidance and rehabilitation.

According to Dr. Edwin H. Sutherland and Donald R. Cressey, criminology can be defined as "the body of knowledge about crime as a social phenomenon." It encompasses various sciences that study crime, which is considered a social phenomenon. Criminology can be divided into three main branches of science, as follows: (Sutherland et al., 1992)

1) Sociology of law: This branch focuses on studying crime as an act prohibited by law and subject to sanctions. The determination of an act as a crime is based on legal rules. In the context of sociology of law, *togel* gambling is considered a crime because it violates the established legal rules, which are accompanied by sanctions. In Indonesia, the regulation governing gambling is Law Number 7 of 1947 concerning Gambling Supervision, and Article 303 of the Criminal Code specifically addresses gambling offenses.
2) Etiology of crime: This branch of criminology seeks to scientifically analyze the causes of crime. The etiology of crime is a significant area of study within criminology. Interviews with various informants have revealed that the causes of gambling crimes include weak religious understanding, lack of education, low economic status, environmental and cultural factors, as well as weak law enforcement.
3) Penology: Penology primarily concerns the science of punishment, but Sutherland includes rights related to crime control efforts, including both repressive and preventive measures (Santoso & Zulfa, 2009). Law Number 7 of 1974 concerning Gambling Control states that all gambling offenses are crimes. Furthermore, the article includes amendments such as:
    a. “Modifying the criminal punishment in Article 303, paragraph (1) of the Criminal Code, from a maximum imprisonment of two years and eight months or a maximum fine of ninety thousand rupiahs to a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs.
    b. Modifying the punishment in Article 542, paragraph (1) of the Criminal Code, from a maximum imprisonment of one month or a maximum fine of four thousand five hundred rupiahs to a maximum imprisonment of four years or a maximum fine of ten million rupiahs.
    c. Modifying the punishment in Article 542, paragraph (2) of the Criminal Code, from a maximum imprisonment of three months or a maximum fine of seven thousand five hundred rupiahs to a maximum imprisonment of six years or a maximum fine of fifteen million rupiahs.
    d. Changing the article title from Article 542 to Article 303 Bis.”

Criminology aims to provide guidance on how society can effectively combat crime and, more importantly, prevent it (Bonger, 1962). The objective of criminology is to

anticipate and respond to all policies related to criminal law, thereby preventing potential adverse consequences for perpetrators, victims, and society as a whole (Atmasasmita, 2011). This is reasonable because gambling poses a real threat to social norms and can create tension both at the individual and societal levels. From a national interest perspective, all forms of gambling have negative impacts and harm the morals and mentality of society, especially the younger generation.

Regarding the considerations of judges in court, the defendant who has committed the crime of online *togel* gambling will be examined and evaluated by the panel of judges to determine whether the charges under Article 303, paragraph (1) of the Criminal Code or Article 303 bis, paragraph (1) of the Criminal Code have been fulfilled. The judge will consider the following factors:

1. The element of "*Barang Siapa*" (Whoever):

Considering that the Criminal Code does not explicitly define the term "*Barang Siapa*," it is clarified in the *Memories Van Toelichting* (MVT) that "*Barang Siapa*" refers to a human being as a legal subject. In this case, the witnesses and overall evidence presented in court have established that the identity mentioned in the prosecutor's indictment is indeed the defendant, Hendra Tatya Andana Bin Muhammad Santoso, who is currently present and being examined in the public hearing of the Kudus District Court. Therefore, it is deemed that the element of "*Barang Siapa*" has been fulfilled.

2. The element of "*Tanpa Mendapatkan Izin*" (Without Obtaining Permission):

Based on the testimonies of witnesses and the defendant's statements in court, it has been established that the defendant engaged in the game without obtaining or having any authorization from the competent authority. Therefore, it can be concluded that the element of "Tanpa Mendapatkan Izin" has been fulfilled.

3. The element of "*Dengan Sengaja Menawarkan atau Memberi Kesempatan Kepada Khalayak Umum Untuk Bermain Judi atau dengan Sengaja Turut Serta Dalam Perusahaan Itu*" (Intentionally Offering or Providing Opportunities to the General Public to Gamble or Intentionally Participating in Such Enterprise):

The term "*sengaja*" (intentionally) refers to performing an act willingly and being aware of its consequences. This can be observed not only from the defendant's internal intentions but also from their outward behavior and actions. The term "*permainan judi atau Hazardspel*" refers to any game that relies primarily on chance for winning, although it may also involve skill and experience.

The considerations of a judge are the basis or factors taken into account by the judge in deciding a criminal case. Additionally, the judge also considers the objective requirements, which include whether the act in question corresponds to the formulation of the offense, is contrary to the law, the individual's capacity for responsibility, and the absence of justifiable reasons.

Regarding the defendant's charges, as stipulated in Article 143 of the Criminal Procedure Code (KUHAP), they are as follows:

a) Article 143, paragraph (1) states that the public prosecutor transfers the case to the district court with a request for immediate trial, accompanied by an indictment.
b) Article 143, paragraph (2) states that the public prosecutor prepares an indictment, which is dated, signed, and contains:

- The full name, place or date of birth, gender, nationality, residence, religion, and occupation of the suspect.
- A precise, clear, and complete description of the alleged criminal offense, including the time and place it was committed.

c) Article 143, paragraph (3) states that an indictment that does not meet the provisions as mentioned in paragraph (2) letter b is legally null and void.
d) Article 143, paragraph (4) states that the derivative of the transfer letter of the case, along with the indictment, is delivered to the suspect or their legal representative and the investigator simultaneously with the delivery of the transfer letter to the district court.
Based on Article 143, the term "*surat pelimpahan perkara*" refers to the complete transfer letter of the case, including the indictment and case files.

The considerations of a judge are one of the most important aspects in determining the realization of justice (*ex aequo et bono*) and legal certainty in a judge's decision. Moreover, these considerations should benefit the parties involved and therefore must be approached with careful, good, and meticulous attention. If a judge's considerations are not careful, good, and meticulous, the decision based on such considerations may be overturned by the High Court/Supreme Court.

In examining a case, a judge also requires evidence, as the results of the evidence will be used as a basis for consideration in deciding the case. The process of proving facts is the most crucial stage in a trial. The purpose of evidence is to obtain certainty that the presented event/fact actually occurred, in order to reach a correct and fair judge's decision. A judge cannot render a decision before it is clear to them that the event/fact in question truly happened, and that its truth has been proven, thereby establishing a legal relationship between the parties. Essentially, a judge's considerations should also include the following:

a) The main issue and the undisputed or unchallenged facts or arguments.
b) A juridical analysis of the decision covering all aspects related to the proven facts presented during the trial.
c) Each part of the plaintiff's petitum (claim) must be considered and examined individually, so that the judge can draw conclusions regarding its proof and whether the demands should be granted or not in the operative part of the decision.

3.2. Proving the Crime of Online *Togel* Gambling

The development of technology and communication has affected many aspects of human life, including the law. The law is required to keep up with advances in communication and technology by issuing legal provisions that regulate activities in cyberspace. The emergence of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions is used to regulate all activities in cyberspace, including online gambling. It is difficult to apprehend online gambling criminals because gambling has become a tradition in Indonesia, and with technological advances, gambling has become increasingly accessible. Online gambling clearly violates Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, but apprehending and prosecuting the perpetrators is challenging due to insufficient evidence. Online lottery gambling involves an interconnected network of participants that mutually

benefit from it, including regional bookies, lottery number collectors, and retailers. However, the ease of technology makes it difficult to apprehend and prove the guilt of cybercriminals, especially those involved in online lottery gambling crimes.

In criminal justice, proof is an effort to uncover the truth about a criminal offense committed by an individual (Panggabean, 2012). Evidence is a crucial factor in determining the fate of the defendant. If the existing evidence, as stipulated in Article 184 of the Criminal Procedure Code, is not sufficient to prove the defendant's guilt, the defendant is declared free from all charges. Judges must be cautious, thorough, and judicious in assessing and considering the value of evidence in a trial. The system or theory of proof in Indonesia adheres to a system or theory of proof based on the negative law (*Negatief Wettelijk Stelsel*). This system or theory of proof is mentioned in Article 183 of the Criminal Procedure Code, which states:

> "The judge may not impose a sentence on a person unless at least two valid pieces of evidence are present, leading to a conviction that a criminal offense has indeed occurred and that the defendant is guilty of committing it."

Referring to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 5, paragraph (1) states that all electronic documents and their printouts are considered valid evidence that can support the prosecution of an offense as an ITE crime. In the case of online gambling, proof of bank transactions and the use of cell phones differentiate it from conventional gambling. Based on the elements outlined in Article 27, paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, and considering the facts presented in the case, it can be concluded that bank transfer evidence in online gambling is deemed admissible in court.

The Criminal Procedure Code (KUHAP) regulates the process of presenting evidence in Article 183. The process of proof is crucial in the examination of a case in court, as it involves presenting evidence to establish the guilt or innocence of the defendant in a criminal case. In online gambling cases, the evidentiary process must be supported by at least two pieces of evidence, as stipulated in Article 183 of the Criminal Procedure Code. The types of evidence recognized in Article 184 of the Criminal Procedure Code include:

- Witness Testimony:

In online gambling cases, finding witnesses who have direct knowledge of the perpetrator's actions and the commission of the offense is often challenging. Perpetrators usually act alone, as these crimes require specific knowledge and expertise in utilizing computer intricacies, unless the perpetrator has connections with individuals possessing similar abilities or expertise.

- Expert Testimony:

An expert can examine and provide an explanation regarding the trustworthiness of a computer system, ensuring that the electronic data contained within the system can be accounted for and presented as evidence with equal strength as other evidence outlined in Article 184 of the Criminal Procedure Code.

- Official Letters:

Official letters possess substantial evidentiary value if they fulfill the necessary formal requirements, are issued by authorized officials, contain official information, and

are executed under oath. The information contained in such letters can only be contradicted by other evidence (Edmon, 2003).

- Instructions:

According to Article 188, paragraph (1) of the Criminal Procedure Code, acts, events, or circumstances that demonstrate a correspondence both with one another and with the crime itself indicate the occurrence of a crime and identify the perpetrator.

- Testimony:

The statement of the accused, as mentioned in Article 189, paragraph (1) of the Criminal Procedure Code, refers to the statement provided by the accused during court proceedings. However, this provision is not absolute, as testimony given by the defendant outside of the trial can be utilized to assist in proving the case in court, as long as the testimony is supported by valid evidence related to the charges against the defendant.

The utilization of electronic evidence in the process of proving criminal cases can be challenging but is feasible due to the existence of standards or provisions for the use of electronic evidence in our laws and regulations, as stated in Article 44 of the ITE Law. In the context of online gambling, evidence that substantiates a criminal occurrence takes the form of electronic data, whether stored on a computer (hard disk) or in the form of printouts or other records of computer activity connected to the internet. With the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which regulates electronic evidence, handling online gambling cases has become more manageable. In court proceedings, electronic evidence used to establish online gambling crimes includes website views, log files (indicating the time of the actions), and Internet Protocol (IP) addresses, which serve as valuable personal evidence for identifying perpetrators and determining the location of computer users. Through research and examination of IP ownership, the user's location can be determined.

During trial proceedings, the authenticity of digital evidence will be scrutinized by presenting it to demonstrate its relevance to the online gambling crime case at hand. Since the investigation, prosecution, and court proceedings typically span a considerable duration, digital evidence must be presented in its original and complete form as initially identified and analyzed by investigators, often through the Forensic Computer Laboratory. Therefore, digital evidence should be presented digitally using a laptop or computer without the need for printed copies (printouts). The ITE Law Number 11 of 2008 provides provisions for the admissibility of electronic information and establishes specific procedures as guidelines for judges in examining and proving online gambling crimes. Hence, if no other evidence can be presented, the recorded electronic information within the system can serve as proof, implicating the subject as a participant in the online gambling crime and holding them accountable. The discussion on electronic evidence pertains to the "seizure" required for evidentiary purposes or the search for tools or evidence that may exist, necessitating the testing of computer systems. The validity and authenticity of the computer system must be verified to ascertain the trustworthiness of the digital evidence.

The discussion on electronic evidence also emphasizes the need for "seizure" carried out for evidentiary purposes or the search for tools or potential evidence, which requires the examination of computer systems. The initial examination of the computer system's validity is essential to establish its authenticity and accountability. As stipulated in Article 43, paragraph (3) of the ITE Law, evidence obtained through confiscation and

seizure conducted by investigators must be accompanied by permission from the presiding judge of the local district court. However, obtaining such permission from the local district court can present challenges for investigators in certain circumstances.

The ITE Law Number 11 of 2008 has provided provisions for the admissibility of electronic information and established specific procedures to guide judges in examining cases and proving online gambling crimes (Karo & Sebastian, 2019). Therefore, if no other evidence can be presented, the recorded electronic information within the system can serve as proof, implicating the subject as a participant in the online gambling crime and holding them accountable for the electronic evidence discovered. The subject's responsibility regarding the identified electronic evidence can be requested. The ITE Law has regulated a special procedure for handling electronic evidence, necessitating that the seizure and confiscation of electronic systems related to alleged criminal acts be carried out with the permission of the presiding judge of the local district court. However, obtaining permission from the local district court can be challenging for investigators in certain situations.

4. CONCLUSION

In applying criminal law to online gambling crimes, particularly online *Togel* gambling, Article 303 and Article 303 Bis of the Criminal Code (KUHP) are used to prosecute online gambling offenders, rather than relying on Law Number 19 of 2016 on Amendments to Law Number 11 of 2011 concerning Electronic Information and Transactions. Judges take several factors into consideration when deciding a criminal case, such as ensuring that the alleged act corresponds to the elements of the offense, is illegal, and establishing the defendant's capacity and absence of justifiable reasons. Additionally, judges must also adhere to the objective requirements set forth by the law. Article 143 of the Criminal Procedure Code (KUHAP) regulates the preparation of the indictment by the public prosecutor, which must meet certain criteria; otherwise, it will be declared null and void. The referral document of the case should also include a complete indictment and case files.

The burden of proof in online *Togel* gambling cases follows the theory of the Negative Legal System based on the law, which requires at least two valid pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code (KUHAP), along with the judge's own conviction. However, in the case examined by the author, the crime should have been prosecuted under the Law on Electronic Information and Transactions (UU ITE), which operates outside the Criminal Code (KUHP). Nonetheless, the offense in this case was still prosecuted under Article 303 of the Criminal Code (KUHP), demonstrating the inapplicability of the *lex specialis derogat legi generali* principle, meaning that the specific law overrides the general law.

Based on the findings, it is recommended that legislators revisit the legal framework regarding online gambling crimes to ensure consistency and effectiveness in prosecuting such offenses. The inclusion of the Law on Electronic Information and Transactions (UU ITE) as the primary legal basis for prosecuting online gambling crimes would provide a more comprehensive and specific approach, considering the unique nature of online activities. This would align with the principles of *lex specialis derogat legi generali* and enhance the legal system's ability to address evolving forms of criminal activities in the digital era. Additionally, further research and analysis should be conducted to explore

alternative legal strategies and measures to effectively combat online gambling and its associated societal issues, taking into account international best practices and experiences.

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OPTIMIZATION OF ROAD SAFETY PARTNERSHIP ACTION (RSPA) IN HANDLING TRAFFIC PROBLEMS IN THE JURISDICTION OF THE TANJUNG PRIOK PORT POLICE STATION

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Abstract

The Tanjung Priok Port in Indonesia faces challenges in traffic management and road safety. To address these issues, the Tanjung Priok Port Police Traffic Unit has implemented Road Safety Partnership Action (RSPA) activities. This study aims to determine the implementation of Road Safety Partnership Action (RSPA) activities carried out by the Tanjung Priok Port Police Traffic Unit in handling traffic problems in the Tanjung Priok Port area. The study incorporates various theories, including Rosen's cooperation theory, Terry's management theory (including planning, organizing, implementing, and supervising), Dr. E Mulyana's competency theory, and problem-solving theory. A qualitative approach with descriptive analysis was employed. The findings revealed suboptimal implementation of the RSPA activities by the Tanjung Priok Port Police Traffic Unit in addressing traffic and road transportation issues. Furthermore, the competence of the Satlantas Polres Pelabuhan Tanjung Priok personnel in executing the RSPA activities was also deemed suboptimal. The active system and methodology employed in the RSPA activities have not been fully maximized. Therefore, optimization measures are required, including strengthening coordination and communication capabilities, empowering budget support and improving facilities and infrastructure in RSPA activities, enhancing the enforcement of traffic violations and management of traffic accidents, fostering personnel quality in executing the RSPA activities, implementing traffic engineering measures in anticipation of increased port activities related to transportation, encouraging community participation, and utilizing advancements in information technology, particularly in traffic engineering within the Tanjung Priok Port area.

Keywords: *Congestion, Road Safety Partnership Action, Traffic Problems*

1. INTRODUCTION

The policy of maintaining public security and order in the traffic sector focuses on traffic safety and management, which is a joint effort of all agencies related to road construction and transportation systems. The traffic police, particularly the traffic police force, play a significant role in ensuring the security, safety, order, and smooth flow of traffic due to their direct presence on the road. This responsibility is further emphasized by the enactment of Law No. 22/2009 on Road Traffic and Transportation (LLAJ), which aims to achieve security, safety, order, and smoothness of traffic, thereby facilitating balanced and harmonious economic and regional development (Silamukti et al., 2022).

Nowadays, traffic problems are increasingly complex to address, especially in large cities like DKI Jakarta, which serves as the nation's capital and economic center (Rahardja & Wennardy, 2022). One of the most challenging issues to tackle is traffic congestion. According to data from the Tom Tom Traffic Index, DKI Jakarta experiences a daily congestion rate of 48 percent (tomtom, n.d.). Moreover, there has been a steady upward trend of 3% per year in traffic violations. This situation is also prevalent in the jurisdiction

of the Tanjung Priok Port Police, where traffic congestion disturbances frequently occur in the port area due to technical service problems, surges in the flow of goods, and concurrent activities. The Tanjung Priok Port plays a vital role in the national economy, serving not only as a hub for export and import activities but also handling 60-70 percent of the nation's logistics.

Addressing the threat of congestion in the Tanjung Priok Port area cannot be accomplished by a single party alone. Various institutions and organizations involved in traffic management in the Tanjung Priok Port area must collaborate to handle the diverse traffic issues. The Tanjung Priok Port Police, PT Pelabuhan Indonesia Regional 2 Tanjung Priok, Jakarta International Container Terminal, Indonesia Vehicle Terminal, Department of Transportation, and other stakeholders in the traffic field must implement a multi-sector partnership approach to bring about sustainable changes in road safety. The synergy among these relevant agencies is of utmost importance and priority, as recognized by the UN resolution on road safety, which states, "Solutions to the global road safety crisis can only be implemented through multisectoral collaboration and partnerships" (Mooren, 2014).

The Indonesian government has long been implementing a policy of addressing traffic problems through a multi-sector partnership approach. This was exemplified by the issuance of Government Regulation No. 37/2011 on the Road Traffic and Transportation Forum. One significant program that emerged from this forum is the Road Safety Partnership Action (RSPA). Since 2012, the RSPA program has been implemented in the jurisdiction of the Tanjung Priok Port Police. Various agencies have been working together to alleviate traffic problems in Tanjung Priok Port through initiatives such as promoting safe riding and driving, conducting socialization campaigns, organizing traffic safety campaigns, and engaging in joint patrols. However, up until 2023, this program has not yielded a substantial solution to significantly reduce traffic problems at Tanjung Priok Port. In fact, institutions and organizations involved in traffic management still struggle with a lack of integration among their systems and a lack of shared vision for addressing traffic problems. The UN resolution on safety emphasizes the need for multisectoral collaboration and partnerships to tackle the global road safety crisis (Feldman & Rosen, 1978).

Hence, concrete and comprehensive steps are necessary to revitalize the Road Safety Partnership Action (RSPA) activities in the Tanjung Priok Port area to address various traffic problems, particularly the threat of congestion that can disrupt the national economy. In light of this situation, this study delves deeper into the topic of "Optimizing the active Road Safety Partnership Action (RSPA) in handling traffic problems in the jurisdiction of the Tanjung Priok Port Police." This study contributes to the existing knowledge by providing a focused analysis of traffic problems, emphasizing the need for collaboration, and offering practical recommendations for optimizing the RSPA program in the Tanjung Priok Port area. The findings and recommendations can serve as a valuable resource for policymakers, traffic management agencies, and other relevant stakeholders involved in improving road safety and traffic management in similar contexts.

2. LITERATURE REVIEW

2.1. Cooperation Theory

According to Rosen in Keban (2008), "Theoretically, the term cooperation has long been recognized and conceptualized as a source of efficiency and service quality. Cooperation has been acknowledged as an effective way to leverage economies of scale. Joint purchasing, for example, has demonstrated such benefits, with large-scale purchases or purchases exceeding 'threshold points' being more cost-effective than small-scale purchases. Through cooperation, overhead costs can be overcome even on a smaller scale. Sharing investments, for instance, can yield satisfactory results in the provision of facilities and infrastructure. Cooperation can also enhance service quality, such as in the procurement or provision of facilities that each party cannot acquire independently. With cooperation, expensive service facilities can be jointly purchased and enjoyed, such as recreational centers, adult education, transportation, and more."

2.2. Management Theory

Fundamentally, management is a framework or process that involves guiding and directing an organization towards its goals or objectives. George Terry & Rue (2016) mention that management seeks to achieve specific results that are usually referred to as "objectives" or tangible outcomes. Meanwhile, management itself has certain intangible goals. Terry and Mainduh (in Sriyono 2020) identify four basic functions of management, which include:

a. Planning: Comprehensive and well-developed planning plays a critical role in determining the efficiency and effectiveness of an organization in achieving its goals.
b. Organizing: The process of organizing involves distributing work and tasks and coordinating them to achieve organizational goals.
c. Implementation (actuating): Implementation aims to foster a work environment where individuals within an organization are motivated and willing to complete their tasks to achieve organizational goals.
d. Supervision (controlling): Supervision entails assessing and correcting ongoing work processes.

