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**EFFICIENCY OF IMPLEMENTING SANCTIONS IN CASE OF
POLYGAMY IN THE MODERN ISLAMIC WORLD**

M. Samson Fajar^{1*}, Abdul Qadir Jaelani²

^{1,2} Faculty of Law, Universitas Muhammadiyah Metro Lampung, Indonesia

E-mail: ¹⁾ ibnuummi@gmail.com

Abstract

Reform of family law is necessary, and this has become a trend in the renewal of Islamic family law in the modern world. One of the themes studied is the application of legal sanctions (criminalization). Criminalization is a product of modern law, which is very different from the fiqh law, which refers to society. In this study, polygamy is the theme that will be discussed. How is the implementation of criminal sanctions in cases of polygamy in some modern Muslim countries? The country objects that are the focus of the study are Indonesia, Malaysia, and Tunisia. The study approach uses a comparative approach, including vertical comparison (state law-classical legal doctrine), horizontal comparison (Law between countries), diagonal comparison (level of legal dynamics). Results in two conclusions that polygamy as a study of Islamic family law is a private matter and a public issue, so it requires firmness of sanctions. There are two views that polygamy law is prohibited and allowed with conditions, as for those who prohibit it, Tunisia by imposing criminal sanctions and those who allow it on condition that Indonesia and Malaysia, by imposing light sanctions.

Keywords: Criminalization, Polygamy, Modern Islamic World

1. INTRODUCTION

One trend of family law reform in the modern Islamic world is implementing legal sanctions (criminalization). The move from classical law, which tends to have no legal sanctions. The example switches to state product laws and regulations, limiting and complicating and even prohibiting and categorizing a problem surrounding family law as a criminal act.

For example, in the case of polygamy, although the criminalization of polygamy has not yet become a general portrait of the laws/laws that apply in Muslim countries, its existence is increasingly being considered. It remains one of the hot topics of the Muslim world today.

It is interesting if the criminalization of polygamy in Indonesia can also be examined more closely. Moreover, see how other Muslim countries apply it, then compared it with each other in the context of conventional Islamic law doctrine, between countries, and its position as one of the images of dynamics in Islamic Law, especially law. Modern Muslim State family. Similarly, when compared with legal policies in non-Muslim countries (Western countries).

As mentioned in the title above, this paper only focuses on studies in several Muslim countries: Tunisia, Malaysia, and Indonesia, using a comparative approach, including vertical comparison (state law-classical legal doctrine); horizontal comparison (Law between countries); diagonal comparison (level of legal dynamics).

2. IMPLEMENTATION METHOD

The method utilized in this study is descriptive qualitative through library research techniques, and literature studies reviewed from the latest journals that discuss the application of criminal sanctions in cases of polygamy in several modern Muslim countries. The country objects that are the focus of the research are Indonesia, Malaysia, and Tunisia. The study approach uses a comparative approach, including vertical comparisons (classical law doctrines of state law), horizontal comparisons (law between countries), diagonal comparisons (level of legal dynamics).

3. RESULTS AND DISCUSSION

3.1 The Enforcement of Sanctions for Polygamy Practices in the Modern Islamic World

One of the steps to reform Family Law in modern Muslim countries is to review several provisions of classical Islamic Law that are considered irrelevant to social conditions and modern demands/changes. The same is true in the case of polygamy. Conventional fiqh rules have been a reference for centuries are being reviewed and replaced with legislation products that seem to be directed at elevating the status of women and responding to the demands and developments of the times.(Buxbaum, 1968)

In general, the provisions (laws) relating to family law in modern Muslim countries related to polygamy rules can be classified: first, countries that prohibit polygamies, such as Turkey and Tunisia entirely. Second, countries that allow polygamy with relatively strict conditions (complicated) include Pakistan, Egypt, Morocco, Indonesia, and Malaysia. Third, countries that treat polygamy more loosely, such as Saudi Arabia, Iran, and Qatar (Mahmood, 1987)

The second category is the general trend of Family Law in the Islamic World of the three categories(Mahmood, 1972). Restrictions on polygamy are varied, from the most lenient to the strictest. For example, in Lebanon, under the family law imposed by the Ottoman Empire in 1917, polygamy is not prohibited but is expected to apply the principle of justice to wives. Things that are not much different also happen in Morocco under the Personal Status Act of 1958, which applies there (Mahmood, 1987).

Another way to limit polygamy is by contract. The wife is given the right to ask her husband when getting married to agree that if it turns out that later he remarries to another woman, the wife can immediately ask for a divorce from the Court or automatically divorce one if the one violates it is the wife. It is mentioned, for example, in article 19 of the Jordanian Family Law No. 61 of 1976 as amended by Jordanian Family Law No. 25 of 1977. The same is also stated in article 31 of the Moroccan Personal Status Act of 1958 (Mahmood, 1987).

As seen in the last example mentioned, the practice of polygamy has even been categorized as an act that is subject to certain legal sanctions. In other words, some Muslim countries have criminalized the practice of polygamy in their Family Laws. As mentioned in the previous discussion, at least 8 Muslim countries have imposed legal sanctions on the issue of polygamy in their family law. The eight countries are Iran, Pakistan, Yemen (South), Iraq, Tunisia, Turkey, Malaysia, and Indonesia.

As for the criminalization of polygamy in family law in the three last-mentioned countries, which serve as models for this study, it will be described in more detail in the following discussion:

1. Tunis

After independence on March 20, 1956, Tunisia immediately compiled various legal reforms and codifications based on the Maliki and Hanafi schools. This reform effort is based on a liberal interpretation of sharia, especially concerning family law. be born *Majallat al-Ahwal ash-Shak'iyah* controversial. Under the leadership of President Habib Bourguiba, Tunisia became the first Arab country to ban polygamy.(Safra & Yeshua, 2003)

*Majallat*it self includes material on the law of marriage, divorce, and child-rearing, which is different from the provisions of classical Islamic Law. In subsequent developments, the *Majallat* or

Personal Status Act of 1956 has undergone several changes, additions, and further modifications through amendments to the Act until 1981. Furthermore, the Tunisian government formed a committee under the supervision of Sheikh al -Islam, namely Muhammad Ju'ayad, to enforce the law officially.

The Sheikh of Zaituna University also participated in the committee. By using the sources obtained from the results of the Lai'hat committee, family law in the style of Egypt, Jordan, Syria, and the Ottoman Turks. The committee submitted a draft family law bill to the government, and the law was finally enacted in 1956.

The law consists of 167 articles written in 10 volumes considered quite comprehensive, although it does not yet contain laws regarding inheritance. This law was amended seven times during the period 1958-1966. The last time this law was amended was in 1981 (UU No. 7/1981), which introduced several essential modifications to the previous law.

There are several reasons for the formation and enactment of the new Tunisian law, namely:

- 1) To avoid conflict between Hanafi and Maliki thinkers;
- 2) For the unification of courts into national courts, so that there is no longer any difference between religious courts and district courts;
- 3) To form modern laws, as a reference for judges;
- 4) To unify the views of society as a whole due to differences from the classical schools;

5) To introduce new laws that suit the demands of modernity (J. N. D. Anderson, 1959) The Tunisian law applies to all Tunisian citizens, especially after an agreement was reached with France on July 1, 1957. From the various reforms in this new law, two things (initially) received a negative response from several circles, namely the prohibition of polygamy. And the necessity of divorce in Court (Gupta, 1992).

Regarding the criminalization of polygamy in Tunisia, article 18 states:

- a. Polygamy is prohibited; anyone married before his first marriage ends, then remarries, will be sentenced to one year in prison or a fine of 240,000 malim or both.
- b. Who is married violates the rules in Law no. 3 of 1957, which relates to city regulations and a second marriage contract; while he is still bound by marriage, he will be subject to the same punishment.
- c. According to unofficial provisions, anyone who knowingly marries someone subject to punishment can also be subject to the same punishment.

The Tunisian Law on the Status of Individuals of 1957 expressly stipulates that polygamy is prohibited. This prohibition is said to have a legal basis in another verse in the Qur'an, which states that a man must marry a wife if he believes he is unable to do justice to his wives (Surah an-Nisa [4]: 3). It turns out, both from experience and revelation statements (Surah an-Nisa [4]: 128), the justice in question will not be fulfilled. However, it should be added that the *fuqaha* the salaf, with reasonable grounds, states that the Qur'an cannot simply be regarded as contradicting itself. Furthermore, the justice demanded by the "polygamy verse" must be interpreted as things a husband can do and not his inner feelings (love).

Tunisia puts forward two reasons for the prohibition of polygamy: first, that the institution of slavery and polygamy is only allowed during the developmental or transitional period of Muslims, but is prohibited during the developmental period or in a cultured society; and second, that the absolute condition for polygamy is the ability to treat the wife fairly, while historical facts prove only the Prophet. Capable of running, I am fair to his wives (N. Anderson, 1976).

Before this law, the qadi in Tunisia consisted of qadi from the Hanafi school and the Maliki school, although the people in general adhered to the Maliki school. However, this eclectic new law has been declared to apply to all Muslims (and has been further accepted by and has been declared to apply to Jews) so that all courts are united. All types and jurisdictions of the judiciary are in the

hands of the national courts. President Bourguiba openly stated, "ideas prevailed in the past, today are contrary to human conscience. for example, about polygamy and divorce which are now regulated by the new law, as well as all the problems that arise in modern life. at the moment." He stated that Islam had liberated the soul and ordered people to review the religious laws to adapt them to the progress made by humans. This statement is very different from the views of the salaf.(Cayne, 1969)

In addition, the reformers in Tunisia emphasized that a husband must have the financial ability to support his wives, and the Koran also requires polygamists to treat them fairly. This Quranic rule must also be interpreted as a moral imperative and as a precedent for the legal condition for polygamy, in the sense that no second marriage can be permitted unless and until it is proven to be equally (egalitarian) where the wives are treated fairly. However, looking at current social and economic conditions, it seems that fairness is an impossibility. When the primary conditions of polygamy cannot be met, Tunisian Law briefly states, "polygamy is prohibited." (J. N. D. Anderson, 1959).

Tunisia can be considered a leading example of how, after 1945, reforms tended to be based more on what was stated to be the right of Muslim states, through their rulers, to *ijtihad*. Tunisia abolished the right to polygamy through Article 18 of the Tunisian Personal Status Act 1956, based on a reinterpretation of Surah an-Nisa verse 3. Tunisia equates justice not only with livelihood (financial support) but also with love and compassion. It is also stated that only the Prophet. Who can do justice to two wives in this way; Therefore, in the current situation, the undeniable assumption is that a Muslim husband cannot fulfill the requirements of the Koran (Newby, 1991).

2. Malaysia

In the context of family law reform, especially in Southeast Asia, it may even be that the scope of the Muslim world is Malaysia as the first country to take this step, marked by the birth of *Mohammedan Marriage Ordinance, No. V Year 1880* in the strait countries (Pulau Pinang, Malak, and Singapore). The allied Malay countries continued (Perak, Selangor, Negeri Sembilan, and Pahang) through *Muhammadan Marriages and Divorces Enactment 1885*. then for the non-allied Malay countries or the shelter countries (Kelantan, Terengganu, Perlis, Kedah, and Johor), which Kelantan pioneered is *The Divorce Regulation of 1907* (Nasution, 2003).

However, when viewed from the era after the end of colonialism and imperialism, Malaysian legislation has undergone several reforms. Taher Mahmood noted that the first reforms occurred in 1976-1980, which dealt with marriage and divorce. At the same time, the second renewal was carried out in 1983-1985, which was named *Islamic Family Law Act*. This new law came into effect in 1983 in Kelantan, Negeri Sembilan, and Malacca. Then in 1984, it was held in Kedah, Selangor, and the Alliance area, and in 1985 it was held in Penang. In recent developments, reforms have also occurred in Terengganu (1985), Pahang 1987 (No. 3), Selangor 1989 (No. 2), Johor (1990), Sarawak (1991), Perlis, and finally Sabah through Law no. 18 of 1992.

Regarding the criminalization of polygamy in positive Law in Malaysia, among others, it is illustrated in the 1984 Law on Islamic Family Law [Federal Territory] (UU 304 of 1984). Article 123 states:

During subsistence a marriage, any man contracts another marriage any place, without the prior permission in writing of the Court. Commits an offense and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

That confirms that a man who is still bound in a marriage can only be polygamous if he has obtained written permission from the Court. Those who violate the provision will be sentenced to a

maximum fine of 1000 ringgit. Alternatively, imprisoned for a maximum of 6 months or sentenced to both at the same time.

The granting of a polygamy permit by the Court is closely related to the results of the institution's consideration of the information given by the applicant and the wives he first married. The basis for the Court's consideration to permit polygamy is related to the condition/behavior of the wife and husband. From the wife's point of view is 1) Infertility; 2) Physical aging; 3) Not physically fit for intercourse; 4) Deliberately not wanting to restore sexual rights, or 5) Mental illness/insane. While the considerations from the husband's point of view are: 1) Economically able to bear his wives and children, 2) Able to treat wives fairly 3) The marriage does not cause danger to the wife's religion, life, body, mind, or property. Been married before,

In general, Malaysian Family Law seems to still adhere to the conception of the Sunni schools, especially the Shafi'i school, in terms of the permissibility of polygamy. The stipulation of several reasons for polygamy seems to be inspired by the fiqh conception of the husband's obligation to his wife and the reasons for the occurrence of Faskh. Meanwhile, the role of the Court in granting polygamy permits and criminalizing polygamy is part of the form of sharia Siyasa, which aims to anticipate and provide a deterrent to the abuse of polygamy. In addition, a new interpretation of the message of the Koran regarding the issue of polygamy and protection measures for women is also an inherent part of the fundamental reasons for enacting these articles.

3. Indonesia

Before enacting Marriage Law No. 1/1974 in Indonesia, a Muslim man is relatively easy to polygamous marriage. He was only asked to report his new marriage to the marriage registrar and be fair to his wives. Substantially, the Marriage Law changes this situation, although it is still ambiguous. On the one hand, the principle that marriage is a monogamous institution is considered to have underpinned such legal provisions (Article 3); indeed, one of the main objectives of the Marriage Law is to reduce the rate of polygamous marriages. On the other hand, the law allows a man to have more than one wife if he can fulfill the requirements of several provisions of the law, is permitted by his religion, and obtains permission from the Religious Court. Although these rights are maintained, the administrative procedures are not accessible. In general, it limits the possibility of arbitrary use of these rights.

The same provisions are maintained in the Indonesian Compilation of Laws (KHI) established in 1991. The courts in this regard play an essential role in granting permission to husbands to practice polygamy. However, both Law no. 1/1974 and KHI do not include legal sanctions against parties who violate. Sanctions for polygamy are regulated in Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1/1974; it is stated that polygamy perpetrators without the Court's permission can be sentenced to a fine of Rp. 7.500,-. Legal sanctions are also imposed on the registrar who records the marriage of a husband who will have polygamy without the Court's permission with a maximum imprisonment of 3 months or a maximum fine of Rp. 7.500,-.