2.3. Competency Theory

According to Dr. E. Mulyasa (2021), several aspects or domains are encompassed within the concept of competence, namely:

a. Knowledge: Awareness in the cognitive field.
b. Understanding: Cognitive and affective depth possessed by individuals.
c. Ability (skill): Proficiency in performing assigned tasks.
d. Value: Standard of behavior that is believed in and has become psychologically integrated into a person.
e. Attitude: Feelings of pleasure or displeasure, like or dislike, or reactions to external stimuli.
f. Interest: A person's inclination or tendency towards making changes.

2.4. Problem Solving Theory

Problem-solving strategy is a learning approach based on authentic investigations that require real resolution of actual problems (David, 2002). In other words, problem-solving strategy is a process that utilizes specific strategies, methods, or techniques to address new situations, enabling desired outcomes to be achieved. Thus, problem-solving is a learning strategy that activates or trains students to face and solve problems effectively.

3. RESEARCH METHODS

The research method employed descriptive analysis. The objective was to describe the existing traffic problems in the Tanjung Priok Port Police jurisdiction by analyzing relevant concepts and theories. Data collection encompassed interviews, surveys, observations, and document analysis. These methods facilitated gathering information regarding the traffic issues, such as congestion, traffic violations, and their impact on the national economy.

The collected data was then subjected to thorough analysis using descriptive analysis techniques. The researcher examined and interpreted the data to identify patterns, trends, and key issues associated with the traffic problems. This analysis involved applying concepts and theories from the literature review, providing a comprehensive understanding of the situation. Based on the data analysis, the findings were presented and comprehensively interpreted. This step involved identifying the root causes of the traffic problems, evaluating the effectiveness of the existing RSPA program, and highlighting the challenges faced by the stakeholders involved.

4. RESULTS AND DISCUSSION

The Road Safety Partnership Action (RSPA) is a program launched by the WHO with the aim of improving safety standards and reducing the fatality rate of traffic accident victims (WHO, 2006). It focuses on realizing the five pillars of road safety, which include road safety management, safer roads, safer vehicles, safer people, and post-crash handling (Pignataro et al., 1973). Through this program, the Police can establish partnerships with relevant stakeholders to enhance safety measures, improve the quality of safety, and reduce the fatality rate of traffic accidents. This initiative also aims to cultivate a disciplined traffic culture, evident through excellent service in the field of road safety, specifically through RSPA programs such as education, infrastructure development, support systems, safety education systems, driver license (SIM) test systems, and manual, online, and electronic capacity building.

Law no. 22 of 2009, Article 1, defines Road Traffic and Transportation Safety as the condition that prevents individuals from the risks of accidents caused by humans, vehicles, roads, and/or the environment. This implies that traffic safety involves the prevention of accidents. Traffic accidents, on the other hand, refer to events resulting in casualties, often preceded by traffic violations. Hence, ensuring road safety entails reducing the number of accidents and traffic violations.

To realize these efforts, the National Police, in collaboration with relevant stakeholders, has developed the Road Safety Partnership Action (RSPA) Program. The program emphasizes the coordination of stakeholders in addressing road safety issues,

ranging from planning and operationalization to evaluation and policy determination. It is essential to highlight that RSPA activities focus on coordination efforts among stakeholders throughout the entire process.
The RSPA Action Plan consists of four sub-action plans, including:

1. Implementing cooperation in traffic accident prevention
2. Carrying out cooperation in handling traffic accidents
3. Carrying out post-traffic accident cooperation
4. Carrying out cooperation to conduct strategic studies of traffic safety

In accordance with Article 7, paragraph (2), letter e of Law 22/2009, the Traffic Police, particularly the Tanjung Priok Port Police Traffic Unit, play a vital role. The Police have the duty and function of government affairs concerning the Registration and Identification of Motorized Vehicles, Drivers, and Law Enforcement. Ideally, the implementation of RSPA activities by the Satlantas Polres Pelabuhan Tanjung Priok can contribute to the reduction of accidents, violations, and traffic congestion.

4.1. Implementation of the Road Safety Partnership Action (RSPA) activity of Tanjung Priok Port Police in handling traffic problems

The high intensity of Tanjung Priok port activities which is not followed by additional road facilities will result in a lot of congestion and traffic violations and the potential for traffic accidents. If this is not immediately anticipated, it will potentially disrupt Tanjung Priok port activities. This traffic problem cannot be done by one agency alone, it requires the collaboration of all stakeholders in the traffic sector. When collaboration and synergy between stakeholders in the traffic sector goes well, traffic disturbances both from human error factors, vehicles, roads and the environment will be reduced.

The implementation of Road safety Partnership Action (RSPA) activities in the Tanjung Priok port area is still not optimal. Some of the indicators that underlie this Road safety Partnership Action (RSPA) activity are the high number of traffic violations and accidents and frequent traffic jams in the Tanjung Priok port area.
a) Traffic Violations

Table 1. Data of Traffic Violations in the Legal Area of Tanjung Priok Port Police Station

Year	Evidence Seized		
	Enforcement of Violations	Driver License	Vehicle Registration Certificate
2019	1.769	230	1.539
2020	741	116	625
2021	874	138	736
2022	1.126	187	939

Source: Tanjung Priok Port Police Traffic Unit

The data above shows that the number of traffic violations in the jurisdiction of Tanjung Priok Port Police is still relatively high. In 2020 there was indeed a decrease, this

was due to covid-19. Meanwhile, in 2022 it is still quite high, despite the ban on ticketing for almost four months by the National Police Chief. Meanwhile, the majority of traffic violations are dominated by four or more wheeled vehicles (trucks and containers). Meanwhile, the types of violations include cargo, vehicle equipment, letters, safety belts and markings and signs. That means, the programs carried out in the Road Safety Partnership Action (RSPA) are not optimal.

b) Traffic Accidents

The number of traffic accidents in the jurisdiction of Tanjung Priok Port Police is not so high. However, these traffic accidents cause tremendous congestion, because they involve large vehicles.

Table 2. Traffic Accident Data in the Legal Area of Tanjung Priok Port Police Station

No	Period	Number of Accident	Victim			Disadvantages
			Died	Seriously Injured	Minor Injured	
1.	2019	18	1	0	16	Rp.75.500.000,-
2.	2020	14	1	0	9	Rp 68.950.000,-
3.	2021	7	1	0	5	Rp.23.000.000,-
4.	2022	11	1	1	10	Rp.46.000.000,-

Source: Tanjung Priok Port Police Traffic Unit.

Traffic accidents are quantitatively recorded with a fluctuating trend. This shows that efforts to prevent accidents and improve the quality of safety have not been optimal. The high number of accidents and the severity of congestion and the absence of an orderly culture in traffic are homework for the Traffic Police and related agencies to overcome this.

c) Traffic Congestion

Traffic congestion is the most frightening specter in the Tanjung Priok port area. Because, when congestion occurs it will cause high economic losses. For example, when the port activity service system is disrupted, it will cause long queues at the port to eventually cause congestion. The following are areas prone to congestion in the Tanjung Priok port area.

For example, it happened in November 2022. Congestion almost occurs every day due to increased activity at the port. Especially since the easing of PSBB in the country and a number of countries due to the pandemic and encouraging export-import activities. In addition, mining trade activities have been revived. At that time, the turnround time for trucks with a radius of 25 km from the port normally took 8 hours. However, due to traffic jams, it eventually took 26 to 18 hours which disrupted economic activities.

Figure 1. Congestion-prone areas in the jurisdiction of Tanjung Priok Port Police Station
Source: Tanjung Priok Port Police Traffic Unit

Therefore, collaborative efforts between agencies are needed so that cases of traffic congestion in the Tanjung Priok port area do not recur. There needs to be an increase in Road safety Partnership Action activities involving all parties to anticipate various congestion disturbances in the jurisdiction of the Tanjung Priok Port Police.

4.2. The competence of Tanjung Priok Port Police personnel in the Road Safety Partnership Action (RSPA) activity to handle traffic problems.

In seeing the readiness of the implementation of the Road Safety Partnership Action (RSPA) activity, in this study the authors describe the competency conditions in the Tanjung Priok Port Police Traffic Unit, as below:
a) Quantity of Personnel

Table 3. Personnel Data of Tanjung Priok Port Police Traffic Unit

No	Position	List of Personnel Composition (DSP)	Real	D
1	First Officer (Pama)	10	6	-4
2	Noncommissioned officers (Ba)	34	22	-12
3	Civil Servant (PNS)	2	0	-2
	Total	46	28	-18

Source: Tanjung Priok Port Police Traffic Unit.

Based on the table above, it shows that in real terms the number of human resources has not met the List of Personnel Composition (DSP). For the DSP, the personnel of the Tanjung Priok Port Police Traffic Unit amounted to 46 personnel while in real terms there were only 28 personnel. This shortage of 18 personnel will certainly interfere with the

performance of the Road Safety Partnership Action (RSPA), especially for shortages in the NCO sector.

b) Personnel quality

The composition of the personnel of the Tanjung Priok Port Police Traffic Unit seen from the educational background of specialization development can be described as follows:

Table 4. HR Competency

No	Position	Formal Education			Traffic Education and Training (*Dikjur Lantas*)
		Senior High School	Diploma (D3)	Bachelor/Doctor (S1/S3)	
1	Pama	4		2	5
2	Ba	18		4	12
3	PNS				
Total		22	0	6	17

Source: Tanjung Priok Port Police Traffic Unit.

Based on the table above, it is evident that only 17 members of the Tanjung Priok Port Police Traffic Unit have received vocational training in the field of traffic. Additionally, there are 22 high school graduates working as press personnel. This situation poses a problem for the effective performance of the Tanjung Priok Port Police Traffic Unit, particularly in relation to the Road Safety Partnership Action (RSPA), which requires collaboration with other agencies.

1. Knowledge:
   a. Some personnel of the Satlantas Polres Pelabuhan Tanjung Priok still lack a comprehensive understanding of the legal instruments and software relevant to the implementation mechanism of the RSPA.
   b. The knowledge of Satlantas Polres Pelabuhan Tanjung Priok personnel regarding the actual problems on the road is still insufficient.
2. Skills:
   a. There is a deficiency in personnel skills related to communication and coordination with stakeholders in the traffic sector.
   b. The personnel also lack the ability to effectively collaborate in traffic and road transportation forums.
3. Attitude and Behavior:
   a. Some members of the Tanjung Priok Port Police Traffic Unit appear to be less responsive and proactive in addressing field-related issues.
   b. Furthermore, there are still personnel who fail to exhibit the principles of smiling, greeting, and engaging in RSPA activities.

These identified issues present significant challenges to the effective functioning of the Tanjung Priok Port Police Traffic Unit, particularly in their cooperation with other agencies during the implementation of the RSPA. It is crucial to address these concerns in order to enhance the unit's effectiveness and ensure road safety within the area.

4.3. System and Method of Active Road Safety Partnership Action (RSPA) by the Tanjung Priok Port Police in Handling Traffic Problems.

The Tanjung Priok Port Police Traffic Unit has undertaken various planning, organizing, implementing, and controlling activities in the execution of Road Safety Partnership Action (RSPA). However, the implementation is not yet optimal. The following description outlines the systems and methods employed by the Tanjung Priok Port Police Traffic Unit in executing RSPA activities:

1. Planning:

a. There is no planning or discussion in the form of a Memorandum of Understanding (MoU) for each action activity aimed at addressing traffic and road transportation issues.
b. Insufficient preparation of various requirements for supporting elements in the implementation of RSPA, including both software and hardware.

2. Organizing:

a. The involvement of members in each activity is not based on their respective competence.
b. Task allocation for personnel is also generalized, lacking detailed instructions for each activity to be carried out.

3. Implementation:

a. Cooperation is primarily understood at the leadership level, with insufficient elaboration for implementation at lower levels.
b. Responsibility shifts between agencies concerning budget, facilities, and infrastructure remain unresolved.

4. Control:

a. Analysis and evaluation are conducted independently, lacking integration between agencies.
b. Report preparation is still conducted separately by individual agencies, lacking an integrated approach.

These identified issues indicate areas for improvement in the Tanjung Priok Port Police Traffic Unit's system and method of executing the Road Safety Partnership Action (RSPA) activities. Addressing these concerns will contribute to optimizing the unit's performance and enhancing the effectiveness of RSPA in tackling traffic problems.

Efforts that can be undertaken by the Tanjung Priok Port Police Traffic Unit to optimize the Road Safety Partnership Action (RSPA) activities in handling traffic problems within their jurisdiction include:

1. Short-term strategy:

a. Strengthening coordination and communication skills at all levels of the Tanjung Priok Port Police Traffic Unit to facilitate effective collaboration with stakeholders in the traffic sector.
b. Comprehensive empowerment of budget support, facilities, and infrastructure for RSPA activities in each operation.

c. Enhancing the enforcement of traffic regulations and the handling of traffic accidents in accordance with Law No. 22 of 2009.

2. Medium-term strategy:

a. Developing the quality of personnel involved in the implementation of Road Safety Partnership Action (RSPA) activities.
b. Conducting traffic engineering measures to anticipate the increased port activities associated with transportation.
c. Empowering public and community participation in the Tanjung Priok Port area to promote and ensure traffic safety.

3. Long-term strategy:

a. Supporting global road safety initiatives, such as the Decade of Action for Road Safety (2011-2020).
b. Utilizing advancements in information technology for RSPA activities, particularly in traffic engineering within the Tanjung Priok Port area.

By implementing these short-term, medium-term, and long-term strategies, the Tanjung Priok Port Police Traffic Unit can enhance the effectiveness of the Road Safety Partnership Action (RSPA) and effectively address traffic problems within their jurisdiction.

5. CONCLUSION

In conclusion, the study reveals several important findings. Firstly, the implementation of the Road Safety Partnership Action (RSPA) by the Tanjung Priok Port Police Traffic Unit in handling traffic and road transportation problems is not optimal. This is evident from the high number of traffic violations, potential accidents, and congestion that disrupt the activities at Tanjung Priok port. To address this, it is crucial to focus on improving the quality of personnel, enhancing coordination and communication among stakeholders, securing sufficient budget support, upgrading facilities and infrastructure, and leveraging advancements in information technology for RSPA activities.

Secondly, the competence of the personnel in the Tanjung Priok Port Police Traffic Unit regarding the RSPA is not at an optimal level. To tackle this issue, it is recommended to invest in personnel development through training, seminars, workshops, vocational education in traffic-related fields, and implementing a system of rewards and punishments.

Thirdly, the system and methods employed in the active RSPA of the Tanjung Priok Port Police Traffic Unit for handling traffic and road transportation problems are not fully efficient. To address this, it is important to take proactive measures such as conducting a comprehensive inventory of budget needs and infrastructure for RSPA activities in the coming year, mapping and analyzing trouble spots and black spot areas, providing recommendations to the Traffic and Road Transport Forum for solving traffic problems, especially in trouble spots and black spot areas, and making effective use of information technology in RSPA activities.

In light of these conclusions, several recommendations are put forth. Firstly, it is recommended that the Chief of Police establish a Memorandum of Understanding (MoU) with relevant agencies within the Road Traffic and Transport Forum in the Tanjung Priok

Port area. This collaborative effort would enable joint responsibility in developing innovative programs and implementing the RSPA. Secondly, the Chief of Police should develop a comprehensive Standard Operating Procedure (SOP) that includes detailed budget guidelines and infrastructure standards to ensure the continuous and effective implementation of the RSPA. Lastly, the Chief of Police should create an operational manual that provides clear instructions for the use of electronic devices and applications related to the implementation of the RSPA.

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THE PROBLEM OF THE RE-EXISTENCE OF MPR DECREES AS A TYPE AND HIERARCHY OF LEGISLATION IN INDONESIA

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Abstract

The Decree of the People's Consultative Assembly, also known as MPR Decrees, contains decisions made by the People's Consultative Assembly. The presence of MPR Decrees has undergone various system dynamics within the hierarchical order of legislation in Indonesia. Law Number 12 of 2011 on the Formation of Legislation reintroduces MPR Decrees as a type and hierarchy of law and regulation, reversing the previous law, Law Number 10 of 2004, which abolished the MPR Decrees from the structural hierarchy. The re-existence of MPR Decrees in the Indonesian legislative system has implications for the order and position of these decrees in the state administration system. This research adopts a normative research method, utilizing a statutory approach as the primary legal material and secondary legal materials such as books, journals, and other sources for analysis. The findings of this study indicate that the re-existence of MPR Decrees creates ambiguity in the validity of the MPR within the state administration system, considering that MPR Decrees originated before the reform or amendment of the 1945 Constitution, when the MPR held a higher position as a state institution. Furthermore, there is no authorized judicial institution to test the MPR Decrees if they are suspected of violating the provisions of the Constitution of the Republic of Indonesia.

***Keywords** : MPR decree, People's Consultative Assembly, Hierarchy of Legislation*

1. INTRODUCTION

Indonesia, as a sovereign country, upholds the rule of law as the foundation for organizing the nation and state. The supremacy of the constitution plays a vital role in realizing this principle, requiring a system of rules that provide protection and guarantee the constitutional rights of every citizen. As part of embodying the rule of law, the state must ensure legal protection, justice, and legal certainty for its people. Establishing a hierarchy or order of norms is one way to provide legal certainty and implement the state's way of life.

In the context of Indonesian state administration, the types and hierarchy of laws and regulations have been regulated and have undergone various dynamics of change. The governing law in Indonesia is Law Number 12/2011 on the Establishment of Legislation, which establishes the hierarchy or sequence of Indonesian laws and regulations. This law reflects the constitutional mandate to regulate the Indonesian constitutional system through legislative measures. Its primary purpose is to regulate the mechanism of formation and hierarchy of laws and regulations in Indonesia.

According to Article 7, Verse (1) of Law Number 12/2011, the hierarchy of laws and regulations is as follows: "Firstly, the 1945 Constitution holds the highest position. Secondly, the Decree of the People's Consultative Assembly is given prominence. Thirdly, Law/Government Regulation in lieu of Law occupies a significant position. Fourthly, Government Regulation is considered in the hierarchy. Fifthly, Presidential Regulation holds its place. Sixthly, Provincial Regional Regulation is recognized. Lastly,

Regency/City Regional Regulations are included in the hierarchy of laws and regulations."

Furthermore, Verse 2 of the clause states that "The legal force of laws and regulations is in accordance with the hierarchy as referred to in Verse 1." Law No. 12/2011 can be seen as an improvement upon Law No. 10/2004 on the Formation of Legislation. Several new provisions were added, including the reintroduction of the Decree of the People's Consultative Assembly or MPR Decrees to the hierarchy of laws and regulations, which had been previously removed in Law Number 10/2004. The regulation also clarifies that the legal force of laws and regulations is based on the hierarchical order established. This indicates that the new provisions in this law reinstate the MPR Decrees as a type of legislation with legal force, positioned below the 1945 Constitution but above ordinary laws.

The re-existence of MPR Decrees in the hierarchy of laws and regulations raises concerns about inconsistency in Indonesian legal politics amid efforts to reform the legal system. Moreover, MPR Decrees originated from the previous constitutional system before the reform era, and their current position has been diminished in quantity due to the mandate of the fourth amendment to the Indonesian constitution. Additionally, the inclusion of MPR Decrees in the legal system creates a gap in the testing of these decrees against the constitution. Neither the Constitutional Court nor the Supreme Court, which are responsible for testing legislation in Indonesia, have the authority to examine MPR Decrees. This setback contradicts the spirit of reform, especially in striving for an Indonesian legal system that can safeguard and uphold the constitution.

The dynamics of MPR Decrees as a type and hierarchy of laws and regulations in Indonesia have been extensively studied and discussed in previous research, which serve as state-of-the-art references for this study. However, this research will specifically focus on the gap in testing MPR Decrees against the Constitution as an implication of their re-existence in Indonesia.

2. RESEARCH METHOD

The research method employed in this study was juridical-normative. This method involved examining the law textually through legislation and conceptualizing legal principles and guidelines for human relations. Therefore, a statutory approach was utilized throughout this writing. The statute approach involved observing all forms of rules and everything related to the issue under discussion.

The author collected data from various sources to prepare this paper. Primary sources included national regulations (primary), which served as the foundation for the analysis. Secondary sources consisted of juridical reviews such as text readings, opinions from scholars, legal journals, and research results. Tertiary sources, such as legal dictionaries, were also consulted to supplement the research process.

3. RESULTS AND DISCUSSION

3.1. Development of MPR Decrees Existence in the Indonesian Legislation System

The position of the People's Consultative Assembly or MPR before the amendment of the 1945 Constitution was the highest state institution in Indonesia in holding full power as an embodiment of the Indonesian people. As an institution that holds and fully executes the sovereignty of the people, the MPR at that time was often said to be the embodiment of the sovereignty of all Indonesian people. The MPR's position as the highest institution in Indonesia ended when the 1945 Constitution was amended from 1999 to 2002. Based on this, the position of the MPR shifted from being the highest institution to becoming a high institution and also having the same position as other state institutions to control and balance other state institutions or what is commonly referred to as the "checks and balances" function.

The demands of reform that occurred in 1998 included revamping the constitutional system in accordance with the mandate of the constitution, especially in rearranging the position, duties, authority and composition of existing state institutions in the constitutional system in Indonesia. The amendments to the 1945 Constitution that were made in response to the demands of the reform resulted in a significant reduction in the MPR's authority, including automatically changing the type and hierarchy of Indonesian legislation.

The Legal Histories of MPR Decrees in the Indonesian legislative system began in 1966, when the Decree of the MPRS occupied the second position in the hierarchy of laws and regulations under the 1945 Constitution. The hierarchy is listed in Appendix 2 letter A at point 1 of MPRS Decree Number XX/MPRS/1966, which outlines "the forms of legislation of the Republic of Indonesia according to the 1945 Constitution are as follows: 1945 Constitution; MPRS Decree; Law or Government Regulation in Lieu of Law; Government Regulation; Presidential Decree; Implementing regulations, such as: -Ministerial Regulations; -Ministerial Instructions; -And others." It is also explained in another point in the attachment that "In accordance with the constitutional system as explained in the authentic Explanation of the 1945 Constitution, the highest form of legislation, which is the basis and source for all subordinate legislation in the State." In addition, the next point explains that "In accordance with the principle of the rule of law, every piece of legislation must be based and sourced firmly on the applicable legislation, which is higher in level."

The status of MPR Decrees in the hierarchy of laws and regulations continued despite the change in the hierarchy of laws and regulations in 1999. History records that in that year there were various big pushes by regions in Indonesia demanding the expansion of regional autonomy and the strengthening of national disintegration as a threat. Under this pressure, the government at that time reformed the concept of regional autonomy to produce Law No. 22/1999 on Regional Government and Law No. 25/1999 on Central and Regional Financial Balance. These changes have certainly also affected the type and hierarchy of laws and regulations in Indonesia. Because of this, MPR Decree Number III/MPR/2000 on the Source of Law and the Order of Legislation was also born, which included Regional Regulations in the type and hierarchy of laws and regulations of the Republic of Indonesia.

The dynamics of the legislation system in Indonesia continued in 2004, when the bearers of the state legislative function approved the Draft Law on the Formation of Legislation into Law Number 10 of 2004. This law improved and replaced MPR Decree

No. III/MPR/2000, which previously regulated the hierarchy of laws and regulations. This law also abolishes the MPR Decrees in the hierarchy of legislation system to be in line with the reform demands that the MPR has reduced its authority and is no longer the highest institution in Indonesia. The hierarchy of laws and regulations is contained in Article 7 Verse (1) of Law Number 10 Year 2004 which states: "The types and hierarchy of laws and regulations are as follows:

a. 1945 Constitution
b. Law / Government Regulation in Substitute of Law
c. Government Regulation
d. Presidential Regulation
e. Regional Regulation."

After a few years, Law Number 12/2011 on the Formation of Legislation was born to replace Law Number 10/2004, which became an effort to improve legislation products. One of the latest contents embedded in Law Number 12/2011 is the addition of the People's Consultative Assembly Decree or MPR Decrees into a type of legislation positioned under the Constitution. According to Article 7 Verse 1 of Law Number 12 of 2011 "The types and hierarchy of laws and regulations consist of:

a. 1945 Constitution
b. Decree of the People's Consultative Assembly
c. Law/ Government Regulation in lieu of Law
d. Government Regulation
e. Presidential Regulation
f. Provincial Regional Regulation
g. Regency/City Regional Regulations."

Through the explanation of the Law, it is explained that the return of the MPR Decree to the type and hierarchy of laws and regulations is intended to provide legal standing for the MPR Decree and MPRS Decree that are still in effect. This is based on Article 2 and Article 4 of MPR Decree No. 1/MPR/2003 on the Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decrees and People's Consultative Assembly Decrees 1960-2002, which still enforce several MPR and MPRS Decrees even though the existence of the MPR has been reduced after the improvement of the constitutional system in the Reformation era.

3.2. Implications of the Re-Existence of Decrees MPR in the Hierarchy of the Indonesian Legislation System

The dynamics or "suspended animation" of the existence of the MPR's Decrees has occurred after the reduction of the MPR's authority after the reformation and the birth of Law Number 10 of 2004 concerning the Formation of Legislation which eliminates the rules in the hierarchy of laws and regulations. The implication of this is a dilemma over the validity of Decrees MPR and Decrees MPRS which are still in effect after changes in the Indonesian constitutional system. The emergence of Law No. 12/2011 on the Formation of Legislation to replace the previous law, is the answer to the re-enactment of the existence of the DECREES MPR which was resurrected and given a clear and firm position in the Indonesian legal system.

The practical implications after the MPR Decree were restored to its existence in the hierarchical structure of the Laws and Regulations as a juridical basis for the validity of the MPR / S Decree which is still in effect as regulated in Article 2 and Article 4 of MPR Decree Number 1/MPR/2003 concerning Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decrees and Decrees of the People's Consultative Assembly 1960-2002.

Another problem or implication that then arises is the blurring of the measure of the extent to which this MPR Decree can be binding inwardly and outwardly as intended by Law Number 12/2011. This is based on the Indonesian constitutional system which has changed after the amendment of the 1945 Constitution. Sociologically, it would not be comparable, especially since the position of the MPR today is no longer positioned as the personification of popular sovereignty and also not as a supreme institution. The position of the MPR does not have a top position compared to other state institutions, so the MPR cannot freely issue all policies and juridical or political decisions that lead to obligations that must be carried out for other state institutions in Indonesia.

The re-existence of Decrees MPR hierarchically in the legislative system also has implications for the gap in testing legislation products against the rules above them. The hierarchical position of the MPR Decrees based on Law Number 12/2011 is placed just below the Constitution, which shows that in the realm of testing the Constitution, only the Constitutional Court can conduct a material / formal test. However, according to the Constitutional Court, testing the MPR Decrees is not within its authority, because the Constitutional Court only has the authority to test laws against the 1945 Constitution. This provision has been regulated by the Constitution through Article 24C Verse (1) of the 1945 Constitution which states that "the Constitutional Court has the authority to hear cases at the first and last instance and its decision is final to test laws against the 1945 Constitution". Although in terms of the hierarchy of legislation, the MPR Decree sits directly below the 1945 Constitution, the Constitutional Court is not authorized to review it.

In this way, it shows a norm deficiency on the institution of judicial power that is authorized to test the products of legislation to be in accordance with the course of the constitution, especially the MPR Decrees which has a position in the hierarchy of the legislative system in Indonesia. In "formal juridical" terms, there is no single provision that regulates that there is a state institution that has the authority to examine the MPR Decree. The implication of the re-existence of the MPR's Decrees in terms of the empty supervision of the MPR's Decrees material through the mechanism of testing legislative products illustrates the big problem of law in Indonesia. This is because the MPR's Decrees material, which is still in effect today, is a product of the constitutional system legislation before the reformation occurred. So that it is vulnerable to the gap of incompatibility with legal needs that lead to the ideals of the nation today, besides that these problems will tend to show an inconsistency in the direction of legal politics in Indonesia.

4. CONCLUSION

The position of the MPR Decrees in the hierarchy of the legislative system in Indonesia has undergone various dynamics in the direction of legal development in Indonesia. The reinstatement of the MPR Decree's existence after the enactment of Law

No. 12/2011 on the Establishment of Laws and Regulations brings about various legal implications. One such implication is the juridical basis for the validity of the MPR/S Decree, which remains in effect as stated in Article 2 and Article 4 of MPR Decree No. 1/MPR/2003 on the Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decrees and Decrees of the People's Consultative Assembly of 1960 to 2002.

Another implication resulting from the re-existence of MPR Decrees is the absence of limitations on their validity in the Indonesian constitutional system after the reform era or the amendment of the Constitution. This is due to changes in the Indonesian constitutional system, where the MPR no longer holds the highest position among state institutions. Furthermore, there are additional implications, such as the absence of a judicial institution with the authority to assess MPR Decrees against the 1945 Constitution, similar to other regulatory products. Consequently, the validity of MPR and MPRS Decrees after the amendment of the 1945 Constitution has significantly diminished in quantity. When compared to the current constitutional system, it becomes evident that MPR Decrees have evaded material supervision by other state institutions. This misalignment with the framework for reforming state institutions in Indonesia, which emphasizes a system of checks and balances, highlights the inconsistency of Indonesian legal politics during the reform era.

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Copyrights

THE CRIMINALIZATION OF COVERING MUSIC SONGS WITHOUT PERMISSION: EXPLORING THE LEGAL IMPLICATIONS, PIRACY, TAX LAWS, AND ACTS OF CORRUPTION

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Abstract

Enforcement of criminal law within the Copyright Act alone is insufficient to effectively address acts of piracy, duplication, cover songs, distribution, and management of copyrighted music and songs. Offenders without a license/permit are subject to both criminal and civil sanctions. The Criminal Law No. 28 of 2014 on Copyright also imposes criminal sanctions for pirates, cover songs, and music rearrangement without permission from copyright holders or related rights. This study identifies two main issues. Firstly, there is a weak implementation of criminal sanctions in copyright law, particularly concerning juridical aspects in the formulation of criminal law provisions (penal policy). Secondly, there is a need for understanding among copyright holders, related rights, and offenders to operationalize law enforcement by employing other relevant laws outside copyright law. The use of criminal acts of corruption and taxation can be an effective effort to protect the law and ensure legal certainty. To address these issues, this research employs a socio-legal approach, which combines doctrinal studies with social studies. This integration is based on the belief that the rule of law cannot operate in isolation when dealing with copyright piracy of songs and music in Indonesia. The post-positivism paradigm underpins this study, acknowledging the reality based on experience while maintaining the researcher's objectivity towards the subject. Empirical verification, hypothesis testing, and maintaining a clear distinction between the researcher and the object under study are emphasized throughout this research.

Keywords*: Copyright, Corruption, License, Music and song cover, Piracy*

1. INTRODUCTION

Criminal law enforcement in the Copyright Law is unable to stand alone in tackling criminal acts of piracy, copying, covering, distributing, arranging music products and songs owned on YouTube channels and other digital machine facilities copyright holders, related rights, and perpetrators who commit piracy without a license / permit will be subject to criminal and civil sanctions (Akyuwen et al., 2023). Civil sanctions that can be carried out refer to Article No. 28 of 2014 concerning Copyright Article 99 Paragraph (1) The Creator, Copyright Holder, or owner of Related Rights has the right to file a lawsuit for compensation to the Commercial Court for infringement of Copyright or Related Rights. Paragraph (2) The lawsuit for compensation as referred to in paragraph (1) may be in the form of a request to hand over all or part of the income obtained from organizing lectures, scientific meetings, performances, or exhibitions of creations that are the result of infringement of Copyright or related rights products. Paragraph (3) In addition to the lawsuit as referred to in paragraph (1), the Creator, Copyright Holder, or owner of related rights may file an application for a temporary injunction or interlocutory injunction with the Commercial Court in the form of:

a. Requesting confiscation of the Creation which has been announced or reproduced, and the means of reproduction used to produce the Creation resulting from Copyright infringement and related rights products
b. Stopping the Announcement, Distribution, Communication, and/or Reproduction of Creation which is the result of Copyright infringement and Related Rights products.

Furthermore, criminal sanctions for perpetrators of piracy, cover songs, rearrange music without the permission of copyright holders, related rights and perpetrators will get criminal sanctions as stipulated in Article 113 Paragraph (1) "Every person who without the right to infringe economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be punished with imprisonment of 1 (one) year and/or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah). Paragraph (2) Any person who, without the right and/or without the permission of the Creator or the Copyright holder, infringes the economic rights of the Creator as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for commercial use shall be punished with a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp500,000,000.00 (five hundred million rupiah). Paragraph (3), "Any Person without the right and/or without the authorization of the Creator or the Copyright holder to infringe the economic rights of the Creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Paragraph (4), "Any person who fulfills the elements as referred to in paragraph (3) by means of piracy shall be punished with imprisonment of 10 years and/or a maximum fine of Rp 4,000,000,000.00 (four billion rupiah). However, the umbrella of civil and criminal law as a juridical basis for copyright holders, related rights and perpetrators in seeking legal justice in the event of copyright crime, always faced with patterns and legal systems that are considered complicated and difficult to follow up.

In the implementation of copyright law, sometimes investigators, prosecutors and judges do not pay attention to matters relating to the regulation of criminal and civil sanctions (Hamzah, 1986; Makawimbang, 2014). The purpose of copyright law always ends in disappointment for copyright holders, related rights and the rights of artists (Sri & Puspitosari, 2020). The perpetrators of piracy and the perpetrators of free covers of music and songs seem to feel innocent. Currently, there is a great deal of scrutiny by copyright holders, associated rights and artists dealing with illegal song covers on YouTube and other social media platforms that are taking place so freely that it seems that copyright law cannot stem the continuous fraudulent and unscrupulous activities of song and music covers (Alghofiki et al., 2021). Many singers, musicians and songwriters have complained to the government and law enforcement agencies, but their complaints are only heard without any concrete follow-up. Particularly police agencies do not have the legal right to investigate freely against perpetrators of criminal acts of piracy or perpetrators of unauthorized cover songs, because the regulation of copyright law in the case of copyright crime is no longer a general offense but a complaint offense (Islamy, 1919; Soepardi, 2009). Therefore, by changing the status of the general offense into a complaint offense limits the space for the police to conduct legal proceedings, without any mediation efforts between the complainant and the reported.

Institutional facilities of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia or a team of Intellectual Property Rights mediators, cannot conduct criminal proceedings. This is an obstacle for copyright holders, related rights and perpetrators to take criminal law in Indonesia. Another reason for the weak enforcement of criminal law in Indonesia is because economically, the perpetrators of large-scale piracy crimes are financially strong companies, so it is very easy for them to play a strategy to deal with problems in ways that are not commendable and undermine the rights of copyright holders (creators), related rights (phonogram producers-broadcasters) and performers (singers-musicians-songwriters).

Moreover, Indonesian YouTubers who create music song content at will, without mentioning the name of the songwriter and music creator, this is already a violation of moral rights and a violation of a license that can be punished, because it has harmed them economically. That, as we know, the phenomenon of Indonesian YouTubers competing with each other to create content of various types and forms of entertainment as well as formal and non-formal events, entertainment and art. One of the things that YouTubers are fond of is making covers of music and songs sung by non-original singers and musicians, so that they get support and get millions of subscribers, likes and views of millions of people around the world. From the results of creating song and music cover content, many YouTubers earn a lot of money from YouTube, the results of which are transferred directly from YouTube to the account of the account owner who created the song and music cover content. The existence of YouTube AdSense made it become one of the most promising sources of income, it's no wonder that almost all YouTubers enable AdSense ads on their videos. YouTube provides conditions before you can actually monetize, namely that the account has been verified, has 1000 subscribers, is not spamming, and the toughest is to have earned 4000 hours of viewing in the last 12 months. This means that many YouTubers are already earning income from covering music and songs owned by copyright holders, related rights, and artists, but they get nothing, YouTubers get results. Therefore, the author argues that YouTube is a place and a means and a forum that provides digital means to publish the work of YouTubers with the aim that the work is watched by many people through digital means, where the results of the broadcast of YouTuber products to YouTube will include commercial advertisements for accounts that get millions of subscribers from all over the world.

As a result of being watched by many people, serving commercial ads on YouTube content and meeting the requirements to get AdSense from YouTube. AdSense is an advertising cooperation program through internet media organized by Google, website or blog owners will get income in the form of revenue sharing from Google for each ad clicked by site visitors, known as the Pay Per Click (PPC) system or pay per click. Therefore, regardless of the type and form of YouTube regulations, what is clear from a legal perspective is that YouTubers who create content that includes music and songs can be said to be a criminal offense against the economic rights of copyright holders, related rights, and performers as stipulated in Article 113 Paragraph (2) letters c, d, f, and h, which threatens perpetrators who translate, adapt, arrange or convert creations or copies thereof, perform creations and communicate creations without the permission of copyright holders, related rights, and performers can be imprisoned for a maximum of three years and a maximum fine of IDR 500 million.

It is not surprising that criminal sanctions against the perpetrators of unauthorized music and song covers can be carried out through criminal and civil remedies, because YouTubers are clear in creating song cover content intentionally and intend to seek commercial gain, not just for fun. Because, YouTube regulations are clear, that every YouTuber will get economic value for accounts that meet the requirements, because the price of 1000 YouTube subscribers is worth IDR 13,000. Reformulation of the legal system, in structuring the formulation, application and execution of Law No. 28 of 2014 concerning Copyright is needed to ensure legal certainty in order to avoid juridical problems in the implementation of the law of copyright enforcement. Because, the application of criminal provisions in the law of copyright is the last step in seeking justice for the perpetrators to obtain legal justice to defend economic rights and moral rights to copyrighted works of songs and music in Indonesia (Samaha, 2016). Reformulation of the Copyright Law, as a means to provide clear legal protection through criminal provisions, and can use and function the involvement of other laws to assist in the enforcement of criminal law against copyright law in Indonesia. Execution can be interpreted as the implementation of the decision of the final implementation of the enforcement of criminal provisions in the law of copyright or the final result. Therefore, in its application there is space outside the law of copyright that can be included in the framework of criminal law enforcement (Soepardi, 2009). The economic impact of criminal copyright infringement is not only detrimental to the perpetrators in Indonesia, but also detrimental to state finances.

Therefore, in the future criminal law enforcement is expected not only to be fixated on the application of copyright law, but can use the Corruption Act which can involve law enforcement officials from the police, prosecutor's office, Corruption Eradication Commission in tackling piracy in Indonesia. Data from ASIRI in 2017 revealed that state losses due to piracy in Indonesia reached Rp 1.75 trillion, while economic losses due to piracy reached Rp17.5 trillion. Therefore, to optimize criminal law enforcement, in order to implement the copyright law, it must be accompanied by the Law on Corruption as a means of supporting criminal law enforcement. In the General Provisions of Article 1 Point (1) of Law No. 17 of 2003 concerning State Finance, it is explained that what is referred to as "State Finance" is; "All state rights and obligations that can be valued in money, as well as everything in the form of money and in the form of goods that can be used as state property in connection with the implementation of these rights and obligations".

Article 2 of Law No. 17 of 2013 As referred to in Article 1 number 1, State Finance includes:

a. the right of the state to collect taxes, issue and circulate money, and make loans
b. the state's obligation to carry out the general service tasks of state government and pay third party bills
c. State Revenue
d. State Expenditure
e. Regional Revenue
f. Regional Expenditure
g. State regional assets managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies

h. Wealth of other parties controlled by the government in the context of carrying out government duties and/or public interests
i. Wealth of other parties obtained by using facilities provided by the government.

Based on the explanation above, the definition of "state finances" in Article 1 number 1 of Law Number 17 of 2003 concerning State Finances states, what is meant by "State Finances" is "all state rights and obligations that can be valued in money, as well as everything in the form of money and in the form of goods that can be used as state property in connection with the implementation of these rights and obligations". Basically, the Anti-Corruption Law confirms that in addition to being identical and attached to the position of civil servants and state administrators, it is also attached to the receipt and expenditure of APBN / APBD funds and non-tax state revenues.

Article 1 point 22 of Law No. 1 of 2004 on State Treasury defines state financial loss as "a shortage of money, securities, and goods, which is real and certain in amount as a result of unlawful acts, whether intentional or negligent". In criminal law theory, this definition is a "material offense" according to the Constitutional Court Decision above because it requires a "real and certain amount" of state losses as a result of a prohibited act and must be proven in court. This means that for potential state financial losses in VAT and PNBP revenues amounting to Rp1.75 trillion, the Anti-Corruption Law can be used to make efforts to assist law enforcement against the implementation of copyright law.

Furthermore, the approach to apply the concept of "state financial losses" based on the terminology of Law No. 17 of 2003, in its implementation is as follows; loss or reduction of state rights and obligations that can be valued in money, or in the form of goods that can be used as state property in connection with the implementation of rights and obligations as a result of unlawful acts in the form of loss or reduction of state rights and obligations. The loss or reduction of state financial revenues and or expenditures can be categorized as "state financial losses". For example, a reduction in the state or regional revenue sector, Non-Tax State Revenue, levies, and income from state businesses. In this case, due to the criminal act of copyright piracy in the field of music and songs, the state lost Rp1.75 trillion in the tax sector.

In order to restore state financial losses (asset recovery) worth Rp. 1.75 trillion, Article 18 Paragraph (1) letter-b of the Corruption Crime Law stipulates an additional penalty in the form of "payment of compensation" in the amount of the value of property obtained from the proceeds of corruption in copyright piracy. This includes the company owned by the convicted person where the corruption was committed, as well as the replacement price of these goods. If the convicted copyright pirate does not pay the restitution within one month after the judge's decision is legally binding, then his property can be confiscated by the prosecutor and auctioned to cover the payment of restitution. This is also in line with the decision of the Constitutional Court that the judge will only impose a verdict of "payment of restitution" if the public prosecutor proves the existence of state financial losses before the court based on the audit of the Supreme Audit Agency. In this case, the investigators and public prosecutors need audit results regarding the certainty of the amount of state losses allegedly corrupted by the perpetrators of copyright piracy in the tax revenue sector committed by the defendant. The goal is that the judge can definitively impose a penalty of "payment of compensation" in accordance with the

amount of state financial losses proven to be corrupted. Real state financial losses are not required as long as they are supported by evidence that leads to "potential state losses".

The Constitutional Court Decision Number: 25/PUU-XIV/2016 dated January 26, 2017 on Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law related to the word "may" was declared contrary to the 1945 Constitution and has no binding legal force. The Constitutional Court's decision places the offense of corruption no longer as a "formal offense" but a "material offense" that must be proven that there is a loss of state finances or the state economy from the prohibited acts in Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law. The Constitutional Court changed the constitutional judgment with its legal considerations in the previous Constitutional Court Decision Case Number: 003/PUU-IV/2006 which stated that "the meaning of state financial losses or the state economy is not a result that must actually occur", so there is a fundamental reason for the Court to change the constitutional judgment because the previous judgment has repeatedly proven to cause legal uncertainty and injustice in the eradication of corruption. In particular, the Constitutional Court of the Republic of Indonesia also made transitional rules regarding corruption offenses involving corporations. Due to the legal vacuum in the Criminal Code, temporary rules are needed while waiting for the Criminal Code to be passed. If the provisions of copyright law involve corporations, then this rule can be used as a supporting rule in the legal process against corporate offenders. Supreme Court Regulation No. 13 of 2016 on the Procedure for Handling Criminal Cases by Corporations:

1. This Perma is still transitional to fill the legal vacuum. Further regulation should be in the Criminal Code. However, the Criminal Code Bill is still under discussion.
2. The content of the Perma is considered to conflict with similar internal regulations in other institutions. For example, the Attorney General's Office of the Republic of Indonesia already has Attorney General Regulation No. 28/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects.
3. The Perma only regulates formal-procedural matters, not substantial matters. Such as the withdrawal of corporate criminal liability, when an act can be charged to the corporation, and when an act cannot be charged to the corporation.
4. The Perma has not touched corporations that are not legal entities. The Perma is also said to not explain corporations in the form of legal entities and corporations that are not legal entities and how they are regulated by each other.
5. Limitations in determining the actions of a person who does not have the authority to make decisions but can control or influence corporate policy or in the Perma is called "Management". This limitation is still unclear.
6. There is no explanation of the difference between group corporate liability and criminal participation.
7. The sanctions given are still limited to fines. Sanctions need to be added to the revocation of business licenses, legal entity status, deprivation of profits, partial or complete closure of the company, correction of criminal acts or placement of the company under guardianship for a maximum of three years.
8. The Perma does not regulate significant differences in determining the corporation or management as a suspect/defendant.