Meanwhile, relatively heavy penalties are imposed for Civil Servants who practice polygamy outside the stipulated provisions. It is stated in Circular No. 48/SE/1990 regarding the Implementation Guidelines for PP. 45/1990 regarding amendments to PP No. 1983 concerning Marriage Permits and Divorce of Civil Servants that PNS and/or superiors/officials, except for Monthly Employees in addition to retirees. Were sentenced to one of the severe disciplinary penalties based on PP No. 30/1980 concerning Civil Servant Disciplinary Regulations.

Various provisions in the Marriage Law no. 1/1974 and the KHI regarding polygamy above basically do not contradict the concept of conventional schools, including the Shafi'i school. Similar to Malaysian Family Law, the requirements for a husband who wants to be polygamous are also related to the husband's obligations regulated in the traditional fiqh conception, namely the

ability to provide a living and treat wives fairly. Likewise, the emergency condition of the wife who was married seems to exist related to the cause of the Faskh. The legal product is oriented to elevate the status of women and provide protection before them, something in line with the spirit of the Qur'an and Sunnah of the Prophet.

Although now polygamous marriages have been and are likely to become a rare occurrence in Indonesia, the effectiveness of polygamy laws still seems to be in doubt. Among the contributing factors are legal sanctions for violating this law, a fine of Rp. 7,500,- or three months in prison, is considered not according to current conditions. The penalties are not harsh enough to prevent violations of the law. In addition, there is still a legal dualism in Indonesia: traditional Islamic Law versus state law, resulting in polygamists preferring to take refuge in traditional Islamic Law, which legitimizes polygamy without worrying about being punished as imposed by "state product" Islamic law.

3.2 Comparative Analysis

What is often used in analyzing comparative data is vertical, horizontal, and diagonal comparison analysis. This analysis is explained by Atha' Mudzhar in his paper, what is meant by a vertical analysis comparing the rules enforced in these countries with the opinions of fiqh scholars when there is a difference then what is the normative basis of fiqhiah so that a new opinion emerges. In comparison, the horizontal analysis compares the similarities and differences between the countries in the application of the sanctions. The diagonal analysis places these countries in order and level in terms of whether the regulation is liberal. In this case, in the application of sanctions.

In the first vertical analysis, the three countries above have departed from the classical fiqh understanding, which essentially does not have a problem with polygamy. Even when the wife does not allow it, it is not a problem for the husband to polygamy. Also in polygamy does not apply stringent conditions as made by these countries. In the perspective of the madhhab, Imam Malik, in his *al-muwatha*, allows polygamy up to four. While as-Shafi'i in *al-Umm*, he also allows polygamy based on the Qur'an and as-Sunnah. Likewise, Ibn Qudamah allows polygamy a maximum of four. In short, the priests of the madhhab require fairness in terms of material and share the night.

As for the horizontal analysis, the strictest prohibition of polygamy is in Tunisia because polygamy is a tradition. However, this is getting massive protest at this time. The President of the Freedom and Citizenship Forum, Fathi Al-Zghal, confirmed the protests were spontaneous and came to resolve polygamy in Tunisia. Al-Zghal supports the idea of protesting because he believes there is a need for a solution to the lives of single women in Tunisia.

According to Al-Zghal, the Personal Status Law, which regulates women's rights and freedoms in Tunisia, needs to be reviewed. Polygamy matters and divorce procedures need to be reviewed because they are considered contrary to Sharia law (Tempo: 2019).

According to a recent report published by the National Agency for Family and Population Affairs in December 2017, Tunisia is one of the countries with the highest rates of marriage reluctance, with a figure of 60 percent much higher than the ratio of other Arab countries.

The report reveals that single women have risen to more than 2.25 million out of 4.9 million women in Tunisia. This figure has increased from just 990,000 in 1994, with the highest gestational age among women ages 25-34.

In this case, essentially, the imposition of criminal sanctions on Tunisian society creates new problems and requires reconstruction because polygamy has finally become a solution to the personal problems of society, especially women.

Meanwhile, Malaysia and Indonesia provide various conditions for polygamy, so they seem indecisive. This is because Indonesia and Malaysia are still very much influenced by the normativity of the Shafi'i madhhab. However, in terms of implementing sanctions, Indonesia is the

lightest, so this does not deter polygamy perpetrators. There are many irregularities in sirri marriages in Indonesia because there is no firmness of the sanctions.

In the author's opinion, the rule of Indonesian law is excellent; by providing a wide but regular space, violations of polygamy sanctions are not for polygamy implementers but for those who violate their rights in family life. Indonesia and Malaysia are culturally shafi'i schools that firmly hold this tradition. Even historically, many umara', ulama' have done this. The imposition of sanctions, in general, will only create new problems as in Tunisia.

The last analysis is a diagonal analysis between countries. Tunisia, which prohibits polygamy, is the country that shows its liberalism in thinking by jumping away from the classical fiqh concept. Even the perpetrators are subject to legal sanctions. They were then followed by Malaysia, which is more assertive than Indonesia. However, there is not too much difference between Indonesia and Malaysia because it is related to culture and territory

4. CONCLUSION

Islamic family law turns out to be not only a conception of fiqh that applies individually without sanctions, so the concept of fiqh is complicated to bind people's lives. So, with the trend of canonization of Islamic Law in several modern Islamic countries both in Tunisia, Malaysia, and Indonesia, this is the progress of Islamic Law in a time full of complex problems.

Polygamy is a fundamental issue to be given rules in Islamic Law because the level of problems in the household is getting higher. From the article above, it can be concluded that there are two views that polygamy law is prohibited and allowed with conditions. As for the prohibition, Tunisia (although the current era is experiencing a new anomaly with large public protests) by imposing criminal sanctions and those who allow it on condition that Indonesia and Malaysia impose light sanctions.

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ANALYZING TRIALS THROUGH ONLINE MEDIA DURING THE COVID-19 PANDEMIC IN INDONESIA

Angga Putra Pratama^{1*}, Dewa Gede Pradnya Yustiawan²

¹ Faculty of Law, Universitas Udayana

² Faculty of Law, Universitas Udayana

E-mail: ¹⁾ anggaputraprat39@gmail.com, ²⁾ pradnya_yustiawan@unud.ac.id

Abstract

The Corona Virus (Covid-19) pandemic is a challenge for humans to transform life activities, so that people have to adapt to changes in human activities, along with the addition of positive cases of the Covid-19 corona virus, the government enforces the Work from Home (WFH) policy. Likewise, the judicial apparatus must carry out its obligations to carry out trials, with the existence of online court media being an alternative in conducting virtual trials/teleconferences, this is a new breakthrough in conducting trials. So that people get justice and the right to get a legal process

Keywords: the judge, online media, Corona Virus (covid-19)

1. INTRODUCTION

The Indonesian government has issued and stipulated various regulations, especially regarding the implementation of face-to-face trials which apparently cannot be implemented and it is recommended to be replaced using a remote trial process or also called a virtual trial or online. This is carried out in an effort to decide the spread of the Covid-19 virus, namely by limiting direct or face-to-face interactions. WHO also advises the public not to carry out activities that cause crowding. In the legal field itself, the law enforcement process is hampered due to the spread of Covid-19, which is still very high in transmission, so that the law enforcement process in court activities is disrupted by trial activities. then a solution is needed to overcome this problem. To reduce crowding activities, the government issued a regulation regarding the conduct of trials by the Supreme Court to issue decisions related to the implementation of electronic trials on the basis of Supreme Court Regulation Number 01 of 2019 concerning procedures for conducting trials through electronic media, so that the trial process is not hampered and the trial continues even though the trial process continues. In the midst of a pandemic, the trial system was changed to an online or electronic trial via teleconference (Hanafi et al., 2021).

The decision of government agencies to conduct trials via electronic means based on the agreement of a Memorandum of Understanding (MoU) between the Supreme Court, the Attorney General's Office of the Republic of Indonesia and the Ministry of Law and Human Rights in this case the Directorate General of Corrections regarding the trial mechanism through online media. The MoU in Indonesian is translated into various terms, including "*nota kesepakatan*", "*nota kesepahaman*", "*perjanjian kerja sama*", or "*perjanjian pendahuluan*" (Matondang, nd). The purpose of making a Memorandum of Understanding is to establish a legal relationship, as a letter made by one of the parties whose contents contain the will, the letter is addressed to the other party, and based on the letter the other party is expected to make a similar letter of intent to show its intention (Mandasari, 2013). Furthermore, the contents of the MoU regarding approval related to the trial mechanism during an uncertain outbreak, so that the agreement is valid until the spread of the Covid-19 outbreak is controlled in Indonesia.

The MoU stipulates that the agreement on the mechanism for the trial of criminal cases through electronic/online media. Moreover, the Attorney General's order to minimize the spread and transmission of Covid 19, so that the trial is not hampered, therefore the criminal cases are tried virtually, the instruction is contained in the Attorney General's Circular regarding efforts to fulfill his obligations as the Implementation of the Duties, Functions and Authorities of the Prosecutor's Office in the midst of the Covid 19 pandemic. Based on this circular, starting from March 30 to July 6, 2020, 176,912 electronic trials have been conducted electronically (Yahya, 2020).

Electronic trial through teleconference means is a transformation of the implementation of the trial in an emergency condition, in line with the health protocol policies issued by the government regarding social distancing and physical distancing, to inhibit the growth of Covid-19 cases in court, as well as in the detention cell, and also anticipating contagion in the Correctional Institution.

As a follow-up to the MoU, the Supreme Court (MA) has issued a regulation in the form of PERMA Number 4 of 2020. This regulation is a form of response from the institution in an effort to maximize the implementation of law in Indonesia, so that it becomes the basis for conducting trials and becomes the basis as a legal shield in implementing electronic in general court, military, and criminal justice institutions (*jinayah*).

On the other hand, there are people who still do not understand how to operate electronic technology, and the lack of the internet network signal in remote areas, even though there is an agreement regarding the use of video conferencing in conducting trials in certain situations. The most important thing is to examine witnesses, but the readiness of electronic devices in each institution, the presence of related parties (witnesses) and the presence of defendants are not evenly distributed and adequate (Hamidah, nd).

The implementation of this electronic trial has the potential to cause fraud, so that it interferes with the principle of fair trial, if the infrastructure to support electronic justice is not in accordance with operational standards and also has the potential to reduce the validity of the evidentiary process. In addition, judges, prosecutors, defendants, legal counsel and witnesses are not in the same room (Akbar & Sabri, 2021). The potential for pressure from various parties from the trial process or evidence will be possible.

However, Article 154 of the Criminal Procedure Code states that the defendant must be present at the trial and should not be allowed to be represented at the trial according to the prosecutor's summons, although Article 154 of the Criminal Procedure Code does not clearly explain the presence. The Criminal Procedure Code does not allow the implementation of justice *in absentia* (in absence) during ordinary investigations or brief investigations in terms of Article 154 paragraph (4) of the Criminal Procedure Code (Pangaribuan et al., 2017). The principle of the presence of the defendant has another name, namely *ius singular*. In addition, the principle of the presence of the defendant is related to the basis of the judge's direct and verbal investigation (Hamzah, 2001).

If during the implementation of the online trial, technical problems such as internet network disturbances are encountered, then in terms of the agenda for proving the examination of witnesses and/or experts as well as the statements of the defendant and other evidence, it cannot be carried out optimally or there may even be a misperception. In addition, if the legal counsel is not in a position with the defendant, and the legal adviser does not definitely see whether the witness and the defendant are in a position of pressure/lie. Hence, researchers are interested in conducting this study further about online trials in criminal cases in the Covid-19 pandemic era, especially analyzing the mechanism for applying procedural law and the evidentiary process. From the explanation of the problems above, the purpose of this study is to find out the online trial process during the covid-19 pandemic in Indonesia.

2. IMPLEMENTATION METHOD

The method used in this research is using the normative law method, using the statute approach, which is to examine and analyze laws and regulations related to the topic of discussion. Besides that, case approach was utilized by analyzing cases that have been decided by the court, with this approach we can compare cases related to the narrative issues that will be discussed in this study (Bachtiar, 2019). This research use secondary data by using a literature study or literature review. Sugiyono (2015) stated that a study based on literature is a theoretical study through references related to the situation being studied, whether it is related to values, culture or norms.

Meanwhile, Zed (2004) argues that literature review is data collection carried out by collecting library sources, reading, and taking notes and processing the results from the sources that have been collected. In this study, the author uses a literature review method, which is an attempt to collect various information and data from various sources, such as journal articles, books, magazines, etc. as a source for the study being studied. The technique for analyzing the data that the author uses in this journal is to use the method of analyzing the content of information or data or what we usually know as content analysis. The analysis was carried out to obtain the acquisitions and results from the literature review in accordance with the things being studied. The process are carried out to obtain data is by selecting, comparing, combining, and sorting information, so that the acquisition of data related to the research topic is found.

3. RESULTS AND DISCUSSION

3.1 Definition

The trial etymologically is the meeting of someone who discusses something. The trial court is the implementation of the trial which is carried out in the court building and is open to the public. So that the defendant has the right to be able to present before the court by the public prosecutor based on the order of the next panel of judges to be examined, tried, and seek the right to a defense (Iswantoro, 2020).

According to the Supreme Court regulation article 1 paragraph 4 number 04 of 2020 concerning the implementation of the electronic court room, it is a court trial forum which is carried out virtually and attended by the relevant agencies.

Therefore, based on the description above, according to the author's opinion, the electronic trial is a process of resolving the problems of both parties by using electronic media as a trial room with a mechanism to examine, judge and decide where the trial is to reach a consensus.

3.2 Court Process Through Online Media in Indonesia

A rapid response to the Covid-19 pandemic is required in the trial mechanism. The government must set health protocols in the trial agenda that must be conducted online using electronic information systems where the parties are in their respective locations, with the legal umbrella issued by the Supreme Court No. 1 of 2019 regarding implementation instructions and technical instructions. As a result of the Supreme Court (MA) circular letter No. 1 of 2020, which deals with the present pandemic's regarding the implementation instructions and technical instructions (*juklak juknis*), the electronic version was further enhanced by Circular 3 of 2020. The regulation describes official activities within the judicial apparatus to transfer their official activities to their respective homes or better known as WFH (work from home). The WFH includes trial agendas, case investigations conducted virtually/online.

The decision to conduct a virtual/online trial based on the Attorney General's order number 5 of 2020 regarding policies for implementing duties and handling cases until the pandemic outbreak is under control (Razaq, 2020). Additionally, regarding the agreement between the Supreme Court, the Attorney General's Office of the Republic of Indonesia and the Ministry of Law and Human Rights regarding the conduct of the trial through online media, the agreement aims to achieve good,

optimal, effective, efficient and secure service in the conduct of the trial.

As a follow-up to the MoU conducted a virtual trial in accordance with the results of the decision of the Supreme Court's agreement to issue regulations on the administration of the trial on the basis of Supreme Court (MA) Regulation No.04 of 2020. The regulation regulates the mechanism of the implementation of criminal trials both criminal cases within the general court circle, the military, and *jinayat* online.

According to the author, with a definite source of law, it will make it easier to carry out tasks in accordance with its role and function as a judicial institution for that as a judicial institution that prioritizes aspects of service to the community that are more responsive and effective and efficient so that people get more attention and do not reduce community satisfaction in obtaining legal services. This matter was conveyed by Hasaziduhu that the aspect of legal certainty has a very influential influence on law enforcement of a statutory provision, although in fact this aspect must be balanced with the principles of justice and expediency (Moho, 2019).