2. RESEARCH METHODS

The loss of state finances in the sector of VAT and PNBP tax revenues of Rp. 1.76 trillion rupiah in the field of products and services for music and song artworks, both physical and digital, carried out by ASIRI is a criminal act of corruption. Thus, there is no need to use copyright law in order to suppress criminal acts of piracy of music and song copyrights. This is part of the impact of the decision of the Constitutional Court (MK) Case Number: 25/PUU-XIV/2016 dated January 26, 2017 on Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law regarding the word "may" declared contrary to the 1945 Constitution and has no binding legal force. The Constitutional Court's decision places the offense of corruption no longer as a "formal offense" but a "material offense" that must be proven that there is a loss of state finances or the state economy from the prohibited acts in Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law. The Constitutional Court in its legal considerations changed the constitutional considerations in the previous Constitutional Court Decision Case Number: 003/PUU-IV/2006 which stated that "the notion of loss of state finances or the state economy is not an effect that must actually occur", so there is a fundamental reason for the Court to change the constitutional considerations because the previous considerations have repeatedly proven to cause legal uncertainty and injustice in combating corruption. In order to be able to take legal action against the perpetrators of criminal acts of piracy of music and song copyrights, the Supreme Audit Agency must first conduct an audit. Thus, before the investigator of a corruption case is raised to the investigation stage, an audit of state financial losses must be carried out, which according to Supreme Court Circular Letter Number 4 of 2016 is the Supreme Audit Agency. This is to anticipate the audit of state financial losses to be used as an object of pretrial determination of suspects.

Table 1. List Of Music Industry Losses and State Losses in 2017

No.	Revenue Name	Physical Piracy	Digital Piracy
1	Industry Loss	IDR 3.5 trillion	IDR 350 billion
2	State Loss	IDR 14 trillion	IDR 1.4 billion
	Total	IDR 17.5 trillion	IDR 1.75 trillion

Due to the huge amount of state losses, there should be other laws that accompany the copyright law so as to reduce the number of criminal acts of piracy if the copyright law is not able to break through to enforce criminal law. This way can provide strict sanctions to those who do not want to deposit into the state treasury. Embezzlement of tax funds that should be deposited into the state treasury but not deposited can be categorized as a crime of corruption, because it has harmed the state economy and state finances. This corruption crime is one of the criminal acts and illegal acts committed by the government.

Any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the state finances or the state economy shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp 200,000,000,000.00 (two hundred million rupiah) and a maximum of Rp 1,000,000,000,000.00 (one billion rupiah)." Based on the definition of corruption in Article 2 Paragraph (1) above, it can be seen that there are three elements of the crime of corruption, namely unlawfully:

Committing an act of enriching oneself or another person or a corporation that can harm state finances or the state economy. This means that the phrase "any person unlawfully" in the Corruption Crime Law can also be used as investigation material for the police, prosecutors, and KPK to investigate corruption crimes against non-tax state revenue funds that are not deposited by taxpayers into the state treasury. This has clearly and clearly harmed the state and harmed the state economy, so that the state has lost up to 1.75 trillion rupiah.

Criminal law enforcement efforts on criminal acts of copyright piracy of songs and music clearly have an impact on the perpetrators and the state, therefore the new copyright law has not been able to have a good effect on the rampant criminal acts of copyright piracy of songs and music. Therefore, in order to support the copyright law, when it has not been able to answer the problem of criminal piracy, then other laws that have the space to participate in helping to eradicate criminal piracy, the Corruption Act as a solution in order to reduce criminal piracy in Indonesia. Through the police, the prosecutor's office and the KPK can conduct investigations and investigations into corruption crimes committed by young people who do not want to pay taxes on CD and DVD products and other digital media without having to wait for complaints from victims. This is because, in the Copyright Law, criminal acts of piracy can be processed under criminal law, after first conducting mediation and complaints. The perpetrators will certainly not lose their minds, and will definitely settle the dispute at the mediation stage, and the space for law enforcement will be smaller.

3. RESULTS AND DISCUSSION

Based on the above, the implications of the new Copyright Law have not fully addressed the problem of piracy in Indonesia. Therefore, any legislative policy must also be a manifestation towards the achievement of these goals. Traditionally, theories of punishment can generally be divided into two groups of theories, which are:

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

According to this absolute theory, punishment is imposed solely because someone has committed a crime or criminal offense (*quia peccatum* est). Criminal punishment is an absolute consequence that must exist as retaliation against people who commit crimes. That is, the new copyright law should be the end result of criminal law enforcement efforts, and is able to resolve existing criminal problems. If the new copyright law has not been able to resolve the criminal acts of piracy, duplication and related licensing and criminal issues in protecting the rights of the perpetrators, it means that the new copyright law has not been able to realize the wishes of the perpetrators in Indonesia. Meanwhile, according to this theory, the main purpose (primary) of crime is "to satisfy the demands of justice". While currently the criminal act of piracy is still dominating the market freely, it means that there has been a legal omission in the aspect of criminal law. The perpetrators in Indonesia do not respond much to mediation efforts, because these efforts cannot provide answers or solutions to stop piracy. The government only focuses mediation efforts on the civil aspect, while the criminal act of piracy is not touched at all, because piracy is a complaint offense. The next step that must be taken by the government is that the complaint offense element in Law No. 28/2014 on Copyright must be changed

into an ordinary offense, so that the Police can work optimally in dealing with criminal acts of piracy. At the very least, this will make it easier for the perpetrators, as without a complaint from us, the police can arrest, confiscate, and search song and music copyright pirates in Indonesia. Currently, in Indonesia, in many parts of the country, pirated CDs and DVDs dominate the market and no legal action has been taken by law enforcement officials in Indonesia. It is ironic that when the new Copyright Law was passed and came into effect in early 2017, only administrative adjustments to economic rights and moral rights attracted royalties, but piracy, duplication, license infringement and the ubiquitous mutilation of songs due to piracy were not touched at all. This is why performers are reluctant to take the legal route, as the new Copyright Law leads us towards civil mediation. In that case, if the new Copyright Law focuses more on civil matters, it is feared that perpetrators in Indonesia will still find it difficult to obtain legal justice from a criminal law perspective. The new Copyright Law limits the settlement of piracy crimes to civil mediation. This raises the question of who will be the mediator when the perpetrators conduct covert activities. It is impossible for Indonesian perpetrators to judge and monitor these criminals individually with a civil mediation system.

Hence, if the new copyright law focuses more on civil matters, it is feared that perpetrators in Indonesia will still find it difficult to obtain legal justice from a criminal law perspective. The new copyright law does limit the settlement of piracy crimes to civil mediation. This raises the question of who will be the mediator when the perpetrators conduct covert activities. It is impossible for Indonesian actors to judge and monitor these criminals individually without triggering conflicts with the pirate company's accomplices. The author is concerned that, in the future, the current and future Copyright Law, particularly in terms of criminal law will become ineffective and suspended which will ultimately harm the larger community of actors. This change of the common offense element to a complaint offense is a strong indication of the weakening of the criminal law in the new copyright law.

The rampant criminal acts of piracy, copying, license violations, and so on, will undoubtedly have severe repercussions for performers if the government and professional organizations overseeing performers in Indonesia fail to address these issues. As Emile Durkheim stated, the function of the criminal is to create the possibility for the release of emotions – emotions stirred by the presence of crime. Meanwhile, schools of criminal law do not seek a legal basis or justification for punishment but aim to establish a practical and useful criminal law system. In the new Copyright Law, the primary objective should be to provide maximum benefits for performers in Indonesia, both now and in the future. We must not let the criminal sanctions outlined in the new copyright law become empty rhetoric that remains unenforced due to a legal system that prioritizes civil matters.

The implications of the criminal law formulation policy of the new Copyright Law be interpreted as an effort to create fair, appropriate, and appropriate criminal legislation for the present and the future. According to the author, criminal sanctions should not be hindered by other desires, such as civil mediation. Criminal proceedings should not prevent victims from pursuing civil remedies, as criminal and civil aspects are different entities with separate legal mechanisms and procedures. The use of legal remedies, including criminal law, to address social problems such as piracy, copying, and license infringement should be a priority in the new copyright law. Law operates in the social realm, and the use of legal remedies falls under social protection and welfare policies.

According to Roeslan Saleh, the use of criminal means and criminal law is justified by the following reasons:

1. The necessity of criminal law is not determined by the goals to be achieved but by the extent to which coercion is permissible to achieve those goals.
2. There are actions aimed at repair or maintenance that hold no meaning for the offender. Additionally, there must be a reaction to the violation of norms that cannot go unpunished.
3. The influence of criminal law is not only directed at the criminals themselves but also at law-abiding members of society to reinforce societal norms.

Considering these important reasons, the use of criminal law is necessary in addressing money laundering crimes and restoring the disrupted social fabric caused by actions contrary to the spirit of the nation and the state. When discussing the formulation of criminal law policy, it is essential to consider the object being regulated, which is the crime or *strafbaarfeit*. Simmons defines *strafbaarfeit* as behavior that is punishable, against the law, and committed by individuals capable of being held responsible. Van Hammel argues that *strafbaarfei*t refers to behavior formulated in the law, punishable by law, deserving of punishment, and committed in error. The existence of formulation elements in law and the concept of criminal responsibility are fundamental aspects of defining criminal acts.

Criminal law policy can be understood as the state's approach or governmental policy in using criminal law to achieve specific goals, particularly in combating crime. It should be acknowledged that there are various ways and efforts that each state can undertake to address crime, including through criminal law policy. Sudarto states that implementing criminal law policy involves conducting evaluations to achieve the best outcomes in terms of justice and efficiency. The politics of criminal law aims to create criminal laws and regulations that are relevant to the current and future circumstances. According to Marc Ancel, penal policy is both a science and an art with the practical objective of improving the formulation of positive law regulations, providing guidance to legislators, courts, and law enforcement agencies.

Criminal law politics also involves the policy of criminalizing and decriminalizing certain acts. In the context of the new copyright law, legal politics should prioritize the enforcement of criminal law to avoid the weakening of criminalization due to insufficient implementation of criminal law. This involves making choices regarding acts that should be classified as crimes or not, as well as determining the goals of the criminal law system in the future. If the new copyright law focuses more on civil law, the execution of criminal law may be weakened. Therefore, with the politics of criminal law, the state has the authority to define acts as crimes and utilize repressive measures against those who violate them. This is one of the essential functions of criminal law, providing a basis for the state's legitimate use of repression against individuals or groups who commit acts defined as crimes. Josep Golstein distinguishes criminal law enforcement into three parts:

1. Total enforcement: This refers to the scope of criminal law enforcement defined by substantive criminal law. Achieving total enforcement is not possible due to limitations imposed by criminal procedural law, including rules for arrest, detention, search, confiscation, and preliminary examination. Additionally, substantive criminal law itself may impose limitations, such as requiring a prior

complaint for prosecution of complaint offenses (*klacht delicten*). This limited scope is referred to as the area of no enforcement.
2. Full enforcement: After considering the limitations in the area of no enforcement, law enforcers are expected to uphold the law to the maximum extent.
3. Actual enforcement: This is considered an unrealistic expectation due to limitations in time, personnel, investigative tools, funds, and other factors. Consequently, discretion is exercised, and the remaining enforcement is referred to as actual enforcement.

The operationalization of criminal law policy, also known as penal policy, involves several stages: formulation (legislative policies), application (judicial and judicial policies), and execution (administration policies). Among these stages, the formulation stage is the most critical in preventing and addressing crime through criminal law policies. Errors or weaknesses in legislative policies can become strategic mistakes that hinder efforts to combat crime in subsequent stages.

In the context of the new Copyright Act Law No. 28 of 2014, the formulation and regulation of criminal law policies address the pattern of penal mediation for piracy cases. Piracy, as defined by the Copyright Act, refers to the illegal reproduction of works and/or related rights products and the widespread distribution of duplicated goods for economic gain, before the commission of criminal acts.

One theory relevant to criminal law is Lawrence M. Friedman's Legal System Component theory. According to Friedman, the legal system comprises three components: legal structure, legal substance, and legal culture. The legal structure refers to the framework or series of laws that shape and define the legal system. It pertains to the institutions involved in creating and enforcing the law. Legal substance encompasses the rules, norms, and patterns of human behavior within the legal system. It includes the decisions made and new rules established by individuals within the legal system. Legal culture represents people's attitudes, beliefs, values, thoughts, and expectations towards the law and the legal system.

Due to address piracy in Indonesia, it is crucial to emphasize criminal law in conjunction with related regulations. According to Friedman's theory, criminal law enforcement can be examined and studied based on the institutions involved in implementing or enforcing the copyright law, norms related to the protection of creators' economic rights, and the attitudes and thoughts of the public regarding these rights. Economic rights of creators, particularly songwriters and musicians in Indonesia, have been previously discussed. However, the distribution of economic rights varies in different literature.

The new copyright law provides legal remedies that victims of copyright crimes can pursue, such as mediation through the Director General of Intellectual Property, filing civil lawsuits in the Commercial Court, and seeking criminal remedies through the complaint process with the Police, the Attorney General's Office, and the General Court. Additionally, other laws can be utilized to assist in enforcing the copyright law, such as the Corruption Crime Law, to combat criminal acts of piracy involving copyrighted songs and music in Indonesia.

The legal substance of the new copyright law also allows for the utilization of other laws to support copyright law enforcement concerning crimes like tax evasion and non-

payment of taxes related to physical and digital products, including CDs and DVDs, in the Non-Tax State Revenue (PNBP) sector. Furthermore, the Value Added Tax (VAT) should be imposed on these products, as it is a tax levied on the added value of goods or services in circulation. Failure to pay these taxes results in substantial losses to the state's economy.

In order to eradicate corruption related to PNBP and VAT revenues and ensure the rule of law in supporting efforts to eradicate piracy, the Government of Indonesia must build a strong policy foundation. These policies are contained in laws and regulations, including the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 on Clean and Free State Administration from Corruption, Collusion, and Nepotism, Law Number 28 of 1999 on Clean and Free State Administration from Corruption, Collusion, and Nepotism, and Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001.

Law enforcement efforts related to the copyright law must adhere to principles such as impartiality, fairness in examining and deciding cases, fair legal process, correct application of the law to protect the rights of justice seekers and the interests of society, and freedom from pressure and violence in the judicial process. The criminal justice system, which includes the police, prosecutors, courts and correctional institutions, must work together to eradicate corruption. Socialization on the enforcement of the Anti-Corruption Law needs to be carried out to address corruption, which often involves individuals who hold important positions in government and civil servants in local government.

In order to effectively enforce criminal law against rampant piracy of copyrighted songs and music in Indonesia, active participation is required to safeguard the new copyright law. The implementation of the copyright law has implications that may intersect with other laws, providing support and complementing the weak enforcement of criminal law in the new copyright law. The copyright law became operational in 2017, following the passing of Law No. 28 of 2014, and underwent two years of socialization.

From an economic and moral perspective, the income of performers has increased due to the emergence of institutions like the Collective Management Organization and Collective Management Institution in Indonesia as royalty-collecting entities. However, on the other hand, the new copyright law has not had a significant impact on criminal law enforcement. The phenomenon of piracy continues to prevail in the domestic market, with counterfeit products accounting for almost 90% of the CD and DVD products. This is a concerning issue that requires attention from the government regarding the implementation of the new copyright law, as it appears to be more focused on the civil aspect, accompanying copyright-related issues to be resolved through mediation. This hinders the enforcement of criminal law for copyright offenses.

Therefore, strict enforcement of the Corruption Law regarding the embezzlement of PNBP must be emphasized, as it can assist in enforcing criminal law under the new copyright law. Various types of corruption crimes, such as embezzlement, extortion, bribery, manipulation, illegal fees, collusion, and nepotism, can contribute to the embezzlement of PNBP and VAT funds.

The crime of embezzlement of PNBP and VAT revenues from the music and song sector, as stated in the copyright law, is a special crime outside the Criminal Code, explicitly stated in Article 25 of Government Regulation Number 24 of 1960. Perpetrators proven to have committed corruption crimes must be held accountable before the law in

accordance with the provisions of the law. Every citizen has an obligation to uphold the law, and those who violate the law must face consequences based on the rule of law.

Efforts to control piracy as stipulated in the new copyright law should not only rely on criminal law but also consider non-penal means. These non-penal efforts can include sponsorship, social education, mental health cultivation through moral and religious education, welfare initiatives for children and youth, and continuous monitoring and patrol of physical and non-physical distribution of copyrighted songs and music products in the market. These preventive efforts involve various components, such as government agencies, the police, and other security forces, aiming to prevent piracy. They cover a wide range of sectors in national life.

Non-penal preventive activities play a strategic role in criminal politics, as they aim to improve social conditions and create awareness among perpetrators of piracy and copyright crimes, indirectly preventing future offenses. It is crucial to streamline and intensify these non-penal activities, as failure to address this strategic aspect can have severe consequences for anti-piracy efforts.

To effectively tackle piracy, a criminal policy should integrate and harmonize all state activities in an organized and coordinated manner. The main challenge lies in integrating and harmonizing non-penal and penal activities or politics to suppress and reduce the factors that contribute to piracy. This integral approach is expected to lead to successful social defense planning, fulfilling the social and political objectives outlined in the national development plan, such as creating a healthy and meaningful environment. Ultimately, these efforts aim to uplift artists and performers in Indonesia, providing them with dignity, improved economic conditions, justice, legal order, and a prosperous and peaceful society.

4. CONCLUSSION

Based on the descriptions above, it is evident that reformulation is necessary in the current policy formulation, application, and execution phases to improve the quality of the Copyright Laws. The current criminal provisions in the copyright law face juridical problems and have failed to address criminal acts of piracy, copying, and copyright licensing in the field of music and songs in Indonesia.

To ensure fair enforcement of criminal law against copyright piracy, a reformulation of the copyright law that addresses juridical issues should be pursued through two legal steps. Firstly, a judicial review should be submitted to the Constitutional Court of the Republic of Indonesia. Secondly, political means can be employed by submitting revisions to the copyright law through the executive and legislative branches (Government-DPR RI). This would involve rearranging the formulation of criminal provisions, synchronizing articles, adding articles that govern legal subjects entitled to file complaints, determining substitute subjects in case of death or minority, specifying time limits for complaints, establishing corporate criminal sanctions, and addressing the withdrawal of complaints and other juridical consequences. Additionally, the expiration rules in the new copyright law need clarification to provide legal certainty for criminal provisions in Articles 112 to 120, as well as addressing the asymmetry between Article 96, Paragraphs (1), (2), and (3) regarding the rules for

payment of criminal compensation compared to the provisions in copyright law No. 28 of 2014 concerning Copyright.

Legislators should pay attention to the unified principles of harmonization in the criminal law system and abide by statutory regulations as stipulated in Appendix II Sub C.3 of Law No. 12 of 2011 regarding Formation of Laws and Regulations. The formulation of criminal provisions should consider the general principles of criminal provisions in Book I of the Criminal Code, which apply to acts punishable under other laws and regulations, unless specified otherwise.

The lack of certainty in the formulation of criminal provisions and the qualifications of offenses in the copyright law No. 28 of 2014 also presents a juridical problem. Legislators have violated Appendix II Sub C.3 of Law No. 12 of 2011 number 121, which requires clear qualifications for acts punishable as offenses or crimes. These juridical issues have significantly affected the rights and well-being of performers, leading to material and immaterial losses. To achieve harmonization within the criminal system of the Copyright Law, the application of criminal provisions, particularly in article 120 "complaint offenses," should be reformulated by aligning the delict qualification with the general provisions in Book I of the Criminal Code. Failure to improve and rearrange the copyright law in terms of criminal provisions may result in prolonged juridical problems and disrupt the order of the criminal law system.

The makers of the copyright law have made mistakes in formulating criminal provisions and offense qualifications, particularly in applying the highest sanctions for copyright offenses. This inconsistency violates the principle of harmonization within the criminal system and deviates from the rules and principles of legislation formation as outlined in the general provisions of Book I of the Criminal Code. In future legislation, legislators should clearly and decisively formulate delict qualifications, similar to copyright law No. 6 of 1982 concerning the copyright, which includes the qualification of delict for criminal copyright acts.

Ideally, in the future, the copyright law should be reformulated to ensure criminal provisions serve as an effective deterrent tool, imposing severe penalties for piracy offenses. The criminal provisions should effectively prevent piracy, copying, and misuse of copyright licenses in Indonesia. The formulation of criminal provisions should function to enforce criminal law, provide social defenses, promote social welfare, and ensure social justice. The copyright law should address criminal acts of piracy while also regulating technical regulations to protect individuals in the performing arts sector. The balance between civil and criminal provisions should be achieved to implement the copyright law more efficiently and accurately, aligning with the objectives of criminal law and punishment.

Given the current condition of social hygiene and the deviant nature of consumers of pirated products, criminal law must be upheld with strict and severe sanctions. To address the weaknesses and juridical problems in the criminal provisions of the copyright law, other legal instruments outside the copyright law can effectively be utilized to suppress and eradicate piracy in Indonesia. Strengthening collective awareness among all stakeholders, including the government, law enforcement agencies, professional artists' organizations, and performers, is crucial. This will create a sense of security and alleviate fears, fostering an environment where artistic works can flourish freely and with dignity.

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Copyrights

RESPONSIBILITY OF INSURANCE COMPANIES DECLARED BANKRUPT FOR THE REPAYMENT OF POLICYHOLDERS' RECEIVABLES

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Abstract

Insurance companies, as legal entities engaging in business activities, may not always maintain good financial standing. A bankrupt company is typically in a state of insolvency where its assets fall short of its outstanding obligations. The insolvency of an Insurance Company leads to setbacks and limitations in its operations, with the Policyholder being the most affected party. This study aims to explore how dividends from bankrupt insurance companies are distributed and how such companies are accountable for settling Policyholders' receivables. The research employs a normative research method, utilizing a statutory approach and legal concept analysis. The findings indicate that the distribution of bankrupt insurance companies' assets is based on the priority order of creditors. The Policyholder, as the Preferred Creditor, receives payment of their receivables first and assumes the position of Separatist Creditor. In case of bankruptcy, the Insurance Company bears full responsibility for settling Policyholders' receivables. If there are any unpaid receivables, the Insurance Company is obligated to pay the remaining amount to the Policyholder.

Keywords: *Bankrupt, Policyholder, Responsibility*

1. INTRODUCTION

Humans live in a life full of uncertainty, and every event that occurs or will occur carries the potential for risk. These risks are closely related to the losses that individuals may experience. For instance, the death of a person can significantly impact the lives of their spouse and offspring, especially if they are dependent on the deceased's financial support (Retnaningsih, 2018). Other events such as childbirth also entail risks, including the health of the mother and child and the child's future education. Additionally, people often face unexpected events like house fires, property damage, or personal accidents.

Regarding these risks, individuals have several options: accept or face the risks, avoid them, prevent them, transfer them to others, or share them with other people or institutions (Patria, 2018). The concept of risk transfer and sharing forms the basis for insurance institutions. Insurance allows individuals (the Insured) to transfer the risks they face to the Insurer. If the risk materializes and causes a genuine loss to the Insured, the Insurer compensates them. For this coverage to take effect, a legal relationship must exist between both parties, documented in a written agreement known as a policy.

In Indonesian law, insurance agreements have been regulated since before independence, specifically in the *Burgerlijke Wetboek* (BW) or the Civil Code, and also in the Commercial Code (KUHD) (Shubhan, 2015). Insurance agreements are considered one of the agreements involving profit and loss, where the outcome depends on an uncertain event. Article 246 of the KUHD formally outlines the limitations of insurance agreements, defining them as agreements in which the Insurer obliges themselves to the

Insured, upon receiving a premium, to provide compensation for losses, damages, or lost expected profits due to an uncertain event.

Insurance companies, like other business entities, may not always have a stable financial condition (Nugroho, 2019). When an Insurance Company faces financial difficulties and is unable to fulfill its obligations to Policyholders, it may be subject to bankruptcy proceedings. The financial condition of a bankrupt business entity is typically insolvency, where its assets are insufficient to cover its liabilities (Sembiring, 2014). In Indonesian bankruptcy law, debts remain with the Debtor until they pass away or the Debtor dissolves (Syahran, 2020).

One prominent example of an insurance company bankruptcy case is PT Asuransi Bumi Asih Jaya. After the revocation of its operational license by OJK on October 18, 2013, Bumi Asih Jaya Life Insurance Company was found to have unpaid claims worth IDR 85.6 billion from 10,584 Policyholders. This insolvency issue affected 103,584 individual insurance policies and 544 group insurance policies. The value of Bumi Asih's active claims totaled Rp3.4 trillion as of the second quarter of 2013, four months before the license revocation, with individual insurance accounting for Rp1.3 trillion and group insurance for Rp2.1 trillion. This amount was expected to increase over time due to the growing number of overdue claims. Notably, the claim debt to Policyholders is not the only debt, as the company also had financial obligations to other parties, such as banks. Despite the potential sale of assets by the Curator team, it is evident that the value obtained would not suffice to cover the entire value of the active claims from Policyholders.

The insolvency of an Insurance Company has adverse implications for its business and significantly impacts the Policyholders. Based on this background, this study aims to address two fundamental and essential issues: 1) How is the distribution of assets (*boedel*) of an Insurance Company that has been declared bankrupt? and 2) What is the responsibility of the Insurance Company concerning the settlement of policyholder receivables?

2. RESEARCH METHOD

This research uses normative legal research methods, namely legal research based on or only examining secondary data, namely library data and laws and regulations as research materials (Diantha, 2016). The types of approaches used in this research are the statute approach and the analytical and conceptual approach. The legal material collection technique used is library research, by reviewing library sources such as books, scientific journals, research reports, and other documents both printed and online that are relevant to the topic being studied in this study (Amiruddin, 2016). The method of analyzing legal materials used in this research is the description analysis method, which describes clearly and what it is of a legal event or legal condition that occurs. The analysis is carried out qualitatively which is against data that cannot be calculated.

3. RESULT AND DISCUSSION

3.1. Distribution of Insurance Company *Boedel* that has been declared bankrupt

According to Clause 16 of Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law), starting from the time the bankruptcy verdict is pronounced, the Curator is authorized to manage and/or administer the bankruptcy estate, even though the verdict has not been legally enforceable. Based on the explanation of Article 16, administration is the disposal of assets to pay or settle debts. The administration of bankruptcy assets can only be carried out after the debtor is in a state of insolvency. Based on Article 178 paragraph (1) of the Bankruptcy Law, insolvency occurs if:

a. in the receivables matching meeting, no peace plan is offered;
b. there is a peace offering by the bankrupt debtor or the curator, but the peace offering is not accepted by the creditors in the receivables matching meeting; or
c. there is a peace offering and it is approved by the Creditors in the receivables matching meeting, but it is rejected or not authorized by the Judge.

The juridical consequence of the Debtor's insolvency is that the Curator will immediately carry out the administration and sell the bankruptcy assets in public (auction) or under hand and compile a distribution list with the permission of the Supervisory Judge, as well as the Supervisory Judge can hold a meeting of Creditors to determine the method of administration (Zuhra, 2016). One part of the bankruptcy estate administration process is the distribution of the bankruptcy estate auction proceeds. The distribution of the bankruptcy estate is based on an order of priority where creditors with a higher position receive a distribution ahead of other creditors with a lower position (Marwanto, 2020). The Bankruptcy and PKPU Law does not explicitly regulate the system or order of distribution of the bankruptcy estate of a bankrupt debtor, to ensure legal certainty, the bankruptcy estate distribution system follows the pre-existing rules in the Civil Code.

1. Article 1334 of the Civil Code stipulates that holders of liens and mortgages (material security) are positioned as Separate Creditors who are higher in position than special rights (Preferred Creditors), unless the law states otherwise.
2. Collateral or security objects of Separate Creditors are separated from the bankruptcy estate. If the proceeds from the sale of the collateral are insufficient to settle the debt, the remaining debt of the Separate Creditors will be claimed as Concurrent Creditors. Conversely, if there is an excess of proceeds from the sale of collateral, it must be returned to the bankruptcy estate.
3. If the Separate Creditors do not execute the collateral or exceed the time limit (90 days after insolvency), the execution of the collateral will be carried out by the Curator. The proceeds from the sale of secured assets by the Curator are first distributed to Preferred Creditors, but Preferred Creditors cannot take all of their rights from the rights of Separate Creditors.
4. In the insolvency of an Insurance Company, the Policyholder is a Preferred Creditor together with the State's tax debt and the salaries or wages of the workers/laborers. Among the Preferred Creditors, the one that must take precedence in the distribution of the bankruptcy estate is the State for the payment of tax debts. This is in accordance with the provisions of Article 21 paragraph (3) of Law Number 16 of 2009 concerning General Provisions and Tax Procedures. So that in the case of the

distribution of the bankruptcy estate of the Insurance Company, the State's right to tax is paid first and then the rights of Policyholders and other Preferred Creditors.

5. After the settlement of Preferred Creditors and Separate Creditors is made, the remaining bankruptcy estate is paid to Concurrent Creditors, including the remaining receivables of Separate Creditors, proportionally. Proportional calculation is to obtain payment on a pro rata basis based on the amount of each bill.

All creditors, whether they are Separate Creditors, Preferred Creditors or Concurrent Creditors, have their own position and rights. In practice, most of the receivables of Preferred Creditors and Separate Creditors are not paid in full because the Curator also needs to consider the rights of concurrent creditors or there are circumstances where the results of the bankruptcy estate auction are insufficient to settle the creditors' receivables.

3.2. Responsibility of Insurance Companies Declared Bankrupt for the Repayment of Policyholders' Receivables

Based on Article 6 of Law Number 40 of 2014 concerning Insurance (hereinafter referred to as the Insurance Law), the form of legal entity for organizing insurance business is a limited liability company; cooperative; or joint venture declared as a legal entity based on the insurance law. The Insurance Company with its status as a legal entity is considered a legal subject that can perform legal acts on its own behalf, has its own assets (separate from the assets of its members) and has its own responsibility, and can be sued and sued in court. As a legal entity, the Insurance Company can perform legal acts and legal relations through the company's organs, namely its management.

The agreement made by the Insurance Company with the Policy Holder contains a clause that the Insurance Company will compensate the Policy Holder for losses arising from events that are not certain to occur or as a result of events that have been determined in the agreement. The achievement arising from this agreement is that the Insurance Company has an obligation to compensate the Policyholder and what it is entitled to is to receive premium payments, while the Policyholder has an obligation to make premium payments and has the right to payment of insurance claims. The responsibility of the Insurance Company has arisen since the agreement between the two parties. If the responsibility is not carried out by one of the parties, the party has committed default or breach of promise. If the Insurance Company does not fulfill its obligations to the Policyholder, the Insurance Company can be declared in debt. The responsibility of the Insurance Company as a Debtor for its debts is guided by Article 1131 and Article 1132 of the Civil Code, both articles provide guarantees to Policyholders as Creditors that their rights will continue to be fulfilled or paid off with the guarantee of the Debtor's assets, both existing and future.

In principle, the assets of the Insurance Company are legally separated from the assets of the company's organs, therefore the legal responsibility is also separated from the assets of the Insurance Company's organs. If the Insurance Company makes an agreement with another party, the responsibility is on the Insurance Company and only limited to the assets owned by the company. In the event of bankruptcy of the Insurance Company, the one responsible for the company's debts is the Insurance Company itself,

and the company's assets become the source of settlement of the creditors' receivables. Personal assets belonging to the organs of the Insurance Company cannot be confiscated or charged for the responsibility of the Insurance Company, because the organs or management of legal entities have limited liability.

Indonesian bankruptcy law does not allow for a debt forgiveness scheme for the debtor's remaining unpaid debts after the bankruptcy estate has been disposed of, otherwise known as the debt forgiveness principle. Bankruptcy does not in any way intend to relieve a person declared bankrupt from the obligation to pay debts and the remaining debts. The bankruptcy of a legal entity cannot be said to be completed if all rights and obligations of the legal entity have not been fully implemented. Based on Article 204 of the Bankruptcy and PKPU Law, Creditors regain the right of execution against the Debtor's assets regarding their unpaid receivables. Creditors' execution rights over unpaid receivables are also strengthened by the provisions of Article 205 of the Bankruptcy and PKPU Law which states that a receivable recorded in the Minutes of Meeting has permanent legal force against the Debtor like a court decision that has obtained permanent legal force.

4. CONCLUSSION

Based on the discussions presented above, the conclusions regarding the division of a bankrupt insurance company's assets (*boedel*) and the responsibility for repaying Policyholders' receivables are as follows:

Firstly, the distribution of the bankruptcy insurance company's *boedel* adheres to a priority order among creditors. Creditors holding higher positions in this order receive distributions ahead of those in lower positions. As a preferred creditor, the Policyholder holds a privileged position and is entitled to receive payment of their debt first, assuming the position of a Separate Creditor. However, it is worth noting that within the category of Preferred Creditors, the State's right to tax takes precedence over the rights of individual Policyholders.

Secondly, the Insurance Company, being a recognized legal entity, enjoys the status of a legal subject capable of conducting legal acts on its own behalf. As such, the company possesses its own assets, bears its own responsibilities, and can be sued and sued in court. In cases of bankruptcy, the full responsibility for repaying Policyholders' receivables rests solely with the Insurance Company. This responsibility extends until all Policyholders' receivables are entirely settled.

Lastly, if there are any remaining receivables yet to be paid off, the Insurance Company remains obligated to fulfill its commitment by paying the outstanding amounts owed to the Policyholders.

In summary, the division of assets and the responsibility for repaying Policyholders' receivables in the event of an Insurance Company's bankruptcy are determined by legal provisions and the priority rules set forth in the applicable laws. Policyholders, being preferred creditors, are given precedence in receiving payments, and the Insurance Company bears the full responsibility for ensuring their debts are met. These legal principles aim to safeguard the interests of Policyholders and maintain a fair and orderly process in times of insolvency.

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Copyrights

LEGAL PROTECTION AGAINST THE CASE OF PT. MOTTOLEDO AS A VIOLATOR OF FEN LIE PATENT RIGHTS

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Abstract

Intellectual property rights (IPR) pertain to property rights derived from human intellectual capabilities, encompassing various forms of talent displayed in technology, science, art, and literature. Adequate legal protection is essential for intellectual works to nurture societal creativity and ensure successful safeguarding of intellectual property rights. This study aims to assess the legal protection of intellectual property rights against PT Mottoledo Fen Lie Agen as a patent infringer. This study employs a normative legal study approach, focusing on the positive legal norms governing the protection of intellectual property rights against PT Mottoledo Fen Lie Agent's patent infringement. The study identifies the substantive requirements for patentability of an invention, namely: novelty, inventive steps, and industrial applicability, as specified in Articles 2-5 of the Patent Law. Concerning copyrighted books and similar works, the protection system discussed earlier adopts an automatic approach. This means that creators do not need to undergo a registration process to obtain legal protection; protection automatically exists from the moment the copyrighted work is created as a tangible expression, such as a copyrighted book, etc.

Keywords: *Fen Lie Agen, Intellectual Property Rights, Legal Protection, PT Mottoledo*

1. INTRODUCTION

Indonesia's development must rely on high-value industries. The country's commitment to implementing the idea of the ASEAN Free Trade Area (AFTA), along with its membership in the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC), demonstrates the government's seriousness in supporting regional business freedom and open economic systems (Manuaba & Sukihana, 2020).

The rapid flow of free trade, which demands higher quality manufactured goods, has proven to encourage the development of technology to support these needs. As a result, there is a growing awareness of the importance of intellectual property rights (IPR) in supporting technological development. This is evident from the large number of copyright, patent, and trademark applications submitted to the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights, as well as a considerable number of industrial design applications (Sutrahitu et al., 2021).

The Indonesian government acknowledges that implementing an intellectual property rights system is a significant undertaking. Its participation in the WTO is a consequence of implementing the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) based on Law Number 7 of 1994 concerning the Ratification of Intellectual Property Rights Agreement Establishing the World Trade Organization.

Based on experiences so far, effective implementation of the intellectual property rights system requires the participation of various agencies and institutions from both the

public and private sectors, along with good coordination between all parties. A robust IPR system necessitates appropriate legislation, optimal IPR administration, law enforcement, and socialization programs.

Intellectual property rights (IPR) refer to rights relating to wealth arising from human intellectual capacity, which can be in the form of works in technology, science, art, and literature. IPR can be broadly categorized into two types: copyright and industrial rights. Industrial rights encompass patents, trademarks, industrial designs, integrated circuits, trade secrets, and plant varieties. Intellectual property rights are governed by several laws and regulations in accordance with TRIPS requirements, namely Law No. 29/2000 (protection of plant varieties), Law No. 30/2000 (trade secrets), Law No. 31/2000 (industrial design), Law No. 32/2000 (integrated circuit layout planning), Law No. 1 of 2001 (patents), Law No. 15 of 2001 (trademarks), and Law No. 19/2002 (copyright) (Isnaina, 2021).

The implementation of the Intellectual Property Rights (IPR) system in Indonesia is still facing challenges. This may be because people are not familiar with the intellectual property system, which is still relatively new in the country. Apart from benefiting industries, universities, and research and development institutions, the intellectual property rights system plays a vital role as a revenue generator.

IPR can be generally classified into two main categories: copyright and industrial rights. Copyright covers works in the fields of science, art, and literature, while industrial rights cover technical fields. The terminology of intellectual property rights often refers to creators or inventors. Copyright includes both property rights and moral rights. Property rights pertain to the rights to receive economic benefits from the creation and related products, while moral rights are attached to the creator or author and cannot be removed or eliminated without reason, even if the copyright or related rights have been transferred.

In the current era of globalization, where various technologies are increasingly advanced, everyone can easily use the current technology to do business for their needs. However, the rapid development of information technology has also negatively impacted copyright protection. It seems that competition occurs in various ways, carried out by different parties, either in accordance with the applicable regulations or not (Muchtar A H Labetubun, 2019).

The owner of the copyright is typically the creator, unless the creator transfers the rights to someone else. If a creation was designed by someone, but others carry out and work on it under the direction and control of the designer, then the designer of the creation is considered the creator.

As society's needs increase, copyright, especially portrait copyright, has received more attention recently. Many efforts are made by irresponsible parties to realize their desires, leading to cases like the one experienced by the author, where profiling results are used to describe the manager of an advertising model as a copyright owner who is free to advertise in various media without permission. The author's images are used without knowledge in advertisements for penis enlargement drugs.

This is certainly detrimental to the copyright owner of the portrait, such as artist management and artists, who should receive financial rights in the form of royalties as the subject of the portrait. But because the portrait is used illegally, the creator does not contract with the management and does not receive royalties.

Fen Life Agen, through its legal counsel DHL and Partners Law Firm, reported PT Mettoledo's alleged patent plagiarism to the Police Headquarters Criminal Investigation Unit and the Directorate General of Intellectual Property (IPR) of the Ministry of Law and Human Rights. Okto, who is an employee of Fen Lie Agen, said that his party holds a simple patent for the work/invention of the Rotary Galah Connector, which is used as a harvesting tool to cut palm kernels. It was registered by the Directorate General of Intellectual Property Rights with a simple patent certificate number: IDS 000002300, dated 29/0/2019, in accordance with Law No. IX/2019, in accordance with Law No. 13/2016.

As a patent owner, he continued, Fen Lie Agen has the right to grant licenses to other parties to use his creation as prescribed by the law. However, Fen Lie Agen discovered in late 2020 that companies were producing and selling their inventions without their knowledge.

According to him, this was discovered by the company's partner in Pekanbaru. To verify the truth of his work's claim at that time, his colleague tried to order a tool sold by PT Mettoledo located in Pontianak, West Kalimantan. Therefore, Okto said that his party has served two subpoenas to DHL and Partners through its attorney in December 2020 and January 2021, but so far there has been no response from PT Mettoledo. Moreover, this study aims to determine how the implementation of copyright protection against patent works used without prior notice to the owner or copyright holder and what efforts are made by patent copyright holders for works taken by infringers.

2. RESEARCH METHODS

The type of legal research utilized in this study is empirical or sociological legal research. This approach aims to explore the correlation between law and society, focusing on the effectiveness of the application of law within the community. The research takes a descriptive nature, aiming to precisely describe the characteristics of individuals, situations, symptoms, or groups, and determine the prevalence of specific symptoms or relationships within society. The focus of this sociological legal research is on the Legal Protection of Copyright, particularly concerning Article 12 of Law Number 28 of 2014 concerning Copyright in Indonesia.

The research was conducted at one of the Fen Lie Agen companies, where a claim related to their work was being considered through its partners attempting to place an order for a tool sold by PT Mettoledo, based in Pontianak, West Kalimantan.

The population for this study consists of the Director of PT. Mottoledo, who is the alleged perpetrator of copyright infringement in the form of the Rotary System Pole Connector, and Fen Lie Agen, the copyright holder.

Regarding data sources, primary data was obtained directly from respondents, including data from both samples and study informants. This primary data focused on the legal protection of copyright in accordance with Article 12 of Law No. 28 on Copyright. Secondary data, on the other hand, was obtained through literature study and included primary legal materials such as legislation and judicial decisions, as well as secondary legal materials, such as textbooks, books, and journal writings on law.

The data analysis and collection in this research followed a qualitative approach due to the non-numeric nature of the data. The data was difficult to quantify, and the relationships between variables were not clear. The deductive thinking method was used

for analysis, starting with general propositions whose truth is known (or believed) and leading to more specific conclusions (new knowledge).

Data collection techniques involved various methods, including observation, where researchers observed the research focus; interviews, where researchers prepared written questions and interviewed respondents to gather data relevant to the research problems; and literature review, which involved extracting quotations from books and literature related to the research problems. Through these approaches, the research aimed to gain insights into the legal protection of copyright and its application in the context of the studied entities.

3. DISCUSSION

3.1. Implementation of Patent Copyright Protection Against the Work of Fen Lie Agen Performed by PT. Mottoledo

In order to preserve the ethical fortune of the inventor, it is possible to hold a fantasy fortune management certificate that covers the systems or items that find the originality of the care and its creator, information instructions, and access instructions. While the electronic description of the fantasy fortune covers the description of an orphanage, which is born and electronically literate part in the association using the orphanage urita schedule in the color of the inventor's individuality, his alias, or pseudonym individuality, the inventor's similar magnifier of the fantasy fortune, the time and chapter of the application of the orphanage, the number, and the description instructions (Muchtar A H Labetubun, 2021).

Recognition of the birth of the end luck of Copyright is since an image was poured or realized part in a tangible composition (tangible form). Recognition of the birth of the end fortune of copyright loaded is not required a certain fatsun or fact, garib pakai fortunes ranging from the presence of the capital fortune of other artists, such as Patents, Trademarks, Industrial Designs, and Integrated Circuit Layout Designs (Muchtar Anshary Hamid Labetubun, 2019).

The main concept of the birth of Copyright will allow the subsidization of the regulation of a fantasy assembly that holds a composition that characterizes and alludes to similar evidence of the upbringing of a person, the main tip of his talents and creativity that has the character of dictum. The dictum nature included in the Copyright subsumes the inventor's or his reproduced intellectual property. Dictum ethical rights are considered to be similar to the dictum luck possessed by an inventor towards preventing the birth of abnormalities at the end of his copyright assembly and towards achieving glorification or applause at the end of his copyrighted work. The right of loaded ethics embodies the incarnation starting from the association that passes through the functioning of the shreds of the inventor using the fruit of his creative assembly, even though the creator is presumed dead or presumed to collect his Copyright ahead of another genus, so that if the magnate of fortune rolls the inventor's individuality, the inventor's character or element of his inheritance succeeds ahead of protruding ahead of the Copyright magnate so that the inventor's individuality is frozen included part in his creation.