Due to the online trial, the following factors must be considered or prepared for:

- a. All participants must be visible on the monitor and audible on the microphone.
- b. The clerk or substitute clerk must arrange the equipment for the implementation of the trial, starting with the trial facilities, the completeness of the elements of the trial and reports to the panel of judges.
- c. During the trial process, the elements of the trial officers wear court uniforms in accordance with the respective provisions that apply in the procedural law.
- d. The documents attached by the prosecution, legal counsel, and the defendant are in the form of softfiles in the Portable Document Format (PDF) format.
- e. Document files are in the form of Portable Document Format (PDF that is attached, then download and confirm the softfile between the read and the downloaded).

Furthermore, for the administrative process of criminal case trials carried out through electronic media as regulated in *PERMA* No. 4 of 2020 concerning Administration and trial of criminal cases in court electronically;

3.2.1 Court Preparation

- a. Before carrying out the trial, the clerk / substitute clerk prepares the ability of the trial participants and reports to the Judge and the Panel of Judge.
- b. When the trial takes place electronically, the defendant and his legal advisor are in the same location as the legal advisor.
- c. In the forum for conducting trials with online media, it is not intended for other people to enter other than the defendant, legal advisors and implementing officers related to the interests of the defendant in accordance with statutory regulations.
- d. The trial forum at the location of the defendant who is conducting the trial must meet electronic equipment that can help run an open and transparent trial.
- e. At the trial, the registrar/substitute clerk records the minutes of the trial from the beginning of the trial until the outcome of the trial decision is released.

According to the author's analysis, in preparation for the trial, it must be ensured, especially for the IT team, which is the main indicator of success in conducting online trials to support infrastructure facilities, so that technical errors does not occur during the trial, therefore the trial preparation mechanism must be fulfilled.

3.2.2 Indictments and Objections

- a. The exception/objection document file is shared with the Judge/panel of Judge in the Portable Document Format (PDF) file format and shared with the prosecutor via the electronic mail link of the court who will conduct the trial before reading and verifying the downloaded trial document file.

- b. When the prosecutor feels an objection to the defendant / exception is sent to the judge / panel of judges, it is arranged in the manner as above.
- c. Under certain conditions, the pronouncement of the court's decision can be read directly in the electronic trial.

According to the author's analysis, the indictment/objection document must be in accordance with the indictment because in the process of submitting and providing evidence as well as the preparation of the text/request letter, must not deviate from the applicable rules and must be based on an indictment as well as in carrying out exceptions and defenses as well as duplicates and legal remedies must not deviate and must always be based on an indictment.

3.2.3 Witness and Expert Investigation

- a. In the process of investigation, witnesses/experts are carried out in the trial room provided by the court electronically.
- b. In urgent conditions, the Judge/Panel of Judge may decide the location of the Witness and/or Expert's investigation as follows;
 - i. The place of the court officer element agency in its legal area;
 - ii. In the examination where the witness/expert is outside the jurisdiction of the court hearing the case, the witness/expert examination shall be conducted at the place where the witness/expert court is located.
 - iii. When the witness/expert is abroad, the witness/expert must obtain approval from the minister of foreign affairs.
 - iv. Other locations are decided by the Judge/Panel of Judge

According to the author's perspective, the examination process should be in a special location that is free from interference or intimidation from various parties, so that the examination is in accordance with operational procedures.

3.2.4 Defendant's Examination

In the examination of the defendant at the trial conducted electronically, the following shall be carried out:

- a. The defendant who is in detention shall have his testimony heard from the place where he is being held, accompanied/unaccompanied by legal counsel;
- b. The defendant who is in detention, but the place where the defendant is detained does not have facilities for an electronic trial, his testimony is heard from the prosecutor's office, or;
- c. If the defendant is not detained, his testimony will be heard in court, prosecutor's office, or other place determined by the Judge/Panel of Judge through an stipulation.

However, if the defendant is not detained, the chairperson/head of the court where the defendant's testimony is heard provides trial facilities electronically and appoints 1 Judge and 1 Registrar/Substitute Registrar without using trial attributes to supervise the examination of the Defendant.

According to the author's analysis, in carrying out the examination, the defendant must obtain trial facilities according to operational procedures, and to get the opportunity to defend and provide information on what the defendant did to the defendant.

3.2.5 Examination of Evidence

In a trial conducted electronically, the evidence to be examined remains at the prosecutor's office. Then the prosecution shows the evidence to the Judge/Panel of Judge electronically.

- a. If the evidence is in the form of a printed document, the Judge/Panel of Judge will match the scanned document in the case file with the original document that is shown by the prosecutor electronically.
- b. If the evidence is not a printed document, then the evidence can be photographed/videoed and

then sent to the Court's e-mail address before being submitted as evidence.

- c. If the Defendant submits mitigating evidence, both in the form of printed and non-printed documents, the evidence shall be treated in the same way as above.
- d. The Judge/Panel of Judge matches the evidence sent with the original electronically.

According to the author's perspective, in conducting an examination of the evidence, the officer concerned must maintain the trust of the trial participants, so that impossible things happen such as sabotage, especially by conducting an electronic trial where the participants are not in the same room and also indications of intervention in favor of someone is very high and must anticipation.

3.2.6 Claims, Defenses, Replies and Duplicates

- a. The criminal charges, defenses, replies and duplicates are read out before the court in accordance with the provisions of the Procedural Law.
- b. When the trial is carried out virtually/electronically, the trial files such as the duplicate and duplicate defense claim files are shared via the court's electronic postal link prior to the submission of the court decision, then after being submitted, they are re-shared via the prosecutor/defendant's electronic postal link and/or or legal counsel.

According to the author opinion, at the stage of reading the demands or defense carried out by the defendant/legal counsel, it does not reduce the right of the defendant in submitting a defense, although there are some people who are not satisfied in submitting a defense during the process of conducting an electronic trial while receiving legal protection and no intervention occurs.

3.2.7 Verdict and Notification of Judgment

- a. The decision is read out by the Judge/Panel of Judges in an open and public trial which is attended by the prosecutor and the defendant/legal counsel, unless otherwise stipulated by the law that applied
- b. In certain situations, according to the decision of the Judge/Panel of Judge, the results of the trial can be submitted electronically.
- c. When the defendant is not present at the time of delivering the results of the decision by the court to the defendant via electronic domicile or electronic mail.
- d. If the defendant does not have an electronic domicile, then the delivery of the decision will be delivered through a decision letter to the address the defendant lives, attaching a copy to the village head or *lurah*. When the whereabouts of the defendant is unknown, the delivery of information related to the court results uses information boards and mass media and prints the court's website.

According to the author, in the process of notification of decisions other than those mentioned above, they must use a certain approach in notification of decisions, so that the treatment after notification of decisions is in accordance with what has been determined.

The trial implementation method as regulated in the explanation above in the online trial is indeed not regulated in the Criminal Procedure Code, but in accordance with the provisions of the procedural law article 64 of the Criminal Code it is stated that the defendant has the right to be tried in general court (Razaq, 2020) when the pandemic conditions are uncertain when it will end with the Supreme Court Regulation Number 4 of 2020 being an alternative in conducting online trials. As for the offline trial, it means that the trial is carried out as usual, that is, all trial participants and the process are in one room when the trial takes place without going through electronic media. Therefore, whenever it is possible to carry out an offline trial, it has been regulated in Article 2 Paragraph (1) of the Supreme Court Regulation as follows: "The trial is carried out in the Court's courtroom in the presence of the Prosecutor and the Defendant accompanied/unaccompanied by a Legal Counsel, unless otherwise determined based on the provisions of the legislation"

If it is not possible to hold an offline trial and in uncertain conditions such as currently still in the Covid-19 pandemic situation, instead the trial can be held via online media/teleconference when starting the initial trial of the case or when the case trial is in progress. With regard to public access to online trials, it is explained in Article 18 of the Supreme Court Regulation "trials are conducted electronically, public spaces to gain access to administrative services or trials are carried out according to the rules of the law".

This trial using online media is indeed a transformation of the judicial system in Indonesia which is more modern and legal reform in Indonesia, especially during the Covid-19 pandemic. Where relevant policies are needed in order to solve stagnant problems in cases due to the spread of Covid-19 if the trial is only carried out offline. Hence, to fulfill the legal rights of the defendant, it is still fulfilled optimally. For example, the principle of fast justice (not long-winded), simple (because it is carried out through electronic media or teleconference), and low costs can really be felt for justice seekers.

This online trial is a form of ultramodern law that emphasizes the basic principles of law, namely the community's need for the law itself, legal certainty, expediency, and justice (Lumbanraja, 2020). Therefore, the implementation of case trials through online media with an uncertain pandemic situation as it is today, with this solution is the right decision and must be maximized by the Supreme Court, if legal institutions do not carry out legal reforms in Indonesia, new problems will arise and a decline will occur in legal services for people who are still dealing with legal problems (Iswantoro, 2020).

By the Supreme Court regulation number 4 of 2020, one of the efforts to be responsible for the community is to obtain legal services that are easily accessible to the public to ensure and create legal certainty, dignified justice for defendants, prosecutors, advocates, and judges and also the costs incurred are simple, effective and efficient in current conditions, so that the community is not hampered in legal services.

However, the application of online trials in criminal cases as part of legal reform must continue to be carried out and developed as a response to the evolving socio-cultural environment without abandoning the principles of other criminal justice systems, such as defendants, witnesses and/or experts being treated according to the rules according the eyes of the law (no discrimination and no intervention). In addition, as stated by Ihwan and Nugraheni (2021), the existence of an online court supervision system is also an important note that can be realized in the form of legal provisions and other supervisory systems.

4. CONCLUSION

With the current state of the Covid-19 pandemic, which alters the pattern of people's lives and forces them to limit their activities, it is essential that a quick response be implemented to address the situation. It is necessary to transform the judicial environment to provide legal services to the community, such as the mechanism of applying event law in the implementation of the trial with online media / teleconference, after which the Supreme Court Regulation No. 4 of 2020 with the regulation of the trial organizers can choose the form of trial in criminal cases, namely online and offline, for offline trials are carried out as in general, namely in one room directly, while for online trials are carried out as in general, namely via online media / teleconference, after which the Supreme In Indonesia, the trial is being held as part of a reform of the country's modern justice system.

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SUPERVISION OF PREDATORY PRICING ON E-COMMERCE TRANSACTIONS IN INDONESIA

Made Lia Indah Sari¹, Dewa Gede Rudy²

¹ Faculty of Law, Universitas Udayana

² Faculty of Law, Universitas Udayana

E-mail: ¹⁾ liaindahsari11@gmail.com, ²⁾ dewarudy1959@gmail.com

Abstract

This study aims to determine the legal arrangements for predatory pricing in e-commerce transactions in Indonesia, as well as to determine the supervision of predatory pricing in e-commerce transactions in Indonesia. The method used in this research is to use a review of the literature study known as the normative legal research method. The approach used is the case approach, the statutory approach and the legal concept approach which aims to provide a legal view of the vacuum of norm issue due to the lack of affordability of regulations that strictly regulate the eradication of predatory pricing in e-commerce transactions. The analysis technique used is descriptive technique. The predatory pricing method is getting more complex with the presence of e-commerce which is classified as part of business actors who run their business subject to the Anti-Monopoly Law. Predatory pricing in Article 20 of the Anti-Monopoly Law focuses on the intention of eliminating competition which should support the nation's economic development, so that it is contrary to the objective of protecting business competition activities. Supervision of predatory pricing action refers to the basis of the regulation contained in the Anti-Monopoly Law, so based on Article 30 and Article 31 of the law, it shows that there is attributive authority to KPPU as an independent institution to supervise and maintain the business competition climate in Indonesia. The KPPU's efforts to supervise predatory pricing in e-commerce transactions can only be carried out when it is clear that the e-commerce with the benefits is carried out in the jurisdiction of the Republic of Indonesia. If predatory pricing occurs, KPPU has the authority to take actions as outlined in Article 36 of the Anti-Monopoly Law.

Keywords: Supervision, Predatory Pricing, E-Commerce

1. INTRODUCTION

As technology advances, it greatly influences many sectors of the economy. It is possible for consumers in their situation to transact freely across many existing platforms because of the innovations that have been introduced (Hanim, 2014). The significance of globalization as the foundation for acceleration in the previous two decades is inseparable from this process, which significantly changed people's behavior through digital-based trade and finance (Nasution, 2009). We Are Social and Hoot Suite revealed data showing that nearly all of Indonesia's social media users prefer to make their purchases online. This can be seen in the fact that the capitalization value of online trade in Indonesia has reached a record high of USD 21 billion, or Rp. 294 trillion, over the past four years (Kompas.com, 2021; We Are Social, 2020).

With the advent of Indonesia's digital market and e-commerce, it's easy to see how modern conveniences such as being able to purchase from virtually anywhere and at any time have influenced people's purchasing habits. To put it simply, electronic commerce is a business model that promotes non-face transactions and uses electronic contracts as a means of engagement between company actors and customers. Mobile phones are the only means by which customers may read the terms and

conditions of their e-commerce purchases. These activities must adhere to valid rules and regulations in order to be considered a legitimate form of negotiating and actual transactions (Anjani & Santoso, 2018). In essence, in short, e-commerce can be understood as a form of electronic-based trade in goods or services, to run an e-commerce requires the principle of business to business or business to customers (Harahap, 2018). The position of the business aspect in e-commerce places business actors to be bound by trade legal arrangements as has been enforced in the area where the trade is taking place. Especially in Indonesia, all trading activities will have the same position as a real form of trade and the regulation is found in Law Number 7 of 2014 concerning Trade. In a form of trade, business actors will also be bound by Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

The predatory pricing problem, also known as market domination by selling at a loss, is linked to the practice of e-commerce that is so free to reap benefits and drawbacks in the community. The products traded are priced at the lowest levels possible, even below the market price that Micro, Small, and Medium Enterprises (MSMEs) can achieve. The market is dominated by a huge number of trading companies, which results in predatory pricing. As a result, this will imply a state of unhealthy business behavior because it results in losses for MSMEs. Predatory pricing can be said to be an activity that is prohibited for business actors by rule of reason which allows the legal assembly to be able to think about competitive factors and determine whether or not the trade is appropriate (Syarif et al., 2021). Business players that have recently placed the lowest prices are frequently found in e-commerce transactions that make spectacular price offers in order to pique the interest of consumers. The presence of a discount supplied in conjunction with a gift away that results in a spectacular price for consumers is said to be a sort of predatory pricing that is forbidden from operating in the country of Indonesia. Predatory pricing has a complex impact because it not only results in losses for small and medium-sized enterprises (SMEs) since they are unable to compete with main competitors, but it also impacts the conditions for healthy business competition and is upheld in the form of a framework for the welfare of society.