In addition, the Copyright enlarger is not allowed to discover the deformation of an upbringing except with the consent of the inventor or his heirs, and when the inventor thinks of giving his Copyright ahead of another genus, waiving the moment the creator is

still alive his consent is required before discovering the deformation, but when the creator thinks of the death of the sky is required to start permission from his heirs (Diza, 2022).

PT Mettoledo, reported to the Criminal Investigation Department of the Indonesian National Police (Bareskrim) Police Headquarters by Fen Lie Agen, similar to the magnifier of the fortune of the Simple Patent of the tip of the assembly/invention colored Rotary principal pole connector, used similar to the harvesting apparatus of the palm branch slicer traveled approximately arranged in the presence of the Director General of Intellectual Property Rights arguing simple patent certificate using the number: IDS000002300 on April 29, 2019, as stipulated in Law No. 13 of 2016.

Fen Lie revealed, his party was like an octroi magnifier holding a fortune ahead of giving up the brevet ahead of other corners of profit riding on the fruit of his work according to the rules directly regulated in the Patent Law in question. One single complainant stated that: "However, in the presence of the reply of 2020, beta was surprised that there was a company that was directly controlling and selling the fruit of its innovation without beta's knowledge, the field was found out starting from the research of a palm oil company found in Pekanbaru," said Fen Lie.

To provide information about the repulsion of the tip of his work in the presence of the time exploring his partner tolerated working on ordering loaded equipment sold by PT Mettoledo located in Pontianak, West Kalimantan. After placing an order for a number of devices, when embracing the trust of the ordered luggage, Fen Lie and his staff Okto did the check, and it was proven to be exactly the same, so that the hard work of the store did the subpoena ahead of PT Mettoledo, exploring his legal happiness starting from the DHL and Rekan Law Office. It presents two city summons present in December 2020 and January 2021, but until now no image has been found since the Mettoledo corner.

Due to the absence of loyalty determination starting from PT Mettoledo, after that Fen Lie Agen worked on a regulatory trick by filing an estimated birth of a criminal offense as stipulated in the Patent Law ahead of the Director General of Intellectual Property Rights on February 25, 2021. And organized a complaint report to the BARESKRIM Police Headquarters BARESKRIM present on March 3, 2021, exploring his Attorney Law Office DHL and Partners. Meanwhile, Fen Lie Agen, explained by Dedi Harianto Lubis, elaborated that his client thought to embrace the trust of the respondent's similar reading appeal starting from the Director General of IPR conducted on Friday, March 5, 2021.

James Lim, the sole interaction defect of PT Mettoledo when contacted at telephone number 0812 5503 XXXX regarding the complaint was reluctant to release the letter regarding the imitation estimate. "*You can call the pendapa, you're just an ordinary employee*," but he did not deny that there was a subpoena to his company. "Documents are indeed found sent to the *pendapa*, but you don't understand that," he explained.

In Indonesia, the fantasy fortune verse is regulated in the fantasy fortune chapter, which is the current one, chapter number 28 of 2014 concerning Copyright. In the rukun, there is an understanding that fantasy luck is "the exclusive luck of the creator or participant to broadcast or reproduce his creation or to allow the test before that use does not discourage translations embracing the beliefs of the living law order (argumentation *wadukmenayang butur wadukmenayang*).

Law No. 19 of 2002 concerning Copyright has been amended by Law No. 28 of 2014. The harmonious development of Copyright is concerned with the use of enforcement which not only works nationally but also regionally and internationally.

Fantasy rights are not magfirah similar pieces starting from the capital fortune of artists formed starting from art subsidies, vocal neighborhood opinions, and fortunes related to Trademarks, Patents, Industrial designs, Integrated Circuit Layout system designs, and Trade Secrets. As well as plant subsidies and likenesses. There is an extension of Rights that is not included in the section on Copyright, namely, genetic resource traditional knowledge and for chlor (GRTKF). For subsidies molecules reside under Copyright pillar 12 (Jayakar & Park, 2014).

The reason for the cover of the fantasy fortune subsidy is that we hold a very high etiquette and a wide variety so that it is expected to realize the rotation of the bodies of fantasy fortune so that it is necessary to subsidize the end of the loaded fantasy fortune. In addition, it is also because Indonesia is similar to the single defect of the people starting from the WTO, TRIPS, and WTC. The protection of fantasy luck above is based on the rules of the Bern Convention. However, the separation of fantasy luck using stuck luck, stuck luck does not hold subsidies internationally because Indonesia has not worked since the Reom convention and the WIPO performance phonograms threaty (WPPS) so that if Indonesian broadcasting is copied by Malaysia, Singapore, and other countries of the Roem convention and WPPT, we do not claim.

3.2. Efforts Made by Copyright Holder Fen Lie Agen to Infringer PT. Mottoledo

It is believed that addressing moral rights violations, no matter how small, will bring results and benefits to those involved, both creators and copyright holders. The frequent occurrence of infringements indicates that they are numerous and difficult to eliminate. Along with the problems that arise, appreciating the creativity of the author and respecting and protecting the results and rights of his work by enforcing the law through non-judicial channels, namely dispute resolution abroad (Valentine, 2018).

This type of dispute resolution is because copyright owners who experience infringement of their copyrighted creations do not want to take too long to resolve the problem. In the case of infringement, Fen Lie agen and the infringer agreed that they prefer to settle out of court because it does not cost a lot of money for just one type of creation. granting royalties as reasonable compensation to the parties whose rights are infringed.

Fen Lie Agen, as the copyright owner of his work, would seek to settle the matter out of court or amicably and obtain financial compensation or rights from the infringer's actions. The property rights contained in 9 UUHC include the rights of publication and reproduction. Publication includes reading, displaying, selling, distributing or disseminating the work by any means, including online media, or by any means by which the work may be read, heard or seen by others.

Duplication, on the other hand, includes an increase in the volume of work either wholly or largely, by using the same or different materials, including permanent or temporary removal. High penalties for copyright infringement encourage creativity. To combat piracy, the Ministry of Justice has cooperated with approximately 18 organizations in the field of copyright, aiming to encourage the works of others while respecting creativity and improving the economic system of the copyright field (Ramli et al., 2019).

The purpose of copyright protection is legal certainty for the creator community to attract investors to invest in Indonesia. Obstacles in the field of copyright are automatic in copyright protection. The author does not have to register, registration can support the

legal certainty of the author. Copyright protection of works other than works of art, literature, and science including folk poetry. Folklore belongs to the state. Internationally, folklore is debated whether it is subject to intellectual property rights (IPR). As Indonesian anthropologists claim that folklore is part of traditional knowledge, such as Javanese, Balinese, etc. dance However, according to international regulations, folklore should be regulated under copyright law, whereas folklore refers to literary and cultural works, hence the huge debate between folklore experts and anthropologists.

According to Satjipto Rahardjo, the emergence of legal certainty does not necessarily occur when a legal product is created. It turns out that regulation is not the only factor causing the emergence of legal certainty, but the behavior of the community itself is a sufficient factor. It cannot be denied that the initial weak purchasing power of the community was indeed an obstacle to eradicating various IPR violations in Indonesia3. In addition to these problems, according to Ansori Sinungan as director of HAKI, there are problems in the implementation of IPR law in Indonesia which can be seen from several aspects. First, the cultural aspect, where people generally do not feel guilty about using pirated products. Second, the social aspect, where law enforcement must be carried out indiscriminately. And third, the legal aspect, where there are still differences of opinion regarding intellectual property rights. Both law enforcement and society.

According to R. Abdussalam, various violations of norms or rules that often occur in society are caused by:(Ramli et al., 2020)

1. A lenient attitude towards offenders who are minors
2. Police behavior that reduces copyright. law enforcement officers
3. Violations of the law that are ignored and followed by many people in a short time and not prosecuted.

Police behavior that damages the image of the force, such as foreign accusations, harsh treatment, not providing good service, thus creating skepticism in the community towards the welfare of law enforcement officers or police. International attention to copyright issues has resulted in several international treaties in the field of copyright. Since the Berne Convention of 1886, which first agreed on the protection of literary and artistic works, it has inspired a number of successor treaties, i.e. international treaties governing more precisely copyright issues, including drawing attention to technologically produced copyrighted works promoting, for example, copyrighted works in the audio industry, broadcast programs transmitting signals sent by Satellite (Sartika, 2018).

The basic philosophy of copyright enforcement follows the concept of intellectual property rights, which is a tangible right so that the owner can take legal action against his rights Copyright ownership has a lifetime limit plus 50 years, hopefully copyright is not long in the hands of the creator as the owner. So that after the creator dies and after 50 years of addition, the public can freely use the right as public property, meaning that people can report or reproduce it without having to ask permission from the creator or the right holder and is not considered an offense. Copyright restrictions, such as UUHC no. 28 of 2014, are also known as Dutch law, namely Auterswet 1912.

This auterswet provision is a transposition of the international provisions of the Berne Convention. Restriction of copyright means that the rights of the creator as the owner of the creation is always respected as a real individual right, in a relatively long period of time created a balance between the interests of individuals and society, we

know. as the concept of property with social functions. But in practice it turns out that copyright restrictions are often favorable to other parties, namely the parties who sue if the song and other works of art, and publishers if the copyrighted works in the form of books. This is inseparable from the commercial nature of copyright, ie. has an economic element to seek profit (Pricillia & Subawa, 2018).

Some provisions relating to offenses where copyright infringement is punishable can be found in the following articles: (Disemadi & Mustamin, 2020)

1. Infringement of commercial rights under Article 9(1) No. 1 for commercial use is punishable under Article 113(1).
2. Infringement of economic rights for commercial exploitation under Article 9(1)(c), (d), (f) and/or (g) is punishable under Article 113(2).
3. Article 113(3) penalizes infringement of the commercial exploitation of economic rights under Article 9(1) a, b, e and/or g.
4. Categorical offenses of copyright infringement of Section 9 Part 1 a, b, e and/or g are punishable under Section 113 Part 4
5. Section 116(1) threats include infringement of commercial rights for commercial use under Section 23(2)(e).
6. Infringement of economic rights for commercial exploitation under Section 23(2)(a), (b) and/or (f) is punishable under Section 116(2).
7. Infringement of economic rights under Section 23(2)c and/or d shall be punishable under Section 116(3).
8. Infringement of the copyright infringement category of Section 23(2)c and/or d for commercial use is subject to the penalty of Section 116(4).
9. Infringement for commercial exploitation of economic rights under Article (2)(a), (b) and/or (d) is punishable under Article 117(2).
10. Violations of the copyright infringement category of section (2)(a), (b) and/or (d) for commercial purposes will be subject to the increased penalty of section 117(3).
11. Infringement of economic rights for commercial use by 25 paragraph 2.
12. Infringement of economic rights under Section 25(2)(d) which is intended as copyright infringement is provided for in Section 118(2).

In addition to protecting the types of copyrights in Sections 23, 24, and 2 above, there are threats to those engaged in any form of commerce. Infringement and/or intellectual property rights related to commercial premises operating in accordance with Section 10, with the consent of the person photographed or his/her heirs, will be subject to a fine under Section 11. Any use of the meaning of Section 12 for the purpose of displaying posters or advertisements for commercial purposes in electronic and non-electronic media will be subject to a fine under Section 115. The threat of criminal penalties also applies to collecting entities that do not have a Ministerial license to operate under Section 88(3), collect royalties and are subject to criminal sanctions and/or fines under Section 119 (Wibawa & Krisnawati, 2019).

4. CONCLUSION

The implementation of Copyright protection arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with the provisions of laws and regulations. According to Law Number 28 of

2014 concerning Copyright, Copyright protection of works can be done in 2 (two) ways: preventively, by registering Copyright with the Directorate General of Intellectual Property Rights, and repressive, by filing a lawsuit to the Commercial Court in the event of a violation of Copyright on the work.

Efforts made by Copyright holders to address cases of copyright infringement can be pursued through non-litigation methods, such as negotiations and reaching written agreements with infringers, with appropriate stamp duty. In such cases, infringers may be required to pay compensation, remove advertising banners installed without permission, or refrain from distributing pamphlets to their buyers.

It is evident that enforcing copyright protection against infringement can be challenging. Therefore, it is advisable for artists to have an organization that advocates for and protects the intellectual property rights of creators. Additionally, there should be considerations for amendments to the Criminal Procedure Code to include electronic media as admissible evidence, as it directly relates to the types of evidence relevant in copyright infringement cases.

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Copyrights

IMPLEMENTATION OF THE SEVERANCE PAYMENT AGREEMENT FOR EMPLOYEES OF PT. GADING BHAKTI

(Case Study of PT. Gading Bhakti in the Pantoen Reu District, West Aceh Regency)

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Abstract

PT. Gading Bhakti, a private company and subsidiary of PT. Mapoli Raya, operates in the palm oil plantation and processing industry. In 2021, PT. Mopli Raya, its parent company, was declared bankrupt under Decree Number 17/pdt-SUS-PKPU/2020/PN.Niaga Medan and Law No. 13 of 2003, Employment Article 95 paragraph 4, mandating debt settlement as a priority for bankrupt companies. Despite this, PT. Gading Bhakti failed to fulfill debt payments to 25 retired employees, resulting in the non-payment of their post-employment benefits. The research aims to investigate the implementation of the severance payment agreement by PT. Gading Bhakti and the company's measures to meet its obligations toward employee severance. The research methodology employed was the empirical juridical method, observing ongoing events and directly examining PT. Gading Bhakti's implementation of the severance payment agreement. Furthermore, the study explores the company's attempts to fulfill the severance payment for its employees. Regrettably, the implementation of the agreement resulted in a breach of contract, with severance payments not being duly honored. Various efforts were made, including rescheduling the agreement and submitting severance payment documents. On the other hand, the employees sought resolution through verbal warnings, mediation, media involvement, and seeking assistance from relevant authorities concerning the unclear situation of severance payments for PT. Mapoli Raya's ex-employees (PT. Gading Bhakti being its subsidiary). In conclusion, the study highlights the challenges faced by retired employees in receiving their post-employment benefits and the need for PT. Gading Bhakti to effectively fulfill its obligations regarding severance payments.

Keywords*: Agreement, PT Gading Bhakti, Employee Severance Payments*

1. INTRODUCTION

Indonesia is not a developed country with many companies supporting the country's economic growth. However, the Indonesian economy has shown rapid development in the world economy and is even among the three largest countries with the highest economic growth globally (Hill, 2018). This growth has led to the emergence of numerous companies since the monetary crisis.

A Limited Company or refers to *Perseroan Terbatas* (PT) in Bahasa is a legal entity formed as a capital alliance based on an agreement to conduct business activities with authorized capital entirely divided into shares, meeting the requirements stipulated in the Law on Limited Liability Companies and its implementing regulations (Aspan, 2017).

Bankruptcy is a situation where a debtor faces financial difficulties in repaying debts. A debtor can be declared bankrupt if they are insolvent or unable to pay for various reasons, such as an economic or financial crisis (Kasmir, 2010). The insolvency stage is one of the stages in the bankruptcy process. Once a debtor is declared insolvent, they are

considered completely bankrupt, and their assets are immediately liquidated. However, this does not guarantee that the bankrupt company's business can continue.

As per the Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, bankruptcy is defined as a general confiscation of the assets of a bankrupt debtor, managed by a curator under the supervision of a supervisory judge. Bankruptcy occurs when a debtor is unable to make payments to their creditors.

PT Gading Bhakti, a subsidiary of PT Mapoli Raya, is a private company engaged in oil palm plantations and processing. In 2020, PT Mapoli Raya was declared bankrupt at Case No. 17/pdt-SUS-PKPU/2020/PN.Niaga Medan, resulting in the termination of employment for 25 employees and retired workers. Companies declared bankrupt are still obligated to pay severance pay to eligible employees, as stated in Article 95 paragraph 4 of the Law on Manpower. This law prioritizes the payment of wages and other rights of workers/labourers in the event of bankruptcy or liquidation.

The Curator plays a significant role in managing and administering bankruptcy assets for the benefit of creditors and the debtor (Sutedi, 2014). As per Article 1 point 5 of the Law on Bankruptcy and Suspension of Debt Payment Obligations, the Curator is appointed by the Court to manage the assets of a bankrupt debtor under the supervision of a Supervisory Judge. The Curator is responsible for the management of the bankruptcy estate. However, successful management and administration of bankruptcy assets require the cooperation of parties directly involved in the bankruptcy process (Sun et al., 2014). Unfortunately, if the company and the Curator fail to cooperate in managing the bankrupt company's assets, all debts may not be repaid (Donaldson, 2000), including the post-termination contributions owed to 25 employees, which consist of old-age and pension guarantees.

In 2021, PT. Gading Bhakti and retired employees reached a mutual agreement. The agreement refers to Law No. 13 of 2003 concerning Manpower, specifically Article 167 paragraph (5), which states that if the employer does not include workers/laborers in the pension program upon reaching retirement age, the employer must provide severance pay of 2 times the long service award money and compensation money as per Article 156 paragraph (2) and (3) respectively. The company promised to make severance pay in installments starting from 14 months, 15 months, and 22 months after the agreement was issued. However, until 2023, the company has not properly implemented the agreed payment plan.

The company's failure to fulfill the agreement in good faith led to three mediation attempts between the employees and the company. During the mediation process, the company agreed to provide severance pay within one week and follow the rules set in Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution, specifically Article 13 paragraph (1), which deals with settlement through mediation.

This case highlights a default on the agreement, where one of the parties failed to fulfill the conditions stated in the agreement. Such defaults are often experienced by weaker parties with higher dependence on other parties, especially when the requirements are one-sided and more burdensome to the weaker party (Pohan & Hidayani, 2020). These requirements are often included in standard agreements and play a crucial role in business law, which is typically based on efficiency-oriented values.

The aim of this research is to examine the implementation of the severance payment agreement by PT. Gading Bhakti and investigate the measures taken by the company to

fulfill severance payments for its employees. The findings of this research could contribute to potential solutions for improving severance payment practices and upholding employee rights in similar contexts.

2. RESEARCH METHOD

This research used empirical juridical research methods, namely legal research methods that performed the task of understanding the law in its true sense and observed how the law worked in society (Soekanto, 2010). This research method was called sociological legal research. The research conducted in collecting data involved using empirical research methods, where the method was employed to see directly and understand the real-world aspects. The research aimed to examine how the company implemented severance pay agreements, how the company made efforts to fulfill employee severance pay, and how the rule of law was applied directly. The researcher also used library data and data from existing laws and regulations. Furthermore, the researcher conducted interviews with several retired employees and representatives from the company.

3. RESULTS AND DISCUSSION

3.1. Implementation of severance pay agreement by PT Gading Bhakti Company

An agreement is one of the two existing legal bases, apart from the law, that can give rise to an obligation (Simamora, 2009). According to the Science of Civil Law, an obligation is a legal relationship that occurs between two or more parties in the field of property, where one party is entitled to an achievement, and the other party is obliged to fulfill that achievement. Essentially, if a company fails to fulfill the promises that have been made, it has committed a breach of promise or defaulted on the agreement that was made (Sriwati, 2000).

The term "achievement" in treaty law refers to the implementation of the terms written in an agreement by the party who has bound themselves to it, in accordance with the specified "terms" and "conditions" as stated in the agreement. If the agreement has been made based on Article 1320 of the Civil Code, the consequence is that the agreement applies as law to the parties involved, as contained in Article 1338 paragraph (1) of the Civil Code, which states that "If one of the parties does not carry out the performance in accordance with what was promised, it is called default." Default refers to the failure to implement an agreement on time, appropriately, or at all (Pendit et al., 2019). In general, default is a situation where a debtor (owed) does not fulfill or carry out the performance as stipulated in an agreement. This can occur due to obligations arising from agreements and laws. Breach of promise can occur either intentionally or unintentionally.

In the implementation of the agreement at PT Gading Bhakti, the payment of employee severance pay installments has not been fully fulfilled in accordance with the agreement that was made. Specifically, the amount of post-employee rights contributions has not been fulfilled in the installments of employee severance pay, as follows:

Table 1. Employee agreement severance pay

No	Name	Amount of severance pay	Repayment period
1.	M.diah	Rp. 90.691.777	14 months
2.	Adian	Rp.321.087.728	22 months
3.	Zainudin B	Rp.93.059.580	14 months
4.	Muhammad Nur Usman	Rp.84.024.364	13 months
5.	Sugianto	Rp.170.645.843	18 months
6.	Arisuda	Rp.92.276.307	14 months
7.	Iskandar	Rp.94.629.962	15 months
8.	Hadi santoso	Rp.97.402.090	15 months
9.	Jainul ahmad	Rp.90.432.961	14 months
10.	Suyetno	Rp.93.461.626	14 months
11.	Ali rahmat	Rp.101.333.186	16 months
12.	Ansori	Rp.92.487.388	14 months
13.	Farizal	Rp.6.274.673	14 months
14.	Khaidir	Rp.100.733.312	17 months
15.	Adil gani	Rp.9275.512	16 months
16.	M.gurpon	Rp.90.691.460	14 months
17.	Abuari	Rp.107.226.296	17 months
18.	Irfan riko	Rp.92.076.543	15 months
19.	Ismail	Rp.90.126.410	14 months
20.	Cut Ali	Rp.93.052.397	14 months

Source: Company agreement letter with the employees

Based on the table above, it is evident that there has been a default in the implementation of the agreement, which was mutually agreed upon by both parties. The company has shown no good faith in fulfilling the agreed-upon terms, despite the existence of an agreement for the repayment of employee severance pay installments from 2021 to 2022, referencing Law Number 13 of 2003. However, in reality, PT Gading Bhakti has violated the agreed-upon rules. The company attempted mediation, and the results of the mediation agreement were given a period of one week for acceptance. Despite this, until now, the severance pay installments remain unpaid. The implementation of the agreement has encountered obstacles, leading to its incomplete fulfillment. The following are the obstacles faced by the company in implementing the agreement:

1) Not fulfilling the elements of the agreed-upon appointment:

PT Gading Bhakti, a subsidiary of PT Mapoli Raya, has not fully paid employee severance pay. Although the company and the employees had an agreement to pay off the severance pay, the company has not fulfilled this commitment. The company continuously promises employees to pay in installments without providing any certainty. Mr. Adian mentioned that there has been no response from PT Mapoli Raya, which claims to be bankrupt under relevant management, and he has not been contacted by anyone regarding the matter.