The discussion on this legal issue has previously been described by Rezmia Febriani under the title "Impact of Selling and Loss Activities Performed by Business Actors in the Perspective of Business Competition" which describes the impact of predatory pricing activities and relates these impacts to Article 5 and Article 8 of the Anti-Monopoly Law (Febrina, 2017). Meanwhile, in I Dewa Gede Riski Manda and AA Sri Indrawati with the title "Predatory Pricing Practices for Business Actors in the Perspective of Business Competition" which focuses on discussing the legal consequences of business actors who practice selling at a loss based on the Anti-Monopoly Law (Manda & Indrawati, 2013). In the previous 2 (two) study, it can be described that the writing with the title "Supervision of Predatory Pricing on E-Commerce Transactions in Indonesia" which will be reviewed by the author does not have the same focus of discussion in full with previous writing, this is because in this paper the author will describes the weak supervision of predatory pricing practices related to e-commerce in Indonesia. As e-commerce regulations are not fully effective in providing certainty in law enforcement against predatory pricing practices, it is necessary to formulate a regulation that provides greater legal certainty in order to optimize the supervisory function mandated by the KPPU Institution in Indonesia, which is currently being considered.

Business competition activities are monitored by an institution, namely the Business Competition Supervisory Commission (hereinafter referred to as KPPU). The mandate of the legislation attributively places the KPPU over an institution that has the right to control and take action against unfair business competition. However, referring to the definition of a business competition as stated in the Anti-Monopoly Law which regulates business persons only specifically for individuals and business corporations centered in the realm of the Republic of Indonesia law. As a result of these limitations, KPPU is only able to provide limited oversight of online trade practices and predatory pricing practices, which are frequently the result of the global market's influence on e-

commerce companies' ability to cooperate in order to offer prices below the usual sales price. As a consequence, the author is interested in analyzing the legal regulation of e-commerce practices that use predatory pricing and the KPPU's role in monitoring the activities of e-commerce business actors with the title "PREDATORY PRICING SUPERVISION ON E-COMMERCE TRANSACTIONS IN INDONESIA"

2. METHOD

The following study will employ a method known as normative legal research to conduct a review of the literature. There are several approaches used, including the case approach, the legal approach, and the legal concept approach, all of which aim to provide a legal perspective on the norms vacuum created by the inability to afford regulations enforcing the abolition of predatory pricing in e-commerce transactions. Additionally, an analytical method is applied, as well as a descriptive method.

3. RESULTS AND DISCUSSION

3.1 Legal Regulations Against Predatory Pricing on E-Commerce Transactions in Indonesia

In general, predatory pricing from a legal perspective in Indonesia is known as selling at a loss. Predatory pricing is a business plan that is tried by business actors by fixing prices with relatively cheap prices for the goods or services they produce with the aim that the business will be able to foster an economic climate that is most attractive to consumers so that within a certain period of time consumers will look for goods with the cheapest price which will have an impact on the destruction of the healthy competition climate with the characteristics of a weakening of the micro-economy because it is unable to compete for profits if we jointly set the lowest possible price. At first glance, predatory pricing is a profitable thing for consumers, but if it is done regularly for a long time, it will lead to a dominant direction of business actors who dominate the market (Febrina, 2017). If it has involved business actors, then the juridical consequences that will arise are the determination of business actors to comply with the law relating to buying and selling transactions.

Business actors are discussed in Article 1 number 5 of the Anti-Monopoly Law which is stated as follows:

“A business actor is every individual or business entity, whether in the form of a legal corporation or not a legal corporation that is built and domiciled or carries out activities within the legal territory of the Republic of Indonesia, either alone or jointly through agreements, conducting various business activities in the economic field.”

In the formulation of the article, it can be seen that business actors can be individuals or legal entities and simultaneously carry out legal rights and obligations to be able to comply with the regulations contained in the Anti-Monopoly Law. Economic literature and law at large have developed specific benchmarks to determine whether an industry is still carrying out predatory pricing practices or not. The Areeda and Turner literature is one of the most influential literatures. They consider that these benchmarks of practice can be observed when an industry determines prices are below its short-term marginal payout. However, because information on short-term marginal costs is hard to come by, they recommend using AVC (average variable cost) information as a proxy. A logic that forms the basis for this determination is that there has never been an industry that has made a profit when operating in a situation where the price is lower than the marginal cost of a short period of time apart from there is a need or a plan or action (Febrina, 2017).

The basis for the formation of the Anti-Monopoly Law, namely moving on to the economic upheaval in 1997 to 1998 which opened up great opportunities for unhealthy trade practices, namely the control of one or several trademarks or companies that took over the market climate. In the formulation of Article 1 number 5 of the Anti-Monopoly Law, there is an agreement clause. Based

on the Anti-Monopoly Law, the basis of the agreement is the binding rules which involve the rights and obligations of the parties. The juridical consequence of this bond is that there is a form of supervision from the practice of violating the agreement that has been agreed upon. Indonesia has the KPPU institution which is authorized to supervise the pace of business competition to maintain a healthy competition climate for the parties.

Business actors who will be bound by an agreement to run their business must also understand the prohibitions of the Anti-Monopoly Law, one of which is also discussed in Article 20 which explains thus:

“Business actors are prohibited from supplying goods and/or services by means of selling at a loss or setting very low prices with the intention of getting rid of or shutting down the businesses of their competitors in the relevant market so as to result in monopolistic practices and/or unfair business competition.”

In accordance with Article 20 of the Anti-Monopoly Law, it prohibits business actors from supplying goods and or services by selling at a loss and fixing very low prices, as with the aim of eliminating or shutting down the businesses of their competitors in the involved market, thereby triggering monopolistic practices and unfair business competition (Febrina, 2017). Selling at loss is intended for the following purposes:

1. Shutting down the other business actors
2. Limiting competitors' movement due to very below-average pricing
3. Obtain the biggest profit because the demand for consumers is guaranteed to increase
4. Is a form of promotional strategy to introduce products and e-commerce places to shop.

In Article 20 of the Anti-Monopoly Law, the prohibited form of predatory pricing is to shut down the other business actors. A business actor can be considered to carry out the supply of goods and or services using a method of fixing a relatively cheap price if the declared value is much cheaper than the price set by other business actors. Therefore, this matter must be tried horizontal comparison. A business actor who supplies goods and or services at a relatively low price can be suspected of having the intention to eliminate or disable the business of his competitors in the relevant market, if at the specified price the level of profit to be obtained is relatively cheap from a valid interest rate.

In a market of perfect competition, the valid price level in the market is determined by the demand and request for goods or services, as well as the price created will lie on the balance between the amount of consumer demand and the quantity negotiated by producers. However, often in the market for special goods or services, there are business actors who set prices (price setters or price leaders) which are usually developing business players using the lowest cost system. That is why to see the purpose of business actors who determine prices very cheaply, it is also necessary to study the ratio of the creation of these business actors. The higher the ratio for the creation of a business actor, the longer it will be possible to keep the creation price that must be borne by the relevant business actor as low as possible. In order for it to be as low as the amount of pricing that may be offered in the involved market, creation fees must remain as low as possible. In connection with this ratio of creation, so that a business actor who supplies goods and or services at a very low price, cannot be said to intend to eliminate or kill the business of its competitors, if the business actor has a high ratio scale. Predatory pricing in fact often occurs in business actors who have a position of influence. It has been recognized in Article 25 of the Anti-Monopoly Law that:

1. One business actor or a group of business actors controls 50% (fifty percent) or more of the market share of a certain type of goods or services; or
2. Two or three business actors or groups of business actors control 75% (seventy five percent) or more of the market share of a certain type of goods or services

So, basically, the Anti-Monopoly Law recognizes the existence of predatory pricing and recognizes that dominant position will provide easy space for business actors to lower prices as low as possible. However, with regard to e-commerce, the regulation of the Anti-Monopoly Law to reach

e-commerce is very weak. This is evidenced by the meaning of e-commerce as part of business actors which is not clearly stated in Article 1 number 5 of the Anti-Monopoly Law. E-commerce which is able to cross national borders with its extraterritorial nature, therefore, until the enforcement of the provisions on Indonesian business competition cannot be carried out for foreign business actors who carry out anti-competition outside the Indonesian national territory, even though these activities have an impact on the Indonesian economy, more precisely, if it continues to emerge that foreign e-commerce businesses that carry out anti-competition activities outside the Indonesian national region cause consequences for the Indonesian economy's market and provisions, its legal defense will be harmed due to the absence of the externality principle in the Anti-Monopoly Law.

Looking at the reality of today, different digital platforms that allow online shopping or e-commerce transactions have emerged. The existence of e-commerce in Indonesia such as Shopee, Tokopedia, JD.Id, Lazada and others often offer large discounts or in other languages commonly called "low prices" which has the potential to provide room for predatory pricing. This further strengthens the disclosure of predatory pricing indications because these shopping transactions are not only produced domestically, but also abroad. Pricing for existing discounts does not have clear legal rules, so that at a certain time the setting of discounts will easily dominate the market and potentially lead to predatory pricing that will overwhelm MSMEs (Anjani & Santoso, 2018).

3.2 Supervision of Business Competition Against Predatory Pricing Actions on E-Commerce Transactions in Indonesia

The increasingly rapid development of e-commerce provides broad opportunities for equalization of existing regulations to be able to reach supervision of transactions in e-commerce (Simbolon, 2013). In the previous discussion, the position of e-commerce as a legal entity is part of business actors. A business actor can be claimed to supply goods and/or services using the trick of determining a relatively cheap price if the specified price is very cheap to use the price determined from several other business persons, therefore this must be carried out in a horizontal comparison (Susanto, 2000). In the ideal competition concept market, the price level that occurs in the market is determined by the demand and supply of goods or services, i.e. the price created will lie between the balance between the number of consumer requests and the number of producer offers. However, often in the market for goods or exclusive services, there are business actors who determine price (price setters or price leaders) which are usually developing business actors with the lowest cost pattern. Therefore, to see the intention of business actors who determine prices relatively cheaply, it is also necessary to examine the pattern of creation of related business actors.

The pattern of creating a business actor will continue to be large, and it will continue to be cheap for the creation fee that must be borne by the related business actor. The above actions are part of the supervision authorized by KPPU. In the state administration system, the institution is included in the state auxiliary organ which is part of a complementary institution. KPPU is independent, namely non-intervention and stands alone specifically to enforce business competition law. As stated in the general explanation of the Anti-Monopoly Law, that:

“In order for the implementation of this law and its implementing regulations to be effective in accordance with its principles and objectives, it is necessary to establish a Business Competition Supervisory Commission (KPPU), which is an independent institution that is independent from the influence of the government and other parties, which is authorized to supervise business competition and impose sanctions. The sanctions are in the form of administrative actions, while criminal sanctions are the authority of the court.”

Based on the description, KPPU is attributively given the authority to supervise and impose sanctions. Supervision is contained in Article 35 letters b and c which state:

- b. Carry out an assessment of business activities and or actions of business actors that can lead to the formation of domination practices and or unfair business competition as regulated in Article 17 to Article 24;
- c. Carry out evaluations on whether or not there is abuse of dominant position which can lead to the formation of domination practices and or unfair business competition as regulated in Articles 25 to 28;

If it is related to predatory pricing in e-commerce transactions, then predatory pricing actions are discussed in Article 20 of the Anti-Monopoly Law, but in relation to KPPU's supervision of e-commerce, it has not received firm legal certainty, although basically KPPU has the authority to supervise all aspects related to e-commerce with business competition, but when it comes to digital trade, there are extraterritorial limitations that require special regulations because of their complexity (Fadhilah, 2019).

The practice of the cheapest discount rates by e-commerce, restrictions need to be made by taking into account the criteria of predatory pricing. This is important to be further regulated because there are no provisions relating to uniformity of discount prices that occur on a large scale in e-commerce transactions. KPPU has the role of supervising the agreements that are formed so that they do not enter into agreements or prohibited actions. Therefore, to determine this matter, there are 2 (two) approaches used at KPPU, namely the rule of reason and per se illegal. Both principles are applied to business competition law to take into account that an action or agreement made by business actors is in accordance with or exceeds the limits of the business competition law. On the principle of per se illegal which reports that, each selected agreement or business activity is called illegal minus further justification for the consequences resulting from the agreement or business activity. On the other hand, the rule of reason principle is tried through the business competition authority agency approach to make an evaluation of the consequences of certain agreements or business activities to determine whether an agreement or activity has the character of limiting or urging competition (Fadhilah, 2019).

The Anti-Monopoly Law's requirements for business actors are still restricted to those who conduct business activities inside Indonesia's jurisdiction. KPPU is unable to take action against business players who engage in business activities outside of Indonesia's legal system (Zihaningrum, 2016).

Therefore, it is necessary to have a comprehensive regulation on business persons, so that KPPU has the duty to exercise control over not only business actors carrying out activities in Indonesia, but also business actors located outside the country, but whose business activities have an impact on business transactions within the country. KPPU's efforts in supervising predatory pricing on e-commerce transactions can only be carried out when it is clear that the e-commerce with the profits made is carried out in the jurisdiction of the Republic of Indonesia. In the event of predatory pricing, KPPU is authorized to take the following actions:

1. Receipt of reports from the public
2. Further research on allegations reported or known directly by KPPU
3. Carry out investigations and/or investigations against allegations
4. Formulate the results of investigations
5. Make calls to related parties.

4. CONCLUSION

Predatory pricing is specifically regulated in the Anti-Monopoly Law, which regulates the qualifications of business actors, namely individuals or legal entities acting and/or domiciled in the Republic of Indonesia's legal area, while predatory pricing is regulated as a prohibited act that alters the business competition climate to one that is unhealthy as a result of significant market dominance. The predatory pricing strategy has become more difficult as a result of the emergence of e-commerce,

which is classified as a business actor subject to the Anti-Monopoly Law. Predatory pricing, as defined in Article 20 of the Anti-Monopoly Law, is influenced by the ability to eliminate competition that would otherwise benefit the nation's economic development, and so runs counter to the goal of protecting business competing activities.

Supervision of predatory pricing acts refers to the basis of the regulation contained in the Anti-Monopoly Law, then based on Article 30 and Article 31 of the law, it shows that the KPPU has attributive authority as an independent institution to monitor and maintain the business competition climate in Indonesia. KPPU's efforts in supervising predatory pricing on e-commerce transactions can only be carried out when it is clear that the e-commerce with the profits made is carried out in the jurisdiction of the Republic of Indonesia. In the event of predatory pricing, KPPU has the authority to take action as stated in Article 36 of the Anti-Monopoly Law.

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Nomor: 16/KPPU-L/2014 tentang Dugaan Pelanggaran dalam Pengadaan Sarana Peningkatan Mutu Pendidikan di SD/SDLB di Dinas Pendidikan Kabupaten Probolinggo).

JURIDICAL ANALYSIS OF FINANCING CONTRACTS
POST CONVERSION OF BANK NTB INTO BANK NTB SHARIAH

Yeni Idayana Attoyibah^{1*}, Hirsanuddin², Djumardin³

¹ Master of Notary, Faculty of Law, University of Mataram, Indonesia

^{2,3} Lecturer at Faculty of Law, University of Mataram, Indonesia

E-mail: ¹⁾ Yeni.danamon03@gmail.com

Abstract

Islamic banking shows great potential, this is indicated by the large number of conventional banks converting to sharia-based banks. The conversion of conventional commercial banks to Islamic commercial banks has its own terms and procedures because it has quite basic differences, especially in the characteristics between interest calculation and profit sharing. Likewise, regarding the legal consequences that arise after conventional commercial banks are converted into Islamic commercial banks, of course, they also have their own characteristics. This research aims to find out how legal certainty over the Post-Conversion Financing Contract of NTB Bank into Bank NTB Syariah. This type of research is normative juridical research. This research uses a statute approach. Sources of Legal Materials used are primary, secondary, and tertiary legal materials. The collection of legal materials is carried out by methods of documentation studies and literature studies. The material is analyzed descriptively. The agreement in the financing contract at Islamic banking system is identical to the agreement in the credit contract at conventional banks, because the agreement's concept still refers to the Civil Code's Book III on General Engagements. According to Article 1233 of the Civil Code, an engagement occurs as a result of an agreement or by legislation. However, it should be noted that while financing Islamic banks, they must adhere to the Islamic economic rules that govern all banking activities.

Keywords: Financing Contract, Conventional Bank, Syariah Bank, Bank Conversion

1. INTRODUCTION

Law No. 10 of 1998 on banking regulates in detail the legal framework, as well as the sorts of operations that Islamic banks may operate and implement. The law directs conventional banks to convert to the sharia system by opening sharia branches and fully converting them. The conventional banking community immediately embraced this chance (Ali, 2008).

A considerable number of conventional banks have converted to sharia-based banks as a sign that Islamic banking has great potential. Islamic and conventional financial institutions are both responsible for collecting funds from the public and distributing them to the community. Conventional institutions often refer to this as finance or credit.

One of the banks that was converted from a conventional commercial bank to a sharia bank is the Bank Pembangunan Daerah Nusa Tenggara Barat. Bank Pembangunan Daerah Nusa Tenggara Barat (Bank NTB Syariah) is a bank owned by the Provincial Government of West Nusa Tenggara together with the City/Regency Governments throughout West Nusa Tenggara. In accordance with the decision of the General Meeting of Shareholders on June 13, 2016 which approved PT Bank NTB Syariah to carry out the conversion of Bank NTB Syariah, it gave new hope for strengthening a just people's economy in West Nusa Tenggara. In accordance with the decision, the Bank's conversion

process must be carried out through a comprehensive study and in accordance with applicable regulations. Bank NTB officially operated as a Sharia Commercial Bank on September 24, 2018.

The process of converting conventional banks to Islamic banks is technically not found in Law Number 10 of 1998 concerning Banking. Provisions regarding technical conversion are found in Bank Indonesia Regulation Number 8/3/PBI/2006 which essentially states that a bank can only change its business activities into a bank that carries out business activities based on Sharia principles with the permission of the Governor of Bank Indonesia (Saliman, 2011).

The existence of the process of acquisition and conversion of the bank in general must pay attention to and heed Law No. 40 of 2007 concerning Limited Liability Companies (*PT*) and their implementation regulations, as well as special provisions in the laws and regulations in the banking sector.

Because of the fundamental differences between interest calculation and profit sharing, the conversion of conventional commercial banks to Islamic commercial banks has its own rules and procedures. Consequently, the legal ramifications that arise when conventional commercial banks are converted to Islamic commercial banks have their own set of features. Furthermore, it concerns the two commercial banks' positions in Indonesia's banking system, as well as Bank Indonesia's policies in developing banking activities, particularly their contribution to the conversion process, because conversion of conventional banks to Islamic banks can currently be used as an alternative choice for banks seeking to transition from conventional to sharia operational systems (Rahmawati & Putriana, 2020).

The main activity of banking institutions, both conventional and Islamic bank is to collect funds and distribute the funds in the form of credit or financing to the public (Indonesian Bankers Association, 2014). The term credit is used in the conventional banking system based on interest (interest based), while in Islamic banking law it is better known as financing based on the desired real profit (margin) or profit sharing (Ghofur, 2007).

The concept of Islamic banking is based on the principle of interest prohibition (interest-free) and the concept of profit sharing as a substitute. According to Islamic philosophers, the foundation of interest is forbidden since it might lead to inequity in the community's economic environment. Islamic banking, on the other hand, is founded on the principles of collaboration based on equality, justice, honesty (transparency), and halal profit. In addition, macro's objective is to carry out the *tarbiyah* (community financial administration) process, as well as to promote healthy competition, revive zakat institutions, and develop *ukhuwah* (networking) with other Islamic financial institutions both at domestically and abroad (Sari, 2015).

In addition, financing in Islamic banking is not absolutely the same as debt/credit. In conventional banking, the absolute provision of funds is debt/credit. Meanwhile, in Islamic banking, the provision of funds is not absolute debt/credit, but it must first be seen in the form of contracts in Islamic banking itself. In sharia banking, there is no known credit agreement, but it is known as financing as referred to in Article 1 Number 25 of Law Number 21 of 2008 concerning Sharia Banking (hereinafter referred to as UUPS) and collateral can be provided for such financing. In the provisions of Article 1 Number 25 of the UUPS it is stated that: "Collateral is an additional guarantee, both in the form of movable and immovable objects submitted by the owner of the collateral to the Sharia Bank and/or UUS, in order to guarantee the settlement of the obligations of the Customer Recipient of the Facility."

There are no interest rates in Islamic banking, but rather a profit-sharing structure. According to the majority of Islamic academics, interest is forbidden in Islam, and this is a fundamental part of Islamic banking's foundational legislation, which prohibits the use of the term "interest."

Contract (*Akad*) becomes something important in every transaction, including contracts/transactions in sharia business. In order for a contract to have legal force, the sharia financing contract is expected to pay attention to the pillars and conditions for the validity of the

contract as determined by Islamic law. The clauses contained in each sharia contract article can be seen if the legal construction is in accordance with or not in accordance with sharia contract law.

The contracts that are most often encountered in practice in Islamic banking include *musyarakah*, *mudharabah* and *murabahah* contracts (Mujahidin, 2016). The contracts offered by Islamic banking are not the same as debt/credit. *Musyarakah* is a cooperation agreement between two or more parties for a particular business in which each party provides a portion of the funds provided that the profits will be divided according to the agreement, while the losses are borne in accordance with the respective portion of the funds (Elucidation of Article 19 paragraph (1) letter c of the Sharia Banking Law). Meanwhile, *Mudharabah* is a business cooperation contract between the first party (malik, *shahibul mal*, or sharia bank) who provides all the capital and the second party (*'amil*, *mudharib*, or customer) who acts as the fund manager by dividing the business profits in accordance with the agreement stated in the contract, while the loss is fully borne by the Islamic bank unless the second party commits an intentional mistake, is negligent or violates the agreement (Mardani, 2014).

Based on this background, this research was conducted with the aim of finding out how the legal certainty of the Post-Conversion Financing Agreement of Bank NTB to Bank NTB Shariah.

2. THEORITICAL FRAMEWORK

2.1. Islamic Banking Concept

According to Law no. 21 of 2008 concerning Islamic Banking, Sharia Banks are banks that carry out business activities based on sharia principles, or Islamic legal principles regulated in the fatwa of the Indonesian Ulema Council such as the principles of justice and balance (*'adl wa tawazun*), benefit (*maslahah*), universalism (*alamiyah*), and does not contain *gharar*, *maysir*, usury, injustice and unlawful objects. In addition, the Sharia Banking Law also mandates Islamic banks to carry out social functions by carrying out functions such as baitul mal institutions, namely receiving funds from zakat, infaq, alms, grants, or other social funds and distribute it to the waqf manager (*nazhir*) according to the will of the waqf giver (*wakif*) (Andrianto & Firmansyah, 2019).

Islamic banks have an operational system that is different from conventional banks. Islamic banks provide interest-free services to their customers. In the operational system of Islamic banks, interest withdrawals are prohibited in all forms of transactions. Islamic banks do not recognize the interest system, whether it is interest earned from customers who borrow money or interest paid to depositors of funds in Islamic banks (Andrianto & Firmansyah, 2019). The interest system applied to banks is considered to contain usury (*riba*).

Islamic banking aims to support the implementation of national development in order to improve justice, togetherness, and equitable distribution of people's welfare. Islamic banks have three main functions, namely the function of Islamic banks to collect funds from the public in the form of deposits and investments, the function of Islamic banks to channel funds to people who need funds from banks, and also the function of Islamic banks to provide services in the form of Islamic banking services (Andrianto & Firmansyah, 2019).

In carrying out its operational activities, Islamic banking has basic principles that must be adhered to. This is because Islamic banking in carrying out its sharia activities must be carried out by several elements that are bound by basic principles. These elements include elements of conformity with Islamic sharia and elements of legality of operations as a financial institution. These principles have become a strong foundation for Islamic banking managers. The basic principles in Islamic banking are the prohibition of transactions containing goods or services that are prohibited and the prohibition of transactions that are forbidden by the system and procedures for obtaining profits (Andrianto & Firmansyah, 2019).

2.2. Contract (*Akad*) Theory

The term contract in Indonesian law is called "*akad*" in Islamic law. The word contract comes from *al-'aqdu*, which means binding, connecting or connecting. As according to the etymology of *Wahbah al-Zuhaili*, the contract means "a bond between two things, both real and meaningful, from one side or two sides" (Anwar, 2010). Meanwhile, as a term of Islamic law, the definition given for the contract is the meeting of consent and *qabul* as a statement of the will of two or more parties to give birth to a legal consequence on the object.

In Islamic banks, financing contracts consist of *murabahah* contracts, *mudharabah* contracts, *musyarakah* contracts, *salam* contracts, *istishna* contracts, *ijarah* contracts and *qardh* contracts (Andrianto & Firmansyah, 2019).

1) *Murabahah* contract

Murabahah financing is financing in the form of a sale and purchase transaction of goods at the cost of the goods plus a profit margin as agreed by the parties (seller and buyer). The profit margin is expressed in the form of nominal rupiah or a percentage of the purchase price. Financing under a *murabahah* agreement includes home ownership financing, motor vehicle financing, working capital financing, investment financing and multipurpose financing.

2) *Mudharabah* contract

Mudharabah contract is an investment-based transaction contract or investment in one particular business activity. The bank and the customer agree to cooperate in a business/project where the bank provides funds/capital, while the customer provides the expertise/skills to work on the project. If in *murabahah* financing the bank acts as a seller, in a *mudharabah* contract the bank acts as an investor or owner of funds (*shahibul maal*). The customer who receives the financing acts as the fund manager (*mudharib*). *Mudharabah* contract financing is financing in the form of investment transactions from banks to customers as fund managers to carry out a business activity with the distribution of operating results determined based on a predetermined ratio or profit sharing. The business activity in question must be a sharia-compliant business activity. Examples of *mudharabah* financing include: working capital financing, investment financing.

3) *Musharaka* contract

Musharaka financing is almost the same as *mudharabah* financing, namely profit-sharing based financing. In *musyarakah* financing, the bank and the customer cooperate in a business/project where the bank provides capital/funds, while the customer provides the expertise/skills and capital to work on the project. So customers are not only managers, but also investors. The definition of a *musyarakah* financing contract is an investment transaction from a bank to a customer as a fund manager to carry out an activity/project with the distribution of operating results determined based on a pre-agreed ratio or profit sharing portion. Examples of financing with a *musharaka* contract include: working capital financing, investment financing and syndicated financing.

4) *Salam* contract

Salam contract is a transactional contract based on buying and selling similar to *murabahah* financing. The difference lies in the delivery of goods that are the object of the transaction. If in *murabahah* the goods are delivered at the beginning, in the case of financing the goods which are the object of the transaction are later. *Salam* contract financing is the financing of buying and selling goods in the form of ordering goods/commodities with payment and delivery according to the agreement, namely payment at the beginning and delivery some in later. *Salam* contract financing occurs mostly in agricultural/agricultural commodities. Examples of *salam* financing include financing for working capital for agriculture/plantation/livestock, financing for capital goods investment, financing for consumer goods industries, and others.

5) *Istishna* contract

The *Istishna* contract is almost the same as the *salam* contract, namely a sale and purchase transaction whose payment is made at the beginning, and the delivery of the goods that are the object

of the transaction is left behind. The difference lies only in the object of the goods being transacted. If in a *salam* contract the object of financing is generally in the form of commodity goods/products, earth, in an *istishna* contract generally in the form of manufactured goods or physical goods with certain specifications. So, financing with an *Istishna* contract is bank financing with a sale and purchase transaction contract of goods in the form of an order for the manufacture of goods with certain agreed criteria and conditions with payment in advance and delivery behind.

6) *Ijarah contract*

Ijarah contract is a transaction agreement for the use of usufructuary rights without any transfer of ownership. *Ijarah* contract financing is bank financing to customers for leasing transactions of goods or services to obtain compensation for the leased object used by the customer. Examples of financing with an *ijarah* contract: working capital financing, multipurpose financing of goods benefits, multi-service financing, such as education costs, health costs, tourism and others; sharia financing card, personal financing.

7) *Qardh contract*

Qardh transactions are borrowing and borrowing funds. There are similarities between this contract transaction and conventional bank financing, namely that there is a transaction of a person/party borrowing from another person/party. The difference lies in the absence of compensation in the form of additional / interest charged on the principal of the loan.

2.3. Financing

Financing in sharia banking or in technical terms productive assets, according to Bank Indonesia regulations, is investment in Islamic Bank funds both in rupiah and foreign currencies in the form of financing, receivables, *qards*, sharia securities, placements, equity participation, temporary equity participation, commitments and contingencies in administrative accounts and Bank Indonesia *wadiah* certificates (Muhammad, 2014).

According to Law no. 7 of 1992 concerning banking as amended into Law no. 10 of 1998 concerning Banking in Article 1 Numbers 12 and 13, which reads:

"Financing based on sharia principles is the provision of money or equivalent claims based on an agreement or agreement between the bank and another party that requires the party being financed to return the money or claim after a certain period of time with compensation or profit sharing. sharia principles are the rules of agreements based on Islamic law between banks and other parties for depositing funds and or financing business activities, or other activities stated in sharia, including financing based on the principle of profit sharing (*mudharabah*), financing based on the principle of equity participation (*musyarakah*), the principle of buying and selling goods by obtaining profit (*murabahah*) or financing of capital goods based on the principle of pure lease without choice (*ijarah*), or with the option of transferring ownership of goods rented from the bank by another party."

2.4. Conversion of Conventional Banks to Islamic Banks

Conversion is the change of a business entity from one system to another. The conversion of a conventional bank to an Islamic bank is a form of conversion. In POJK No. 16/2016, conventional banks are allowed to change their business activities to become Islamic banks, but Islamic banks are prohibited from converting to conventional banks.

Changes from conventional banks to Islamic banks in practice can be done in several ways, including the following:

- 1) Takeover (Acquisition)

Acquisition is a legal institution which in the context of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) is known as takeover, which is a legal act carried out by a legal entity or individual to take over the shares of the company which results in the transfer of control over the company.

2) Conversion Change

Conversion is a change from one system to another, the conversion of a conventional bank to a sharia bank by conversion results in a complete change. Therefore, all assets in Conventional Banks are converted into Islamic Bank assets (Rasyid, 2017). According to the Financial Services Authority Regulation article 4 paragraph 1 number 36/POJK.03/2016, changes in the business activities of a Conventional Bank to a Sharia Bank can only be carried out with a permit from the Financial Services Authority.