2) Lack of company transparency:

The company lacks transparency with retired employees and fails to provide clear information to employees who were promised the repayment of employee severance pay. Although the agreement states that the severance pay installments for 14 months have been paid, there has been no actual repayment related to employee severance pay. The management denies responsibility and says this is not their role.

3) Lack of a source of funds:

While the company intends to fulfill its obligations as per the agreement, its ability is severely limited due to a lack of financial resources. Several children of PT Mapoli Company have experienced bankruptcy, impacting the financial situation of PT Gading Bhakti. The management claims to have made efforts to fulfill the agreement but is unable to do so due to the lack of clarity regarding the installments and continuous promises of payment, along with frequent requests for documents related to severance pay delivery. Despite these assurances, the company has not made severance pay installments, leading to its failure to fulfill the agreement.

In summary, the implementation of the employee severance pay agreement has resulted in default, as the company has failed to fulfill the agreement that was made together. It is evident that the company's default is in the form of non-performance.

3.2. Settlement efforts made by the company in fulfilling severance pay for employees of PT Gading Bhakti.

In connection with this case, a company that has received a bankruptcy verdict by the court may not at all reduce or eliminate the rights of workers/laborers. The company's actions have been proven to default by not fulfilling the agreed-upon collective agreement. Default, in this case, can occur due to business failure or the debtor's inability to fulfill performance obligations, as specified in Article 1238 of the Civil Code. This includes situations where the debtor is declared negligent by warrant, deed, or by the force of the bond itself, causing the debtor to be considered negligent with the passage of time.

The company PT Mapoli Raya has made efforts to overcome defaults, which include:

1) Rescheduling the agreement:

The company can reschedule the agreement, providing them with more time to fulfill their obligations and allowing the company to present reasons for the delay.

2) Sending Employee Severance Files:

PT Mapoli Raya has requested employee files related to the repayment of severance pay installments, such as KTP (identification cards), bank books, and other documents. They have paid severance pay in installments, although not in accordance with the agreement. These efforts have been made more than once, yet the severance pay installments remain unpaid.

Despite the company's efforts, PT Gading Bhakti is still in default, as it has not fully fulfilled the agreement. In response, the employees have taken several steps to claim their rights:

1) Oral warning:

The employees firmly warned the company orally, seeking clarity regarding the installment repayment, but no definitive response was received.

2) Demonstration (Demo):

The employees attempted a demonstration to assert their demands, but the company's assistant from PT Gading Bhakti stated that it was not his domain to respond to the former employees' requests.

3) Media:

The employees utilized media channels to highlight their efforts to fulfill severance pay rights. They even resorted to living on the PT Gading Bhakti premises and managing oil palm fruit to meet their basic needs.

4) Request for assistance to authorities:

The employees sought assistance from authorities such as the governor and regent to address the issue, but the matter remained unresolved.

Additionally, legal efforts such as negotiation or mediation were attempted. Mediation, with the assistance of a mediator who lacks authority to decide or impose a settlement, was undertaken. However, the company's promise to reply within one week after mediation was not fully fulfilled, and the severance pay installments remain uncertain. Claims were made to the employment BPJS (Social Security Administration Body) in the local district, but the company management had not made the necessary deposits.

Despite the efforts made by the employees and employee parties, the severance pay rights remain unfulfilled, and the company has shown no good faith in fulfilling the agreed-upon terms. To prevent defaults in agreements, both parties must act in good faith when carrying out the agreement. Default can be a significant source of conflict involving multiple parties when the parties bound by the agreement fail to fulfill their obligations as specified in the contract.

If the efforts mentioned above do not yield results, legal action can be pursued through a civil trial. This involves filing a lawsuit in court to address the default problem, and the judge will decide the civil case based on the rules of the law. Likewise, despite the attempts made to resolve the issue, the severance pay rights of the employees have not been fulfilled, and legal actions may be necessary if the default issue remains unresolved.

4. CONCLUSSION

Based on the implementation of the agreement, it is evident that the debtor, PT Gading Bhakti Company, has defaulted in fulfilling the agreement made together. This demonstrates a lack of good faith on the part of the company, leading to the non-fulfillment of promised employee severance pay installments. The implementation of the employee severance pay settlement agreement has encountered obstacles due to the company's failure to meet its obligations, including a lack of funds to pay off its debts, not fulfilling the agreed-upon elements of the promise, and a lack of transparency.

Both the company and the employees have made various efforts to address the issue. The company attempted to reschedule the agreement and requested severance employee

files. However, despite these efforts, there is still no clarity regarding the installment of severance pay for the employees of ex-PT Mapoli Raya (PT Gading Bhakti), a subsidiary of PT Mapoli Raya Company.

On the other hand, the employees also made efforts to claim their rights, including giving verbal reprimands, participating in mediation, using media channels to highlight their situation, and seeking assistance from relevant authorities. Unfortunately, these efforts have not resulted in the fulfillment of their severance pay installments according to the contents of the agreed-upon agreement.

In conclusion, the company's default and lack of good faith in fulfilling the agreement have led to the non-fulfillment of employee severance pay installments. Despite the various efforts made by both parties, the issue remains unresolved, and the employees' rights have not been fulfilled as per the agreement.

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LEGAL RESPONSIBILITY OF GOODS/SERVICES PROVIDER FOR BUILDING FAILURE

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Abstract

Construction failure can be caused by a failure in the process of procuring goods or services, or it may occur during the construction process itself. Construction work failure refers to a condition where the results of construction work do not comply with the agreed work specifications in the construction work contract, either partially or entirely, due to the fault of the service user or service provider. The purpose of this study is to analyze the responsibility of goods/services providers in the event of a building failure and to examine the form of their responsibility in such cases. This study adopts a descriptive normative approach to answer questions regarding the responsibilities of goods/services providers in cases of building failures, as outlined in Legislation Number 18 of 1999 concerning Construction Services, which was renewed as Number 2 of 2017 Construction Services, Government Regulation Number 29 of 2000 concerning construction service providers, and regulations pertaining to the responsibilities of goods/services providers in the event of building failures, which include meeting the Standards for Security, Safety, Health, and Sustainability, undergoing inspection by a team of experts appointed directly by the Minister, and complying within a maximum period of 10 (ten) years from the final delivery of Construction Services. The responsibility of goods/services providers for building failures is based on the principle of Liability based on Fault and is administered through written warnings, administrative fines, temporary suspension of construction service activities, inclusion in the black list, and even suspension or revocation of permits.

Keywords: *Building Failure, Form of Responsibility, Goods and Services Provider*

1. INTRODUCTION

Indonesia is a developing country that is earnestly engaged in various development efforts. These efforts encompass both physical and non-physical development in all sectors. The goal is to ensure that the results of these developments are enjoyed by all Indonesian people, aiming for equitable and fair well-being both materially and spiritually, in order to achieve the welfare of the people and create prosperity. The success of development heavily relies on the participation of all citizens, which means that development must be carried out evenly across all layers of society (Djumialdji, 1996).

One of the areas of development is the economic sector, manifested in the form of physical construction such as office buildings, housing, ports, industries, roads, bridges, and more. All of these require strict regulations both juridically and technically, which need to be developed and improved in their implementation (Djumialdji, 1987). Particularly during President Joko Widodo's era, the infrastructure sector has become a priority in his government's programs to drive national economic growth. This infrastructure development is an ambitious program compared to previous presidents (Ir Sulistijo Sidarto Mulyo & Santoso, 2018). Implementing construction works is mandatory for the government, private sector, as well as local and foreign investors collaborating with contractors.

Looking back at the history of development in Indonesia, it began even before Indonesia gained independence, during the Dutch colonial period. At that time, there were only about six construction companies, subsidiaries of Dutch parent companies. Besides these six Dutch contractor companies, there were also several small Indonesian contractor companies that served as sub-contractors and suppliers. After Indonesia gained independence, many Dutch professionals such as engineers, professors, teachers, company directors, and architects returned to their homeland, leaving these positions to be filled by Indonesians. During this period, Indonesia experienced economic instability, and there were limited funds available for development, except for rehabilitation works with foreign aid. As time passed, precisely in 1965, there was a reformation in the development program and its implementation. From the beginning, it was realized that construction processes had different characteristics compared to typical factory productions. The main focus of construction services lies in the quality and capability of human resources, managers, and workers, while in the factory industry, the main focus lies in the quality of machines. Therefore, the development of construction services became an important and strategic public agenda, considering the rapid developments in the contexts of globalization and liberalization, poverty and inequality, democratization, and regional autonomy, all of which are made possible by economic, political, social, and cultural stability (Triyanto, 2004).

Construction, in general, is understood as the creation and development of infrastructure (roads, bridges, dams, irrigation networks, buildings, airports, ports, telecommunication installations, process industries, etc.) as well as the maintenance and repair of existing infrastructure. However, construction can also be understood based on different perspectives, such as services, industries, sectors, or clusters. The construction sector is conceived as one of the economic sectors that encompass planning, implementation, maintenance, and operational activities, transforming various inputs into construction products. The construction industry is essential in its contribution to the development process, providing various facilities and infrastructure necessary for enhancing the quality of life in society. Construction involves various activities and stakeholders, including contractors, consultants, material suppliers, plant suppliers, transport suppliers, laborers, insurers, and banks, all of whom participate in the transformation of inputs into final products used for social and business activities within society.

Based on the Republic of Indonesia Law Number 2 of 2017 concerning Construction Services, hereinafter referred to as Law No.2/2017, construction services are defined as consulting services for construction planning and/or construction work. Construction consulting refers to activities that encompass assessment, planning, design, supervision, and management in the construction of a building. On the other hand, construction work refers to activities that involve construction, operation, maintenance, dismantling, and reconstruction of a building.

With the amendment of Law No.2/2017, the definition of construction services has changed. Originally, construction services covered consulting services for construction planning, implementation, and supervision. Now, construction services only cover consulting services for construction and/or construction work.

One of the objectives of the Republic of Indonesia Law Number 2 of 2017 concerning Construction Services, hereinafter referred to as Law No. 2/2017, is to evaluate and improve Law Number 18 of 1999 concerning Construction Services, as it

did not meet the demands for good governance and the dynamics of the development of construction services.

Law No. 2/2017 was enacted by President Joko Widodo on January 12, 2017. Law No. 2/2017 was promulgated by Yasonna H. Laoly, the Minister of Law and Human Rights, in the State Gazette of the Republic of Indonesia Year 2017 Number 11, and the Explanation of Law No. 2/2017 was added to the State Gazette of the Republic of Indonesia Number 6018 on January 12, 2017 in Jakarta.

In the Republic of Indonesia Law Number 18 of 1999 concerning Construction Services, the definition of building failure is as the condition where the building, after being handed over by the service provider to the service user, does not function properly either wholly or partially, and/or does not comply with the provisions stated in the construction work contract or its utilization deviates as a result of the fault of the Service Provider and/or the Service User. While in Law No. 2/2017, building failure is defined as follows: "A condition of building collapse and/or the building not functioning after the final handover of construction services."

The condition of building failure included in the scope of building failure in Law No. 2/2017 is a failure that has been handed over to the service user, and thus does not include building collapse before the final handover of the results. At present, Government Regulation of the Republic of Indonesia Number 22 of 2020 concerning Construction Services (hereinafter referred to as GR No. 22/2020) aims to establish order in the implementation of construction work, ensuring equal position between service users and service providers in terms of rights and obligations. However, in the face of international competition challenges, the provisions in Law No. 18/1999 jo Law No. 2/2017 seem to require improvement, especially concerning efforts to strengthen the competitiveness of construction services to compete internationally, as these regulations are considered no longer in line with the development of the times and have been amended to become Law No. 11/2020 concerning job creation.

The construction services sector currently plays a very important and strategic role, as it produces final products in the form of buildings or other physical forms, including facilities and infrastructure that support the growth and development of various fields, particularly the economic, social, and cultural fields, in order to achieve the goal of a just and prosperous society, both materially and spiritually (Pianandita, 2009). Additionally, construction services play a role in fostering and developing service industries in Indonesia.

In the era of globalization, the development of Indonesia is carried out in a planned, comprehensive, integrated, directed, gradual, and sustainable manner in all sectors of life. National development is carried out in a gradual and sustainable manner to achieve the aspirations of the Indonesian people to improve the welfare of society in order to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) (Lumban Gaol, 2018). The creation of an advanced and prosperous society allows Indonesia to be on par with other nations that have progressed before. The development and progress of such a society have a significant impact on legal relations, where agreements or contracts become crucial aspects in these legal relations.

In legal theory and practice, the terms "construction" and "contracting" are considered synonymous, especially when related to the legal terms of construction contracts or contracting law. In fact, the term "contracting" has a broader scope than the

term "construction" because contracting covers both construction and the provision of services (Fuady, 1998).

One of the fundamental changes in Law No. 11/2020 concerning job creation, which amends Law No. 2/2017 concerning Construction Services to replace Law No. 18/1999, concerns sanctions in the event of building failure. Building failure is the biggest risk in infrastructure development. Building failure refers to a situation where the building does not function properly and cannot be used. In the context of construction in Indonesia, one of the building failure cases that has garnered public attention is the collapse of Mahakam II Bridge in East Kalimantan in November 2011, followed by criminal sanctions imposed on the officials responsible for the technical implementation of the project, budget users, and project managers. The regulation on building failure can create a climate for the construction services business to be more responsible and at the same time provide opportunities for healthy competition to achieve high-quality production. Considering the current physical conditions that are still concerning, regulations alone will not be effective if all stakeholders are not willing to facilitate or implement them. However, if we still have the desire and willingness to act in accordance with our competencies, then this regulation can better protect the rights, obligations, and responsibilities of each construction service provider.

Previous researchers who have discussed the issue of building failure include, first, Nur Amanah Yuliani, with the title "Juridical Study of Agreements between Developers and Home Buyers in Building Failure Issues in Pemalang City." The topic discussed is building failure, but the difference lies in the juridical study, whereas the author's research focuses on the legal responsibility of goods/service providers for building failure and legal issues; second, the research conducted by Andrew Timothy with the title "Legal Responsibility of Construction Service Providers and Service Users in Building Failures." There is a general similarity in the topic of building failure. The difference lies in the application of the principles of security and safety and the implementation of responsibilities by construction service providers and service users, whereas the author examines the legal responsibility of goods/service providers for building failure and legal issues; third, the research conducted by Tamatompol Marviel Richard with the title "Legal Responsibility of Construction Service Providers and Service Users According to Law Number 18 of 1999 Concerning Construction Services." The similarity lies in the topic of building failure. The author examines the legal responsibility of goods/service providers for building failure and legal issues. Based on the description of the background above, the author is interested in determining the legal issues and further examining the Legal Responsibility of Goods/Service Providers for Building Failure, especially concerning Article 85 of GR No. 22/2020, which is of a discretionary nature in terms of its responsibility.

2. RESEARCH METHODS

The research at hand is a normative legal study, which focuses on analyzing and interpreting legal norms, principles, and rules. To conduct this research, the problem-based approach is utilized, allowing the researcher to address specific legal issues in a targeted manner. Two primary approaches are employed in this study: the statute approach and the conceptual approach. The statute approach involves an in-depth examination of relevant laws and statutes governing the subject matter, while the

conceptual approach delves into the theoretical foundations and philosophical principles underlying the law.

In terms of the research methodology, a normative analysis is adopted, employing various legal reasoning methods such as legal interpretation, synchronization, and legal discovery. Legal interpretation aims to understand the meaning and intent of legal provisions, while synchronization seeks to harmonize conflicting laws and create a coherent legal framework. Legal discovery involves identifying pertinent legal principles and precedents relevant to the research topic.

The primary objective of this research is to provide well-founded answers and recommendations pertaining to the identified legal issues. By thoroughly examining the legal framework and applying normative analysis, the researcher seeks to gain valuable insights into the subject matter and offer informed proposals to address the legal challenges at hand. However, to obtain a comprehensive understanding of the research findings, one must refer to the complete research document or thesis, which further explores and details the outcomes of the investigation.

3. RESULT AND DISCUSSION

Construction failure is a failure that can occur due to deficiencies in the procurement process of goods or services or during the construction execution phase. Construction work failure refers to the condition where the results of construction work do not comply with the specified job specifications agreed upon in the construction contract, either partially or entirely, resulting from errors made by service users or service providers.

In building construction work, building failures are often encountered, which can be caused by either the service providers or the service users. All construction work progresses through stages (cycles) that begin with planning, the nature of building materials used, testing of materials and structures, execution, supervision, and building maintenance.

The factors causing construction failures are likely to occur in the construction industry due to its complexity, involving numerous parties, and being carried out in open environments. Both the failure of construction and building failures can be attributed to the competence of resources, including the competence of business entities, expertise, and skills. Among these factors, the labor force becomes one of the causes of construction failures, as the proper placement of labor according to specific expertise ensures efficiency and effectiveness in the resulting work.

Thus, proper planning, preparation, and distribution of resources with the appropriate structure and quantity significantly contribute to the success of the implementation. The contribution of the labor force to the smooth progress of a project depends on their skills and motivation.

Overcoming construction projects is not an easy matter. It requires precision and creativity in generating ideas. As is known, projects, especially in construction, are the most complex industries with numerous risks that, if not well managed, can lead to project losses. To address these challenges, systematic steps are needed to find strategies to overcome project losses.

Construction failures in building structures occur in various elements, with the average deviations observed in structural elements being 4.36% of the contract value, roof

elements 2.53%, foundations 0.15%, utilities 0.12%, and finishing 0.07%. The success of construction projects also greatly depends on the role of supervisors, both internal (contractors) and external (consultant supervisors), which significantly affect project quality. Internal supervision (contractors) influences the quality, while external supervision (consultant supervisors) is highly dependent on quality. The management of each civil engineering project encompasses fundamental management functions: planning, supervising, and construction.

Infrastructure development provides benefits that can be felt by the community in conducting activities, and construction infrastructure is built to facilitate community mobility in work and business. The government believes that besides achieving equal distribution of goods and services, this development will also enhance productivity and competitiveness, leading to public welfare. During implementation, various risks, including construction and building failures, cannot be overlooked. Major issues in building construction indicate not only weaknesses in Standard Operating Procedures (SOPs) but also incorrect systems during the construction process. Furthermore, the frequent occurrence of dishonest contractors who prolong project completion or neglect SOP implementation, endangering the safety of building users, can result in accidents with minor, severe, or fatal injuries.

From legal events or construction cases, there are several issues in implementing Law No. 2/2017 regarding Construction Services, including:

a. The lack of separation between Construction Failure and Building Failure in Law No. 2/2017 regarding Construction Services may lead to future problems, such as property losses. This condition directly impacts the construction process, as construction failures can cause building failures. Both instances have adverse effects on the costs incurred, increased capital, time, risks, and social aspects or the level of public trust in building quality, resulting in a negative perception of building quality. Consequently, people become unwilling to use such buildings for their activities.
b. The sanctions imposed on contractors for any negligence in carrying out construction still leave loopholes for contractors to evade responsibility.
c. When discrepancies are found during the construction process with the clauses in the contract, this issue cannot be brought to court.
d. It has not become a reference for several cases of construction failures that have occurred in Indonesia. This issue should be examined from the perspective of legal certainty guided by Law No. 2/2017 regarding Construction Services.
e. Law No. 2/2017 regarding Construction Services has not established a measure of success in its application.
f. Law No. 2/2017 regarding Construction Services has not been assessed for its success in the implementation of construction services.

Referring to Law No. 2/2017 regarding Construction Services, the article related to Building Failure is Article 1 of Law No. 2/2017 regarding Construction Services, which defines Building Failure as a condition of building collapse and/or non-functionality after the final delivery of Construction Services results.

Article 63 states that construction Service providers are obligated to replace or repair Building Failures as referred to in Article 60 paragraph (1) caused by the errors of the Construction Service provider.

Meanwhile, article 67 consists of statement that construction Service providers and/or Service Users are obliged to provide compensation for damages in the event of Building Failures as referred to in Article 65 paragraph (1), paragraph (2), and paragraph (3). Further provisions regarding the provision of compensation as referred to in paragraph (1) are regulated in Government Regulations.

Article 98 stated that construction Service providers who fail to fulfill their obligation to replace or repair Building Failures as referred to in Article 63 are subject to administrative sanctions, which include:

a. Written warning;
b. Administrative fines;
c. Temporary suspension of Construction Service activities;
d. Inclusion in a blacklist;
e. Freezing of permits; and/or
f. Revocation of permits.

The Form of Legal Liability of Goods/Services Providers in the Event of Building Failures under the application of Law No. 2/2017 regarding Construction Services, which needs to be improved, as it must consider aspects of legal certainty, legal consequences, and legal protection.

Theoretically, this study is expected to provide an understanding of Legal Certainty, Legal Consequences, and Legal Protection in relation to agreements between users and construction service providers regarding Construction and Building Failures in Indonesia. Additionally, it is hoped to contribute to the development of legal knowledge. Practically, this study is expected to contribute thoughts and input for the Government of the Republic of Indonesia, State-Owned Enterprises, the Ministry of Public Works and Housing, private sector contractors, and Construction Service providers based on the agreements stipulated in contracts.

Procurement of goods and services, commonly known as tendering, is widely practiced by government agencies and the private sector. This activity is carried out to obtain goods and services by an institution/organization, starting from the planning of needs to the completion of all activities to obtain those goods and services.

According to H. Subagya M.S (in Mahendra Romus and Virna Museliza), Procurement is all activities and efforts to increase and fulfill the needs for goods and services based on applicable regulations, creating something that was previously nonexistent.

Construction failure is work that does not comply with technical specifications, either partially or entirely, resulting from the errors of the service provider or service user (Siregar & Azzahra, 2022). In terms of timing, building failure and construction failure are different. Construction failure occurs during the construction phase when the building is not yet completed. On the other hand, building failure occurs after the final handover of work between the service provider and the service user. According to government regulations, both failures are caused by the errors of the service provider or service user. Therefore, it is essential to know, examine, and analyze the Legal Certainty of Agreements between Users and Construction Service Providers regarding their responsibility for Construction and Building Failures, as well as the Legal Consequences of Users and Construction Service Providers in the event of Construction and Building Failures based on Law No. 2/2017 regarding Construction Services. Furthermore, it is

necessary to assess and analyze the Legal Protection for Users and Construction Service Providers who suffer losses due to Construction and Building Failures.