3) Sharia Business Unit

The definition of a Sharia Business Unit is contained in Article 1 number 10 of the Sharia Banking Law, namely a work unit from the head office of a conventional commercial bank that functions as the main office of an office or unit that carries out business activities based on sharia principles, or a work unit at a branch office of a bank that domiciled abroad that carries out conventional business activities that function as the main office of the sharia sub-branch office and/or sharia unit.

4) Spin-off

The spin-off is a new institution regulated in Law Number 40 of 2007 concerning Limited Liability Companies (Limited Company Law) and Sharia Banking Law. In the Limited Liability Company Law, separation is defined as a legal act carried out by a company to separate its business which results in the legal transfer of all assets and liabilities of the company to one or more companies or part of the company's assets and liabilities are transferred by law to one or more companies (Article 1 number 12 of Law Number 40 of 2007 concerning Limited Liability Companies). In the context of a bank, this spin-off institution is defined as the separation of business from one bank into two or more business entities, in accordance with the provisions of the legislation (Article 1 number 32 of Law Number 21 of 2008 concerning Islamic Banking).

3. METHOD

This type of research is normative juridical research or known as doctrinal legal research, namely research based on existing legal rules. This research uses a statutory approach. The statutory approach is carried out by reviewing and analyzing all laws and regulations related to the legal issue being investigated.

The types and sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The collection of legal materials is carried out by means of documentation studies and literature studies. This research uses descriptive analysis.

4. RESULTS AND DISCUSSION

4.1. Legal certainty regarding the rights and obligations of the parties after the conversion of conventional banks to Islamic Banks

Legal certainty is inextricably linked to the existence of the parties to an agreement in a conventional banking system or to a contract in a sharia-based banking system. Conversion of conventional banks to Islamic banks affects the uncertainty regarding the parties' rights and obligations. The bank and the customer are the parties in this case. A contract governs the legal relationship between the consumer and the bank. As a result, it is entirely reasonable that the interests of the customer involved receive legal certainty, similar to the certainty provided to banks by law.

According to Law Number 10 of 1998, Article 1 states that customers are parties who use bank services, including depositors and debtor customers. Depositing customers are customers who place

their funds in a bank in the form of deposits based on the bank's agreement with the customer concerned. Meanwhile, debtor customers are customers who obtain credit or financing facilities based on Sharia Principles or equivalent based on the bank's agreement with the customer concerned.

In principle, the provisions regarding the rights and obligations of partners or customers of Islamic banks are no different from debtors in conventional banks. Everything is regulated by the Financial Services Authority as the institution in charge of supervising the activities of the financial services sector. However, what needs to be emphasized in financing in Islamic banks is the existence of Islamic economic principles that underlie all activities in the banking world.

Financial Services Authority Regulation Number 1 concerning Consumer Protection in the Financial Services Sector. This provision issued by the OJK (Financial Service Authority) regulates at least 5 principles or rights that must be obtained by every FSI consumer, namely the right to obtain transparent information, the right to get fair treatment, the right to get reliable service, the right to protection of confidentiality and data security, and the right to file a complaint if there is an issue.

In Article 4 of Law Number 8 of 1999 concerning Consumer Protection it is also explained that the rights of financing customers are: (1) the right to receive documents as collateral as long as the credit agreement is paid off, (2) the right to choose and obtain goods and/or services in accordance with the exchange rate and the conditions and guarantees promised by consumers, (3) The right to comfort, security, and safety in using the goods and/or services, (4) The right to correct, clear information regarding the conditions and guarantees of the goods and/or services. services, (5) The right to get advocacy, protection and efforts to settle consumer protection disputes properly, (6) and others.

While the partner's obligation is to pay installments in an orderly manner every month until the period ends and fulfill all administrative requirements. In *murabahah* financing, partners are usually required to submit guarantees for financing facilities provided by Islamic banks. If it is a house that is being financed, the partner must submit a Certificate of Ownership (SHM) of the dwelling as proof of the seriousness of the partner in fulfilling his obligations. If it is a car that is being financed, then the partner is required to submit the Motor Vehicle Ownership Book (BPKB) of the vehicle.

Apart from the bank, partners should also understand the Islamic values underlying the financing practices at the bank. The reason that distinguishes financing in conventional and Islamic banks is the final estuary. The conventional banking system emphasizes solely on profit orientation, while the Islamic banking system emphasizes two aspects, namely world orientation and hereafter orientation. Thus, it will be very easy to implement a truly sharia Islamic bank if all the subject components are related to *murabahah* financing.

For the bank as the provider of financing facilities, as regulated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, it explains the rights and obligations of banks, namely: (1) receiving installment payments that run in an orderly manner every month until with the completion of the credit deadline, (2) receiving or storing collateral for credit guarantees, (3) obtaining provisions for services provided to consumers (customers).

Whereas in Article 1131 of the Civil Code there is a general principle of the rights of a creditor, namely the creditor's right to the debtor to regulate all the objects of the debtor (the debtor), both movable and immovable objects. The obligations of the Bank are: (1) providing financing, (2) submitting documents when the credit is paid off, (3) returning collateral when the credit is paid off, (4) providing convenience for consumers to be able to own and carry out the contents of the credit agreement.

Referring to Law 21/2008, Law Number 8 of 1999 concerning Consumer Protection ("Consumer Protection Law"), and Regulation of the Financial Services Authority Number 1/POJK.07/2013 of 2013 concerning Consumer Protection in the Financial Services Sector ("POJK 1 /2013"), basically there is no provision that explicitly requires FSBs (Financial Services Business

Actors), both those conducting conventional and sharia business activities, to provide a copy of the agreement or contract to customers.

However, there are a number of obligations of business actors in the Consumer Protection Law that need to be considered. One of them is the right of consumers to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services. On the other hand, these things have also become the obligations of business actors, in addition to the obligation to provide explanations on the use, repair and maintenance of goods/services.

In POJK 1/2013 it is stated that the FSB is required to provide and/or convey information about products and/or services that are accurate, honest, clear, and not misleading as set out in documents or other means that can be used as evidence. This information must be conveyed when providing an explanation to consumers regarding rights and obligations, when making agreements with consumers, and published when delivered through various media, including through advertisements in print or electronic media.

In addition, before the consumer signs the product and/or service document and/or agreement, the FSB must submit a document containing the terms and conditions of the product and/or service to the consumer, which at least contains: a) details of costs, benefits, and risks; and b) procedures for service and settlement of complaints at the PUJK.

Therefore, based on the explanation above, although basically there is no obligation to provide a copy of the contract to customers in general, the FSB has an obligation to provide accurate, honest, clear, and not misleading information regarding its products and/or services which must be stated in the document or other means that can be used as evidence.

In the process of providing financing, the Bank (*shahibuul maal*) and the customer (*mudharib*) jointly make an agreement to carry out a certain business activity which is then stated in the contract. Upon granting the agreement, the parties have rights and obligations for what must be fulfilled and must not be violated. In addition, due to the nature of cooperation, in its implementation the profits are shared, the ratio is mutually agreed upon, and the losses are fully borne by the *shahibuul maal* unless the *mudharib* commits a mistake, negligence or intentional mistake.

The customer is declared in default when the financing is due, because the SPK employer has unilaterally terminated the contract, resulting in the customer's ability to pay for achievements to the Bank. The creation of legal protection for the parties who have carried out the agreement is an example of the realization of legal certainty.

In the theory of legal protection, there are two types of legal protection, namely preventive and repressive legal protection. In the process of providing such financing, Islamic banks are required to refer to the provisions of the UUPS and general banking principles. As stated in Article 35 paragraph (1) UUPS, Islamic banks and UUS in carrying out their business activities are required to apply the precautionary principle. The precautionary principle referred to in accordance with sharia principles is to fulfill the principles of justice (*'adl*), balance (*tawazun*), benefit (*maslahah*) and universalism (*alamiyah*). Article 36 of the UUPS also states that in channeling financing and carrying out other business activities, Islamic Banks and UUS are required to take methods that are not detrimental to the Sharia Bank and/or UUS and the interests of the customers who entrust them.

Banks need to conduct financing analysis in accordance with the 5C principles, namely Character, Capital, Capacity, Collateral and Condition of economic. In the case of providing financing, such as using a *mudharabah* contract, a bank officer must understand the basic introduction of the customer's character, whether the prospective customer is eligible for financing. If the precautionary principle has been implemented and the Bank approves the financing of the prospective customer, the application can be continued with the contract process. Bank NTB Shariah has implemented the 5C principle before approving the financing application to prospective customers, so that the Bank believes that the financing disbursed is truly in accordance with the benefits and provides a proportional profit sharing.

However, because the customer failed to pay, especially the financing object in the form of an SPK, the contract was terminated and resulted in a loss event. Banks need legal protection, whether given by law or born because of the engagement itself, as stated in Article 1338 paragraph (1) of the Civil Code, all agreements made legally apply as law for those who make them. This means that an agreement is born, it can be said as law for the parties who make it. From a legal point of view, the relationship between the Bank and the customer is contractual or an agreement and a relationship of trust (Nopriansyah, 2019). In an agreement that is equated with contract in Islamic law it is defined as "the relationship between *ijab* and *qabul* (*Ijab* means proposal and *Qabul* means acceptance in presence of proper witnesses) in accordance with the will of the Shari'a which stipulates the existence of a legal influence (effect) on the object of the engagement".

Because the contract has a legal effect on the impact of the implementation of the agreement, the contract can be equated as law for the parties who make it. Back to the problem, if the Bank suffers a loss when the customer defaults, the Bank will collect payments to the customer and approach the customer. If the customer after taking these actions cannot produce results, the Bank will take repressive actions.

Whereas in repressive legal protection, it is defined as protection obtained after a problem/dispute occurs. In *mudharabah* financing, for example, Banks need to provide opportunities for customers with a restructuring pattern in accordance with POJK No.16/POJK.03/2014 concerning Asset Valuation of Islamic Commercial Banks and Sharia Business Units, which states in Article 55 paragraph (2) that Banks need to conduct financing rescue by rescheduling, reconditioning and restructuring. This has been done by the Bank as the first effort to save financing so that it does not fall into the collectability of Non-Performing Financing (NPF). After that, the Bank needs to reorganize whether the customer can return smoothly according to the agreed addendum. If it is unable to generate results, the Bank will carry out the guarantee efficiently.

4.2. Changes in the credit agreement into a financing agreement after the conversion of conventional banks to Islamic Banks

In conventional banks using the term credit instead of the term financing, the definition of credit in conventional banks with financing at Islamic banks is different, namely: (a) In conventional banks, the reward given to the owner of the funds (the bank) is in the form of a fixed percentage of interest, while in Islamic banks using profit sharing; (b) Repayment of funds borrowed at conventional banks is paid in installments within a predetermined time with the same amount, while financing at Islamic banks does not require installments every month or a certain time but must be paid off at the agreed time; (c) If it turns out that the debtor is able to pay off his debt before the stipulated period, conventional banks are subject to a discount on the loan

Besides having to fulfill the legal requirements of the agreement as stated in Article 1320 of the Civil Code. The practice of *muamalah* in Islam in principle must be in accordance with and not conflict with sharia norms. Fiqh experts agree that in business activities (*muamalah*) Islam must avoid elements that are prohibited by *syara'* namely, *maisir* (gambling), *gharar* (uncertainty), usury (riba) and *batil* (injustice). This also applies to banking activities, particularly Islamic banking. The *maisir* (gambling) and *batil* (injustice) elements in *murabahah* can be eliminated with project certainty and a clear rate of return, in accordance with the contract agreed at the beginning of the collaboration. In this case, the customer is not burdened with fluctuations in bank interest rates.

Thus, it is certain that the number of monthly installments can be predicted according to the financing period, because in this case Islamic banks do not recognize the interest system. The element of usury in *murabahah* can be eliminated by the concept of buying and selling, because basically Islam justifies buying and selling and forbids usury. In the technical element, the customer does not feel aggrieved by the bank, there is clarity regarding the price of the object to be purchased by the

customer and the profit taken by the bank. Likewise, the object being traded must already exist at the time of signing the contract. Thus, it can be concluded that the application of *murabahah* products is in accordance with the principles of financing based on Islamic principles, namely that it does not contain *maisir* (gambling), *gharar* (uncertainty), usury (*riba*) and *batil* (injustice) (Bahri, 2008).

The agreement in the financing contract at a sharia bank is no different from the agreement in credit at a conventional bank, because the principle of the agreement still refers to the Civil Code contained in Book III concerning General Engagements. The engagement according to Article 1233 of the Civil Code is born out of an agreement or by law. From these two sources, the most important is the engagement that arises from the agreement (covenant law) (Badruzaman, 1991). Because the parties have the freedom to enter into any type of engagement, as long as it does not conflict with the law, morality or public order (Article 1338 of the Civil Code paragraph (1) jo. Article 1337 of the Civil Code) (Meliala, 2007).

In a process of providing financing, the most important thing is the making of a financing agreement, or what in Islamic banking is usually called a financing contract. The interpretation of the agreement is regulated in Articles 1342 to 1351 of the Civil Code. According to Article 1342 of the Civil Code: "If the words of an agreement are clear enough, then it is not allowed to deviate from it by way of interpretation". Then according to Article 1343 of the Civil Code: "If the words of an agreement can be given various interpretations, then what must be seen is the intention of the parties who made the agreement".

Conventional bank credit agreements and financing agreements have similarities in the nature of the agreement, which is really consensual in nature. The form of the agreement is written and uses a standard contract. Other similarities, among others, can be seen from the contents of the agreement, namely, the determination of the amount of money, the amount of the profit-sharing portion, the method of payment, the time of repayment and collateral.

In the practice of sharia financing, there is the application of contracts that are modeled on credit agreements from conventional banks, as well as the form of facilities that are always sought to mirroring with facilities in conventional banking. Whereas if it is supposed to apply sharia principles correctly and purely, then the deeds made for both sharia financing contracts and the types of financing facilities must also independent which supported by clear and adequate sharia banking laws.

The Civil Code (*KUHPerdata*), Criminal Code, UUPT, SK (Decree) and SE (Circular letter) Bank Indonesia are the legal basis for conventional bank agreements, credit agreements are an agreement system that uses an open system and contains the principle of freedom of contract as long as does not conflict with applicable laws and regulations, public order and morality (Ghofur, 2007). According to the principle of freedom of contract, an agreement can be made either orally or in writing. For the banks as an organization that has been established and in relation to the orderly organization as well as evidence in written form. Regarding the written agreement, it has been regulated in Article 1320 of the Civil Code, then regarding the cancellation of the agreement, it is regulated in Article 1381 of the Civil Code.

The form of clauses in credit agreements in conventional banks can be seen from certain conditions set forth in clauses that need to be included in the credit agreement, including: (Kansil, 2009)

1) Terms for the first-time credit withdrawal (*pre-disbursement* clause)

This clause concerns:

- a. Payment of provisions, credit insurance premiums, and collateral insurance as well as the cost of binding collateral in cash.
- b. Submission of collateral and its documents as well as the implementation of the binding of the collateral.

- c. Implementation of the closure of collateral insurance, and credit insurance with the aim of minimizing risks that occur outside of the debtor's or creditor's fault.
- 2) Clause regarding maximum credit (Amount Clause)
This clause has important meaning in several ways, namely:
 - a. It is the object of the credit agreement so that changes to the agreement regarding this material have the consequence that it is necessary to make a new credit agreement (in accordance with Article 1381 point 3 and Article 1413 of the Civil Code).
 - b. It is the limit of the creditor's obligation in the form of providing funds during the grace period of the credit agreement, which also means the limit of the debtor's right to withdraw the loan.
 - c. It is the determination of the amount of collateral value that must be submitted, the basis for calculating the determination of the amount of the provision or commitment fee.
 - d. This is the limit for the imposition of an overdraft fine.
- 3) Clause regarding credit term
This clause is important in several ways, namely:
 - a. It is a time limit for the bank, when the obligation to provide funds in the maximum amount of credit ends and after the expiration of that period, giving rise to the right to collect/refund credit from the customer.
 - b. It is a time limit when a bank may issue warnings to debtors if they do not fulfill their obligations on time.
 - c. This is the right time for the bank to review, or re-analyze, whether the credit facility needs to be extended or needs to be billed again.
- 4) Clauses regarding loan interest
This clause is expressly regulated in the credit agreement with a view to:
 - a. Provide certainty regarding the bank's right to collect loan interest in an amount that has been mutually agreed upon because interest is the bank's income which will directly or indirectly be calculated with the cost of funds for the provision of the credit facility.
 - b. Approval of interest collection above 6% (six percent) per year. By basing on the information guidelines of Article 1765 and Article 1767 of the Civil Code which allows the collection of loan interest above 6% (six percent) per year as long as it is agreed in writing.
- 5) Clauses regarding credit collateral
This clause is intended so that the debtor does not make withdrawals on the replacement of collateral goods unilaterally, but there must be an agreement with the bank.
- 6) Insurance clause
This clause aims to transfer the risk that may occur, both on collateral goods and on its own credit.
- 7) Clause regarding actions prohibited by the bank (Negative Clause)
This clause consists of various things that have juridical and economic consequences for securing the bank's interests as the main objective. Examples of actions that are not permitted by debtors include:
 - a. Prohibition of asking for credit from other parties without the bank's permission.
 - b. Prohibition of changing the legal form of the debtor's company without the bank's permission.
 - c. Prohibition of dissolving a company without the bank's permission.
- 8) Tigger Clause or *Opeisbaar* Clause
This clause regulates the right of the bank to terminate the credit agreement unilaterally even though the term of the credit agreement has not yet expired.
- 9) Clause regarding fines (Penalty Clause)

This clause is intended to emphasize the rights of banks to collect levies both in terms of the amount and condition.

10) Expense Clause

This clause regulates the costs and expenses incurred as a result of granting credit, which are usually charged to customers, including but are not limited to: the cost of binding collateral, making credit agreement deeds, acknowledging debts and collecting credit.

11) Debit Authorization Clause

Debiting a loan account must be with the permission of the debtor.

12) Representations and Warranties

This clause is often referred to as a material adverse change clause. The point is that the debtor promises and guarantees that all data and information provided to the bank is correct and not distorted.

13) Clause of compliance with bank provisions

This clause is intended to guard against the possibility that if there are things that are not specifically agreed upon but are deemed necessary, then they are considered generally agreed upon.

14) Miscellaneous or Boiler Plate Provision Additional articles.

15) Dispute Settlement (Alternative Dispute Resolution)

Clauses regarding the method of settlement in the event of a dispute or dispute between creditors and debtors.

16) Closing article

The closing article contains a copy of the credit agreement with the intention of making arrangements regarding the amount of evidence and the date of entry into force of the credit agreement as well as the date of signing of the credit agreement.

While the form of the Clause of the Financing Contract at Islamic Banks can be seen from certain conditions set forth in the clauses of the financing contract which are included in the *murabahah* financing contract at the Islamic bank, including:

1) Terms for the first-time credit withdrawal (*predisbursement* clause)

This clause concerns:

- a. Terms and methods of withdrawing the financing facility.
- b. Submission of customer documents, signing of financing contracts and guarantee agreements required by the bank.
- c. Submission of collateral and its documents as well as the implementation of the binding of the collateral.
- d. Opening of financing accounts by customers.
- e. Fees and taxes.

2) Clauses regarding prices and financing facilities in the maximum credit agreement (Amount Clause)

In contrast to credit agreements in conventional banks, Islamic bank financing contracts regulate the acquisition price, margin, selling price, bank financing, and *murabahah* receivables.

3) Clauses regarding repayment and fines

This provision regulates the period of repayment of customer obligations, and fines for late returns of customer payment obligations to the bank.

4) Clauses regarding credit collateral

This clause aims to ensure orderly payment of debts/obligations of customers to the bank. This clause regulates the delivery of collateral by the customer to the bank, the method of binding the collateral, and returning proof of ownership of the collateral to the customer.

5) Clause regarding actions prohibited by the bank (Negative Clause)

This clause consists of various things that have juridical and economic consequences for securing the bank's interests as the main objective. Examples of actions that are not permitted by debtors include:

- a. Prohibition of asking for credit from other parties without the bank's permission.
- b. Prohibition of changing the legal form of the debtor's company without the bank's permission.
- c. Prohibition of dissolving a company without the bank's permission.

6) Clause regarding Risk

This clause regulates the customer's obligation to carry out a physical inspection and the validity of the goods purchased and the transfer of risk to the customer.

7) Clause regarding fines (Penalty Clause)

This clause is intended to emphasize the rights of banks to collect levies both in terms of the amount and condition.

8) Expense Clause

This clause regulates the costs and expenses incurred as a result of granting credit, which are usually charged to customers, including among others: the cost of binding guarantees, making sharia financing contracts, debt recognition and credit collection.

9) Representations and Warranties

This clause is often referred to as a material adverse change clause. The point is that the debtor promises and guarantees that all data and information provided to the bank is correct and not distorted.

10) Applicability clause of legal provisions

This clause stipulates provisions regarding the implementation of agreements that are subject to the provisions of the applicable laws and sharia provisions, including Bank Indonesia Regulations, Fatwa of the National Sharia Council of the Indonesian Ulema Council.

11) Clause of compliance with bank provisions

This clause is intended to guard against the possibility that if there are things that are not specifically agreed upon but are deemed necessary, then they are considered generally agreed upon.

12) Dispute Settlement (Alternative Dispute Resolution)

Clauses regarding the method of settlement in the event of a dispute or dispute between creditors and debtors.

13) Closing article

The closing article contains a copy of the credit agreement with the intention of making arrangements regarding the amount of evidence and the date of entry into force of the credit agreement as well as the date of signing of the credit agreement.

4. CONCLUSION

Because both have been regulated by the OJK, the laws governing the rights and obligations of Islamic bank partners or customers are essentially the same as those governing debtors at conventional banks. However, when it comes to financing Islamic banks, they must adhere to the Islamic economic principles that underpin all banking activity. Sharia financing involves the use of contracts that are modeled after credit agreements from traditional banks, as well as the creation of facilities that are always designed to resemble those found in conventional banking. If it is to apply sharia principles correctly and purely, then the deeds issued for both sharia finance contracts and the sorts of financing facilities must stand alone, supported by clear and adequate sharia banking rules.

Thus, the agreement in the financing contract at Islamic banks is identical to the agreement in the credit contract at conventional banks, because the agreement's concept still relates to the Civil Code's Book III on General Engagements. According to Article 1233 of the Civil Code, an engagement occurs as a result of an agreement or by legislation. According to this source, the most

critical aspect of the agreement is the involvement that results (covenant law). Because the parties are free to enter into any sort of engagement, as long as it does not violate the law, morals, or public order (Article 1338 of the Civil Code, paragraph (1) jo. Article 1337 of the Civil Code).

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**JURIDICIAL REVIEW IMPLEMENTATION OF LAND
REGISTRATION ACCORDING TO GOVERNMENT REGULATION
NO. 18 OF 2021 CONCERNING MANAGEMENT RIGHTS, LAND
RIGHTS, FLAT UNITS AND LAND REGISTRATION**

Lalu Nuzul Indrawan^{1*}, Arba², Aris Munandar³

¹ Master of Notary, Faculty of Law, University of Mataram, Indonesia

^{2,3} Lecturer at Faculty of Law, University of Mataram, Indonesia

Corresponding E-mail: ¹⁾ lalunuzulul@gmail.com

Abstract

There are differences from the implementation of land registration related to the announcement of land registration. The Government Regulation should be implemented properly, but in fact in the field the regulation still does not provide certainty. In order to provide legal certainty to the community with the issuance of Government Regulation Number 18 of 2021. The purpose of this study was to determine and analyze the legal arrangements for land registration according to Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, and to identify and analyze Government Regulation No. 24 of 1997 concerning Land Registration with Government Regulation No. 18 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, and to find out and analyze the legal consequences of changes to Government Regulation Number 24 of 1997 after the enactment of Government Regulation Number 18 of 2021. This research is normative legal research. Approach methods used in this research are Legislative Approach, Conceptual Approach, Comparative Approach; and analytical approach. Based on the research findings, it can be concluded that Regulations which is the legal basis that is still valid for Government Regulation Number 18 of 2021 concerning Management Rights of Land Rights, Flats and Land Registration Units which are still being carried out without first revoking Government Regulation Number 24 of 1997 concerning Land Registration which has a period of The announcement is different between the two Government Regulations, namely, with the principle of Lex Posterior Derogat Legi Priori.

Keywords: Land Registration, Management Right, Land Right, Announcement

1. INTRODUCTION

Human life is inextricably linked to the land. Land is both a source of life and a place to live for humans, especially for the people of Indonesia, where the majority of the population still relies on land for survival, both for agriculture and plantations. Guarantees of legal certainty in the land sector will be critical; comprehensive, complete, and explicit legal instruments that are consistently applied will be required to provide legal certainty in the land sector and to maintain land registration in order to ensure legal certainty over land.

The state is given the constitutional right to control over water, earth, and the natural resources contained therein. The state controls and is used as much as possible for the prosperity of the people as stipulated in Article 33 Paragraph (3) of the 1945 Constitution (Sugiharto et al., 2015).

Article 33 paragraph (3) of the 1945 Constitution which stipulates that: "Earth, water and natural resources contained therein shall be controlled by the state and used as much as possible for the prosperity of the people."

According to Article 4 of the Agrarian Law, land is defined as the earth's surface. Land plays a significant part in human life since humans and land have always had a direct relationship by nature. Because land is the major capital and the only capital for almost all of Indonesia, the relationship between humans and land can be defined as very close in this context.

One of the objectives of the establishment of the Basic Agrarian Law is to lay the foundations for providing legal certainty and protection regarding land rights for the Indonesian people as a whole. In order to achieve this, land registration is carried out. Land registration in the Basic Agrarian Law is regulated in Article 19.

Land is part of the earth's surface which is legally regulated regarding land rights (Waskito & Anowo, 2017). One of the objectives of the establishment of the Basic Agrarian Law is to lay the foundations for providing legal certainty and protection regarding land rights for the Indonesian people as a whole. In order to achieve this, land registration is carried out. Land registration in the Basic Agrarian Law is regulated in Article 19.

Regarding the implementation of land registration throughout Indonesia, it is based on Government Regulation Number 24 of 1997. The implementation of land registration is carried out by the National Land Agency. Land implementation includes land registration activities for the first time and land maintenance (Arba, 2018).

According to the provisions of Article 1 point 1 of Government Regulation No. 24 of 1997, land registration is a series of activities carried out by the government on a continuous, continuous, and regular basis, including the collection, management, bookkeeping, and presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and housing units of flats, as well as the provision of proof of title for parcels of land that already have a title (Arba, 2018).

However, until now the rules regarding land registration are still in conflict between the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration and Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration.

In Article 26 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, it is explained that:

"The list as referred to in Article 25 paragraph (2) along with a map of the relevant land parcel or parcels as referred to in Article 20 paragraph (1) shall be announced within 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide opportunities for interested parties to file objections."

Meanwhile, in Article 88 of the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, it is explained that:

- "(1) Announcement of the results of collecting physical data and juridical data:*
- a. in systematic land registration is carried out for 14 (fourteen) calendar days.*
 - b. in sporadic land registration for 30 (thirty) calendar days."*

This property registration process is not only governed by one statutory regulation, but it is also governed by other rules. Legislation frequently overlaps one regulation with another. Even now, the rules governing land registration have been in contradiction with government regulation number 18 of 2021 governing management rights, land rights, apartment units, and land registration,

resulting in a norm conflict with government regulation number 24 of 1997 governing land registration.

Because there are discrepancies in how land registration is executed in relation to the announcement of land registration, the Government Rule should be appropriately implemented, but in practice, the regulation still lacks confidence in the field. As a consequence, to provide the community with legal certainty, the issuing of Government Regulation Number 18 of 2021.

2. THEORITICAL AND CONCEPTUAL FOUNDATION

2.1. Legal Certainty Theory

According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize aspects of "should" or *das sollen*, by including some rules about what must be done. According to Gustav Radbruch quoted by Eva Fadillah, the law must contain three (3) identity intentions, namely as follows: (Fadillah, 2016)

- 1) The principle of legal certainty (*rechmatigheid*). This principle is a juridical view.
- 2) The principle of legal justice (*gerechtigheid*). This principle reviews from a philosophical point of view, where justice is equal rights for all before the court.
- 3) The principle of legal benefit (*zwechmatigheid* or *doelmatigheid* or utility). The principle that accompanies the principle of legal certainty and justice.

This legal certainty is realized by law with its nature which only makes a general rule of law (Wantu, 2011). The general nature of the rule of law proves that the law does not aim to achieve justice or benefit, but solely for certainty.

2.2. Justice Theory

Justice can be interpreted as an act that is fair or impartial (Aristoteles, 1997). Justice is one of the goals of law. The embodiment of justice can be seen in the scope of everyday life in society and the state.

Justice according to Aristotle's view is divided into 2 (two) kinds, namely: "*Distributief*" justice is justice that gives each person a portion according to his achievements. Meanwhile, "*communitatief*" Justice gives equal amount to everyone without discriminating against their achievements in this case related to the role of exchanging goods and services (van Apeldoorn, 1996).

According to John Rawls, justice is the main virtue of the existence of social institutions (Faiz, 2009). Meanwhile, Hans Kelsen (2011), in his book *General Theory of Law and State*, is of the view that law as a social order can be declared fair if it can regulate human actions in a satisfactory way, so that they can find happiness in it (Kelsen, 2011).

Fair is putting things in their place, receiving rights without more and giving others without less and giving the rights of everyone who is entitled completely without more without any less between those who are entitled in the same situation, and punishment of bad people or those who violate the law, in accordance with their mistakes and violations (Mansyur, 1985).

2.3. Legality Theory

Legality is one of the most important theories in the framework of analyzing the process of drafting laws and regulations (Salim & Septiana, n.d.).