The criteria for building failure, according to the laws and regulations, are work that does not comply with technical specifications, either partially or entirely, resulting from the errors of the service provider or service user. In terms of timing, construction failure and building failure are different. Construction failure occurs during the construction phase when the building is not yet completed. On the other hand, building failure occurs after the final handover of work between the service provider and the service user. According to government regulations, both failures are caused by the errors of the service provider or service user.

Building failure can be caused by human errors themselves. Human errors can be the result of ignorance or performance errors (carelessness and negligence). Ignorance can be caused by a lack of training, education, and experience. Performance errors (carelessness and negligence) include errors in calculations, misreading drawings and specifications, and construction defects. Nevertheless, the consultant must plan everything well to achieve the best results.

The criteria for a construction experiencing building failure are:

1) The building does not function after the final delivery of construction services.
2) It does not comply with the job specifications as agreed upon in the construction work contract.
3) It does not meet safety, health, and sustainability standards, making the service provider responsible.
4) The construction age is still within the liability period as specified since the final delivery of construction service.

According to Hilebrant, the Construction Service Industry is an industry that includes all parties involved in the construction process, including professional labor, construction workers, and suppliers who together fulfill the needs of industry stakeholders.

Generally, the market share of high-tech construction jobs has not been fully dominated by National Construction Service businesses due to two factors:

a. Internal factors which are:
    1) National construction services generally still have weaknesses in management, technology mastery, and capital, as well as a shortage of skilled and expert personnel;
    2) The structure of national construction service businesses is not fully organized and strong, reflected in the lack of synergistic partnerships among service providers in various classifications and/or qualifications;
b. External factors, which are:
    1) Inequitable working relationships between service users and service providers;
    2) Inadequate support from various sectors, directly or indirectly affecting the performance and reliability of national construction services, including access to capital, professional and skilled workforce development, and the availability of standard building materials and components;

3) The national regulation and development of construction services is still partial and sectoral.

Legal cases in construction projects may arise due to deviations from contracts, including deviations from volume, quality, and project timelines. Such legal cases can lead to legal sanctions, both administrative, civil, and criminal. To prevent all parties involved in construction project management from facing such issues, it is essential to have a clear understanding of the legal aspects, obligations, and rights in project execution. Law No. 18 of 1999 concerning Construction Services mandates that in the event of "building/construction failures," all parties involved may be investigated and held accountable, including owners, planners, implementers, and consultants.

The regulation of the liability of goods/services providers in the event of building failures is governed by Law No. 18/1999 concerning Construction Services, which has been evaluated and revised with Law No. 2/2017 concerning Construction Services in response to the growth of the construction sector in Indonesia.

According to Law No. 2/2017, the responsibilities of goods/services providers in the event of construction failures are as follows:

a. If Construction Service Providers fail to meet Safety, Security, Health, and Sustainability Standards as specified in Article 59, Service Users and/or Service Providers may be held responsible for Building Failures. In other words, Construction Service Providers must comply with Safety, Security, Health, and Sustainability Standards.
b. To determine building failures, an Expert Evaluator appointed and determined by the relevant Minister is required. Based on the examination results by the Expert Team, as stipulated in Article 60 of Law No. 2/2017, the deadline for evaluating building failures is a maximum of 30 (thirty) working days from the receipt of the failure report.
c. Based on Regulation of the Minister of Public Works and People's Housing of the Republic of Indonesia Number 8 of 2021 concerning Expert Evaluators in building failures, the expert evaluator is directly appointed by the Minister, and the payment of compensation must begin within 30 (thirty) calendar days after being determined by the competent authority. This is explained in Article 36, assessing the amount of compensation resulting from building failure incidents, including:
    1) Calculation of technical losses
    2) Calculation of financial losses experienced by third parties other than service users and service providers
    3) Calculation of economic losses experienced by service users or building owners/building administrators.
d. Based on Article 63 of Law No. 2/2017, the provider of goods/services must replace or repair building failures caused by their own errors.
e. Based on Article 65 of Law No. 2/2017, the maximum period of responsibility for building failures is ten (10) years from the date of final delivery of Construction Service.

The regulation of the "Construction Age Plan" in "Construction Work Contracts" is regulated based on Article 86 of Government Regulation No. 22/2020 concerning the

Implementation Regulation of Law No. 2/2017 concerning Construction Services. Legally, the purpose of this regulation is to include the planned construction age in the construction work contract, providing legal certainty to Service Users that the delivered building will have a minimum life span of ten (10) years. In Article 86(3), this regulation shifts the responsibility from Service Providers to Service Users after the specified period has elapsed.

The procedure for including the "Construction Age Plan" in "Construction Work Contracts" is governed by Article 87 of Government Regulation No. 22/2020, which states:

a. The determination of the construction age plan as referred to in Article 86(1) must be clearly and explicitly stated in the design documents and incorporated into the construction work contract.
b. The period of responsibility for building failures as referred to in Article 86(3) must be clearly and explicitly stated in the construction work contract.

Failure to include the construction age plan in the construction work contract does not constitute a criminal act in the context of criminal law. However, it may be considered an administrative act, as the failure to fulfill the legal obligations in the construction work contract is a legal administrative error. Consequently, the liability for such failure would be in the context of administrative law.

4. CONCLUSION

In conclusion, the responsibility of providers of goods and services in the event of building failures is a crucial aspect in the construction industry. Construction failures can occur due to deficiencies in the procurement process or during the construction execution phase, and they may result from the incompetence of the service provider or the service user. Various factors contribute to construction failures, including the competence of resources and the proper placement of skilled labor. Addressing construction project challenges and minimizing failures requires a clear legal framework, compliance with regulations, and systematic approaches to risk management.

The legal responsibility of service providers for construction failures is defined in UU No.2/2017, which outlines the obligations in case of construction failures. Providers must ensure that construction meets safety, health, and sustainability standards. Expert appraisers, appointed by the Minister, assess construction failures within a specified timeframe. Providers are required to replace or repair the failures caused by their errors, and the liability for construction failures remains for a maximum period of ten years from the completion of the construction service. Strengthening legal clarity and protection in the construction industry is vital to avoid legal issues and ensure successful project execution, benefiting all stakeholders involved in infrastructure development. By implementing these measures, the construction industry in Indonesia can continue to grow and thrive, providing safe and reliable structures for the benefit of society.

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JURIDICAL REVIEW OF ADOPTED CHILD INHERITANCE RIGHTS IN THE PERSPECTIVE OF THE CIVIL CODE

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Abstract

This research examines the legal perspective of the inheritance rights of adopted children based on the Indonesian Civil Code. Inheritance is the transfer of property rights from a deceased person to living heirs, and in many cases, adopted children may be entitled to inherit from their adoptive parents. However, the status of adopted children in inheritance laws can be complex and raises various legal issues. The study explores the concept of adoption and its implications on the inheritance rights of adopted children. It analyzes relevant provisions of the Indonesian Civil Code and other related legal texts to understand the legal status of adopted children as heirs. The research also investigates the challenges and problems that may arise in determining the inheritance rights of adopted children, particularly when there are natural descendants or other adoptive children involved. By adopting a qualitative research approach, the study gathers data through legal document analysis and interviews with legal experts. The findings shed light on the legal intricacies surrounding the inheritance rights of adopted children and provide insights into the recognition and protection of their rights under the prevailing legal framework. The research contributes to the understanding of the legal complexities surrounding adoption and inheritance in Indonesia and highlights the importance of addressing these issues to ensure fair and just treatment of adopted children in matters of inheritance.

Keywords: *Adopted Child Status, Civil Law, Inheritance Assets or Estate, Inheritance Rights*

1. INTRODUCTION

By human instinct, every parent desire to have children to continue their lineage, inherit their legacy, and bring happiness to their household. For households that are not blessed with children, they seek various ways to have a child, such as adopting or fostering children, whether from their own family or from others, to become their adopted children.

The presence of a child in a household is eagerly anticipated and desired by all families, but not all families can experience having their own child, leading them to consider adoption. In Javanese tradition, the adoption of a child is seen as a way to entice the family to be blessed with their own biological child. However, adoption gives rise to issues related to blood ties and inheritance.

The process of adoption is under the authority of the court. According to Article 7(2) of Law No. 35 of 2014 concerning child protection, the upbringing or adoption of a child shall be carried out in accordance with applicable legal norms, customs, and the child's religion. Article 33(2) of the same law states that, "To become the guardian of a child as referred to in paragraph (1), it shall be done through the court's decision" (Soemitro, 1990)

In general, an adopted child is a child taken in and raised by someone else, and legally recognized as their own child. Similarly, adoption is defined as the lawful act of taking in or adopting someone else's child as one's own (Indonesia, 2005).

Inheritance law is an essential part of family law, as it plays a crucial role in determining and reflecting the family system within a society (Muzakir, 2022). This is because inheritance law is closely related to the scope of human life. Every human will experience significant events in their life that are legal in nature, including death.

When there is a legal event, such as the death of someone, the close family members will experience loss and grief, and this event also has legal consequences concerning the management of the deceased's rights and obligations. The resolution and management of a person's rights and obligations due to their death are governed by inheritance law (Syarifuddin, 2019).

Inheritance law is a set of legal rules that regulate who the rightful heirs are to inherit the deceased's estate, the position of the heirs, and how the inheritance is distributed fairly and equitably. Thus, heirs are a group of people or relatives who have a family relationship with the deceased and have the right to inherit or receive the estate left by the deceased (Ramulyo, 2016).

The obligations that must be fulfilled by heirs include preserving the integrity of the deceased's estate before distribution, finding a suitable way of division according to the provisions, settling the deceased's debts if any, and executing the will if it exists. The reasons for inheritance arise due to marriage, kinship or lineage, the emancipation of slaves, and relations among Muslims.

In general, it can be stated that the status of an adopted child in inheritance remains the same as their original status. They have a lineage relationship with their biological parents even they only have an inheritance relationship with them. Thus, adoption does not alter the existing lineage relationship and inheritance between them (Zaini, 1992). Consequently, the adopted child does not inherit from their adoptive parents, but the adoptive parents can give a will or gift during their lifetime to the adopted child in accordance with their wishes.

The adoption of a child falls under the category of legal acts, which result in rights and obligations for the parties involved. In the Book of Civil Law or *Burgerlijk Wetboek* (BW), in the division of inheritance as stated in the Book of Civil Law, an adopted child inherits the same as a legitimate child (Weni, 2020).

There are two arising issues. First, the legal status of an adopted child in the perspective of the Indonesian Civil Code. Second, the inheritance rights of an adopted child in the perspective of the Indonesian Civil Code.

2. RESEARCH METHODS

The thesis adopts two approaches: the statutory approach and the conceptual approach (Marzuki, 2011). By examining relevant laws and regulations, the roles and responsibilities of parties involved in construction contracts are thoroughly analyzed.

The research methodology employed is normative juridical, focusing on studying the application of principles and norms in positive law. This norm system covers principles, norms, and rules derived from statutory regulations, agreements, and doctrines found in legal literature, research outcomes, expert works, scientific articles, and related websites concerning inheritance for adopted children (Efendi & Ibrahim, 2018). The research also follows a statutory approach, which considers legal norms in statutory regulations related to the research topic (Mahmud, 2006).

The legal sources include primary materials such as the Civil Code (KUHPerdata/B.W), Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage, and Law No. 35 of 2014 concerning child protection.

Secondary materials provide explanations for primary legal materials, such as draft regulations, research results, doctrines/theories from legal literature, works from legal experts, scientific articles, and relevant websites. While tertiary materials offer guidance and explanations on primary and secondary laws, utilizing resources like the Kamus Besar Indonesia Indonesian Dictionary and Kamus Hukum Law Dictionary.

3. RESULT AND DISCUSSION

3.1. Overview of Inheritance Law

The term "inheritance law" originates from Dutch (*Erfrecht*). Article 830 of the Civil Code essentially states that Inheritance Law (*Erfrecht*) is the law that regulates the legal position of a person's wealth after their death, particularly the transfer of that wealth to others.

Within the provisions of Inheritance Law in the Civil Code, there are three main elements:

1) The person who leaves behind the inheritance (*erflater*);
2) The inheritance (*erfernus*);
3) The heirs (*erfergeenaam*).

According to the Civil Code, not all heirs automatically inherit everything left by the deceased. The concept of inheritance in the Civil Code can be seen in Article 584, which states that "Ownership of a property can only be obtained through possession, attachment, expiration, or inheritance, whether according to the law or a will."

Inheritance law is a set of regulations governing the transfer of wealth (rights and obligations) from a deceased person to someone else. Another definition of inheritance law encompasses all legal provisions regarding the wealth of a deceased person, including the transfer of that wealth and its consequences for those who receive it, both among themselves and third parties (Meliala, 2018).

From these two definitions, several terms can be distinguished:

a. The deceased: the person who has passed away and left behind wealth.
b. The heirs: individuals entitled to the inheritance.
c. The inheritance: the wealth left behind, comprising assets or liabilities.
d. Inheritance: the process of transferring a person's wealth (rights and obligations) to their heirs.

3.2. Legal Status of Adopted Children according to the Civil Code

Children are the most important element in a family. Therefore, in cases of inheritance division, children are entitled to inherit the estate before other heirs. There are several legally recognized categories, namely:

a. Legitimate children.
b. Stepchildren.
c. Children from a forbidden union.
d. Adopted children.

e. Acknowledged children born out of wedlock.
f. Unacknowledged children born out of wedlock (illegitimate children).

Legitimate children are those born to legally married couples. They are also referred to as legitimate children. On the other hand, stepchildren are children of a spouse from a previous marriage or children of a husband from his other wives. In terms of inheritance law, stepchildren (half-siblings) are treated differently from legitimate children.

Then, children from a forbidden union are those born from a relationship between close relatives who are prohibited from marrying, such as siblings. These children are not entitled to inherit, be adopted, or be recognized as legal children. However, according to the Civil Code, children from forbidden unions are entitled to support from their parents.

The 2014 Child Protection Law, in Article 1 paragraph (9), defines adopted children as children whose rights are transferred from the family environment of their birth parents, legal guardians, or other responsible parties for their care, education, and upbringing, into the family environment of their adoptive parents based on a court decision or order.

This provision clarifies that adoption only involves a transfer of authority. The subsequent meaning of this transfer will be further elaborated according to the religious beliefs followed during the adoption process. Specifically for Muslims, the transfer of authority does not sever the relationship between the adopted child and their biological parents, nor does it create a relationship between the adopted child and their adoptive parents as if they were legitimate children in Islamic law (Al Amruzi & Sarmadi, 2012).

Conversely, according to non-Muslim customs with their variations and Chinese community traditions, the transfer of authority legally entitles the adopted child to bear the adoptive father's name, be considered as if born from the marriage of the adoptive parents, and become the heirs of the adoptive parents.

In other words, adoption results in the severance of all civil relations based on lineage between the biological parents and the adopted child. This interpretation is no longer applicable due to Article 39 paragraph (2) in the 2014 Child Protection Law, which states that adoption does not sever the blood relationship between the adopted child and their biological parents.

Adoption based on statutory regulations includes direct adoption by prospective adoptive parents of prospective adoptive children who are directly under the care of the adoptive parents, and adoption through child care institutions. Adoption affects the legal status of the adopted child, in which inheritance rights of the adopted child are returned to the inheritance laws of the adoptive parents. Adoption involves taking in another person's child for nurturing, educating, providing full attention and affection, and treating them as one's own child (Bula et al., 2023).

In the Civil Code (BW), adoption is not specifically mentioned, but the institution of adoption is regulated in Staatblad 1917 No. 129, which essentially stipulates that adoption is the act of adopting a male child as a son by a married man or a man who has been married but has no male descendants. Therefore, only male children are allowed to be adopted. However, according to jurisprudence, it has been stated that female children can be adopted as daughters by a woman who has no children. "Regarding the legal relationship between the original parents after the child has been adopted by someone else, it is severed, and the adopted child inherits from the adopting father."

Regarding the requirements for adopting a child, Staatblad 1917 Number 129 in Article 8 lists four requirements, which are:

1) Consent of the adoptive parent.
2) If the adopted child is the legitimate child of their parents, then permission from the parents is required. If the father is deceased and the mother has remarried, the consent of the legal guardian and the estate authority as the guardian supervisor is required.
3) If the adopted child is born out of wedlock, the consent of the acknowledging parent is required. If no one acknowledges the child, then the consent of the guardian and the estate authority is required.
4) If the adopted child is 15 years old or older, their own consent is required.
5) If the adoptive parent is a widow, the consent of the deceased husband's brothers and father is required, if they are still alive, or if they reside in Indonesia, then the consent of male relatives in the father's line up to the fourth degree is required (Zaini, 1992).

3.3. Inheritance Rights of Adopted Children Based on the Perspective of the Civil Code

The adoption of a child will affect the inheritance rights of the adoptive child towards their adoptive parents. In principle, the inheritance rights of the adopted child are subject to the inheritance laws of the adoptive parents. Based on legal considerations, adoptive parents are obliged to ensure that their adopted child is not left without care after their death. For this purpose, in society, adopted children are usually provided with a portion of the inheritance as a means of sustenance through a will. A testamentary gift is a way for the owner of wealth to express their final wishes regarding the distribution of their estate to the heirs, which will take effect upon the death of the testator.

An adopted child can inherit from their adoptive parents, but it must not prejudice the rights of other existing heirs. An adopted child who is adopted orally cannot inherit from the adoptive parent, but they can be given a testamentary gift that does not deviate from the Ligitieme Portie (legitimate share). An adopted child adopted through a court decision can inherit from their adoptive parents, depending on the region, as different regions may have varying practices in giving inheritance to adopted children.

This is further emphasized by the opinion of a Notary, stating that the adoption of Indonesian citizens of Chinese descent still follows Staatblad 1917 No. 129. Due to the use of Staatblad 1917 No. 129, the adopted child has the right to inherit from the adoptive parent.

The adopted child is a first-class heir, therefore they receive inheritance from the adoptive parents. According to Article 13 of Staatblad 1914 No. 129: "A man dies leaving a widow with the authority to adopt a son, so the estate authority must take necessary actions to manage and protect the property that will be given to the person to be adopted" (Subekti & Tjitrosudibio, 1999).

An adopted child from the adoptive parents has inheritance rights according to the given inheritance, and they are absolute heirs as stipulated in Article 852 of the Civil Code. According to Article 830 of the Civil Code: "Inheritance only occurs due to death." The inheritance will be given when the decedent has passed away and the heirs are still alive.

Basically, the process of transferring someone's wealth to their heirs, known as inheritance, occurs only because of death. Therefore, inheritance will only occur if three conditions are met. The conditions for an heir to receive inheritance according to the Civil Code are:

a. Inheritance is only open upon the occurrence of a death (Article 830 of the Civil Code). This means that if the couple has divorced when the decedent passes away, the ex-husband or ex-wife is not considered an heir.
b. The heirs must exist at the time of the decedent's death. As stated in Article 836 of the Civil Code, "To act as an heir, a person must already exist at the time the inheritance is opened, as provided in Article 2 of this Civil Code."
c. An heir must be capable and entitled to inherit, meaning they are not considered by the law as someone unfit to inherit due to death or deemed incapable of being an heir.

This is because the adopted child becomes the biological child of the adopting parent after adoption. According to adoption law, adoption through the court is done through a court order (Wibawa & Hidayantina, 2023). The status of the adopted child is equivalent to that of a biological child. The legal consequence of this in the division of inheritance is the same as for a biological child, as stated in Article 852 of the Civil Code. According to Article 830 of the Civil Code: "Inheritance only occurs due to death." Therefore, the estate or inheritance is only open when the decedent has passed away, and the heir is still alive when the inheritance is opened.

The law recognizes two ways to obtain an inheritance, which are:

a. *Abintestato* (inheritance according to the law), as stated in Article 832 of the Civil Code. According to this provision, the rightful recipients of the inheritance are blood relatives, both legitimate and illegitimate, and the surviving spouse.
b. *Testamentary* (inheritance as specified in a will or testament), as stated in Article 899 of the Civil Code. In this case, the owner of the wealth creates a will where the heirs are specified.

An adopted child is a child resulting from an act of someone taking or making someone else their child without severing the family ties of the child from their biological parents, whether they are still minors (underage) or adults (Iskandar et al., 2021). The same obligations apply to this form of adoption as in adoption according to the Civil Code, which includes provisions regarding the absolute share included in the law, such as in Article 913, 914, 916, and so on.

It is essential that the relevant authorities closely supervise issues related to child adoption to ensure that adoption is genuinely based on high humanitarian principles in line with the cultural spirit of the Indonesian nation, and that there are no hidden or ulterior motives behind the adoption. The author also suggests that with various regulations governing child adoption, it may be necessary to establish a national regulation specifically addressing the issues of child adoption and the legal status of adopted children as heirs.

4. CONCLUSION

In conclusion, the process of adopting a child involves submitting an application to the District Court, which provides legal certainty for the adoption according to the prevailing law. The adopted child holds the same status as a biological child under the Civil Code, and the biological parents forfeit their inheritance claims as specified in Staatblad 1917 Number 129, Article 14. This grants the adopted child the right to inherit the estate of their adoptive parents based on the law or through testamentary inheritance if a will is received (*Hibah Wasiat*). It is worth noting that for Indonesian citizens of Chinese descent, the adopted child's status is akin to that of a legitimate child, ensuring their entitlement to inherit their adoptive parents' wealth.

In essence, both the Civil Code and Staatblad 1917 Number 129 affirm that adopted children are on equal footing with biological children in terms of inheritance rights, placing them in the first category of heirs. This means that adopted children have the right to a share of their adoptive parents' estate, establishing them as absolute heirs in accordance with Article 852 of the Civil Code. With these legal provisions in place, adopted children can be assured of their inheritance rights, allowing for a more secure and stable family environment, which aligns with the principles of justice and fairness in inheritance matters.

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

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

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

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

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

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

Literature Review

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

Method

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

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

Results and Discussions

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

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

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

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

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

Work with Graphic:

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

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

Conclusions

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

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

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

Acknowledgments (if any)

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

References

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

Page limitations

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

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