Hans Kelsen said that the meaning of justice is legality, where a general rule is fair if it is applied according to the written rules that govern it, and the same applies to all similar cases (Kelsen, 2011). The principle of legality was built with the aim of legitimizing the law in the power of the government in order to create a legal state where the meaning is a state based on law; The law guarantees justice and protection for all people in the territory of the country concerned. All state activities are based on law or in the context of the Indonesian rule of law, namely a state based on Pancasila and the Constitution which upholds human rights and guarantees that all citizens are equal

before the law and government and are obliged to uphold the law and the government without any exception.

Meanwhile, in the Black's Law Dictionary, legislation has many meanings. In this definition, the definition of legislation is very broad, not only establishing or enforcing laws, but also being defined by: (Salim & Septiana, n.d.)

1. The power to make laws;
2. Legislative action;
3. Drafting and enactment of laws;
4. Making laws through laws, in contrast to laws made and determined by the courts;
5. Formulation of rules for the future. Laws are set by the legislature.”

2.4. Land rights

Land rights give a power or authority to the subject of the right or also known as the holder of the right to utilize or exercise the right to ownership of the land (Santoso, 2015). Land rights have been regulated in Law no. 5 of 1960 Article 4 paragraph 1 (one) which explains that based on the right to control the state then various kinds of rights to a surface of the earth are determined which are then called land, which can be given and owned by individuals or collectively, as well as other legal entities. Based on the description above, the right to a surface of the earth is then also referred to as the right to land which comes from the right to control the state over the land (Santoso, 2015).

2.5. Land Management Rights

Management Rights in Dutch known as *Beheersrecht*, which at that time meant the Right of Control (Parlindungan, 2015). The definition of management rights by experts is often reviewed in terms of meaning as well as in terms of the substance stipulated in a statutory regulation regarding the existence of management rights (Soerodjo, 2014).

Maria SW Sumardjono stated that:

"Management rights speak of the right to control the state in terms of the authority to implement it is given or delegated to the right holder". (Sumardjono, 2008)

In the UUPA, the term Management Rights does not contain a term, so in particular the extent of the term management rights is outside the provisions of the UUPA (Parlindungan, 2015). As explained that on the basis of the right to control the state, the implementation of the right to control the state can be delegated to autonomous regions and customary law communities, this is so far as it does not conflict with government regulations and applicable laws and national interests, as described in article 2 paragraph 4 (four) UUPA.

2.6. Land Registration

According to Article 1 paragraph 1 of Government Regulation Number 24 of 1997, Land Registration is a series of government-led activities that include the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, in the form of maps and lists, about parcels of land and flat units, as well as the issuance of certificates as proof of their rights.

Article 3 (three) Government Regulation Number. 24 of 1997 states that the purpose of land registration is:

- a) To provide legal certainty and protection to holders of rights to a plot of land, flats and other registered rights so that they can easily prove themselves as holders of the rights in question.
- b) To provide information to interested parties including the government so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels

and apartment units.

- c) For the implementation of orderly land administration.

2.7. Flats

Law No. 16 of 1985 explains that flats is a multi-storey building that is constructed in an environment that is divided into functionally structured parts in both horizontal and vertical directions and is comprised of units that can be individually owned and used, particularly for residential areas equipped with shared parts, objects, and common ground. According to the KBBI, Flats is a building that is planned and used as a residence by several families and has a minimum level of two floors with several residential units.

3. METHOD

The type of research used in this research is normative legal research. The approach methods used in this research are the Statute Approach, the Conceptual Approach, the Comparative Approach; and analytical approach (analytical approach).

The types of legal materials used are legal materials sourced from literature studies with Primary Legal Materials, Secondary Legal Materials, and Tertiary Materials. The technique of collecting legal materials used in this research is literature study. While the analysis of legal materials in this study is descriptive.

4. RESULTS AND DISCUSSION

4.1. Arrangements for Land Registration According to Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration

A. Land Registration Arrangements Based on Legislation

In the regulation regarding land registration, it must be based on the principle of legality. In Black's Law Dictionary, legislation/legality has many meanings. In this definition, the definition of legislation is very broad, not only to stipulate or enforce laws, but also to mean the power to make laws; Legislative action; Drafting and enactment of laws; Making laws through laws, in contrast to laws made and determined by the courts; and/or Formulation of rules for the future. Laws are set by the legislature.

Meanwhile, regulations that are closely related to land registration based on legality theory can be explained below as follows:

- a. Law no. 5 of 1960 concerning Agrarian Principles (UUPA).

The UUPA stipulates that the land rights registered are only Ownership Rights regulated in Article 23, Cultivation Rights are regulated in Article 32, and Building Use Rights are regulated in Article 38, and Use Rights are regulated in Article 41, while Lease Rights for Buildings is not required to be registered.

However, in Article 9 of Government Regulation Number 24 of 1997 concerning Land Registration, it regulates several objects of land registration which include:

- a) Ownership Rights (*SHM*).
- b) Right to Business (*SHGU*).
- c) Right to use building on state land (*SHGB*).
- d) Right to Use State Land.
- e) Right to Use Land Management.
- f) *Waqf* Land.
- g) Ownership of Flat Units.
- h) Mortgage right (Santoso, 2010)

- b. Government Regulation (*PP*) No. 10 of 1961 concerning Land Registration as amended by

Government Regulation No. 24 of 1997 concerning Land Registration and Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration.

According to Article 1 paragraph 1 of Government Regulation Number 24 of 1997, Land Registration is a series of government-led activities that include the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, in the form of maps and lists, about parcels of land and flat units, as well as the issuance of certificates as proof of their rights (Parlindungan, 2015).

Article 3 (three) Government Regulation Number. 24 of 1997 states that the purpose of land registration is:

- a. To provide legal certainty and protection to holders of rights to a plot of land, flats and other registered rights, so that they can easily prove themselves as holders of the rights in question.
- b. To provide information to interested parties including the government so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units.
- c. For the implementation of orderly land administration.

Talking about land registration and the importance of land registration. Of course, what is no less important is what land registration actually is. The terms regarding land registration in several languages are different, although the meaning in brief is of course the same. In English it is called *cadaster*, in Dutch it is called *cadasteral* and *cadastro* in French and *pendaftaran tanah* in Indonesian.

In Article 1 point (1) Government Regulation No. 24/97 states "that land registration is a series of activities carried out by the government continuously, continuously and regularly, Article 11 states that the implementation of land registration includes land registration activities for the first time and data maintenance. Land registration, and in Article 12 it is explained Land registration activities for the first time includes: collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of proof of rights for existing land parcels. his rights and ownership rights to the apartment unit as well as certain rights that burden it.

Thus, the definition of land registration includes measurement, mapping and bookkeeping of land; Registration of land rights and the transfer of these rights; and Provision of valid proof of rights documents as a strong evidence. In addition, land registration aims to:

- a. To provide legal certainty and legal protection to holders of rights to flats and other registered rights so that they can easily prove themselves as holders of the rights in question. Legal certainty here relates to land registration data. Land registration data according to Boedi Harsono, consists of: physical data and juridical data (Harsono, 2008).
- b. To provide information to interested parties including the government in order to easily obtain the necessary data in carrying out legal actions regarding land fields and units of flats that have been registered. Therefore, at the District / City Land Office held land registration business in what is known as a *public list* is for interested parties to do legal actions regarding a land body or certain flat units necessary and therefore they have the right to know the data stored in public lists. Public list consisting of registration map, land list, measuring letter, land book, and list of names. A *registration map* is a map that describes plots or plots of land for land clearing purposes. A *land list* is a document in the form that contains the identity of a plot of land with a numbering system. A *measuring letter* is a document that contains physical data of a plot of land in the form of maps and descriptions, which the data is taken from the registration map. A *land book* is a book that contains the origins of land ownership including the identity of the rights holder. A *list of names* is a document in the form of a list that contains information about land tenure with

a right to land, or management rights and about certain individuals or legal entities.

c. For the implementation of orderly land administration

In Government Regulation Number 10/61 it does not contain specifically in its articles concerning the principle of land registration used. Because principles are things that are principle in implementing a regulation after going through in-depth study and research, including philosophical studies. The principles of land registration are as follows:

- a) Simple, so that the basic provisions and procedures can be easily understood by interested parties, especially land rights holders.
- b) Safe, is to show that land registration needs to be carried out carefully and carefully so that the results can guarantee legal certainty according to the purpose of the land registration itself.
- c) Affordable, which is affordability for those in need, especially by taking into account the needs and abilities of the weak economic group.
- d) Up to date, is adequate completeness in its implementation and continuity in data maintenance. Available data must show the current state.
- e) Open, means that anyone can request information on data on land registration carried out by the Land Agency.

Almost all over the world, countries register land in their respective countries. Therefore, in general, there are two land registration systems, namely;

- a) The Negative System is a system that gives the owner of this land a stronger guarantee, when compared to the protection given to third parties, this system is adopted by, among others, the Netherlands, France, the Philippines.
- b) Positive system, is a system in which those who obtain land rights will be given stronger guarantees. This system is adopted by countries such as Germany, Switzerland, Austria, Australia (Chomsah, 2004).

Meanwhile, the land registration system in Indonesia uses a land registration system (registration of titles) as used by Government Regulation No. 10/61 and Government Regulation No. 24/97, which is a negative system with positive tendencies or *desclut Quasi Positive* (Pseudo-Positive) descriptions. We can see in the publication system that is used for the public with a negative system that contains positive elements, because it will produce letters of proof of rights that act as strong evidence, as stated in article 19 paragraph (2) of the UUPA. Not a pure negative publishing system (Harsono, 2008).

The holder of the right of name is listed in the land book as the owner who is protected by law, including the process of changing the name with the condition of openness (*Operbaar Beginnel*) The *Bilay pencil* which is measured is adjusted to the land registration map with a scale of 1: 1000. Hence, it is possible to see it again in the event of a land boundary dispute.

From the Quasi Positive (Pseudo-Positive) system, there are 2 registration systems implemented according to the will of Government Regulation Number 24/97, namely:

- 1) Systematic registration: Land registration is carried out by the government by forming a special committee to carry out registration, and initiatives emerge from the Government. The committee formed by the government is called Adjudication.
- 2) Sporadic Registration: Land registration is the first time regarding one or more objects of individual or mass registration. Initiatives arise from rights holders, both individually and en masse.

At the end of the land registration, of course, evidence will be issued for the recognition of rights to legal subjects from the recognized rights. As quoted by Martiman Prodjomidjoyo and Pidlo (in (Hairan, 2012)), to ensure legal certainty, there are 4 (four) theories in this evidence, namely:

- a) The theory of evidence that is merely reinforcing (*Bloot Affirmatif*), that is, those who propose something must prove it and not those who deny or deny it.
- b) Subjective theory, that a civil process is the implementation of subjective law or aims to

maintain subjective law, which means that whoever claims or claims to have rights must prove it.

- c) The objective theory is that the plaintiff is asking the court to apply objective legal provisions to the events being filed.
- d) A public theory that gives judges more authority to seek the truth by prioritizing the public interest (Soerodjo, 2003).

Meanwhile, the certificate is in terminology or officially written "certificate". The certificate is a letter of proof of land rights, an acknowledgment and affirmation of individuals from the State on land ownership individually or jointly or as a legal entity whose name is written in it and at the same time explains the location, picture, size and boundaries of the land parcel (Hermit, 2004).

Therefore, the certificate serves as a valid proof of ownership according to the law in force in Indonesia. Government Regulation Number 10/61 and Government Regulation Number 24/97 it is clear from the land registration that a land certificate will be issued from the right holder who requests it.

Once the importance of the certificate as evidence of rights, the certificate can provide a brief description of who has the right to the land.

Then in the issuance of certificates of land rights there is also a difference between Government Regulation No. 10/61 and Government Regulation No. 24/97. The difference between the certificates is the type. In Government Regulation Number 10/61, land registration law recognizes 3 (three) types of certificates, namely: a) certificates, b) temporary certificates, and c) mortgage certificates.

Meanwhile, certificates issued after the enactment of Government Regulation No. 24/97 consist of a) certificates of land rights, b) certificates of mortgage, and c) certificates of ownership of flat units.

When we discuss certificates as legally admissible proof. Naturally, because the certificate was issued and validated by the relevant authorities, it has become genuine and persuasive proof. Along with getting legal (juridical) recognition, this is accomplished through a regulated process. This process is undoubtedly connected to the requirements for holders of land rights.

However, we can see in article 32 paragraph (2) of Government Regulation Number 24/97 that if a land parcel has been issued legally on behalf of the person or legal entity that acquired the land in good faith and in fact controlled it, the party who believes they have the right to this land can no longer demand the exercise of the right if they do not submit objections in writing to the holder of the certificate within 5 (five) years of the certificate's issuance.

This article makes it possible for such parties to sue. Furthermore, if the other party is not the true owner but is aware of the flaw in this legislation, intellectual games can arise in the legal field. In general, other evidence that can negate the power of the certificate of rights should be examined.

There is a contradiction between the legal strength of a piece of evidence, given the existing theory that a certificate is a strong piece of evidence in law. Meanwhile, the legal force of a certificate is only fully recognized if there is no lawsuit for up to five years. The long period of recognition also supports the existence of legal games. For example, certain parties try to find other evidence and then proceed to court because within a period of five years, the position of the certificate may lose. If the position of the power of the certificate is in doubt, it is certainly something natural, but if legally, the status and process have been passed by following the regulations.

B. Complete Systematic Land Registration and Sporadic Land Registration

Land registration can be carried out through systematic and sporadic land registration, namely land registration activities carried out simultaneously covering all land parcels in an area or part of a village, both land owned by a land right or state land.

1. Complete Systematic Land Registration

Land registration for these rights is addressed to the rights holders in order to provide legal certainty for them, because registration of the transfer, its abolition and its encumbrance, such as the first registration or registration due to conversion, or its release will cause many legal complications if it is not registered, even though registration is strong evidence for the rights holder (Parlindungan, 2015). The aim to be achieved from the implementation of a complete systematic land registration is to provide legal certainty and protection for community land rights.

Complete Systematic, is a land registration activity for the first time that is carried out simultaneously which includes all land leveling objects that have not been registered in one village area or other names of the same level. The definition of complete systematic land registration according to Article 1 point 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 6 of 2018 concerning Complete Systematic Land Registration, are: Land Registration Activities for the first time which are carried out simultaneously for all Land Registration objects in the entire territory of the Republic of Indonesia in one village area or other name equivalent to that, which includes the collection of physical data and juridical data regarding one or several objects of Land Registration for the purposes of its registration. The implementation of complete systematic land registration aims to realize legal certainty and legal protection of people's land rights based on simple, fast, smooth, safe, fair and equitable and open and accountable principles, so as to improve the welfare and prosperity of the people and the country's economy, as well as reduce and prevent land disputes and conflicts (Article 2 paragraph (2) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 6 of 2018 concerning Complete Systematic Land Registration).

2. Sporadic Land Registration

The legal basis of sporadic registration of tana is contained in Government Regulation No. 24 of 1997 on Land Registration. Sporadic land registration is the first land registration activity regarding an or some land registration object in the area or part of a village individually or en masse, and all fees are charged to the applicant, The land registration task is carried out by the Head of Office (Ka Kan) of the National Land Agency of the city / district, except certain activities that are by Government Regulation No.24 of 1997 or the relevant statutory regulations assign to other officials.

With the issuance of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, it does not provide legal certainty for land ownership by applicants who have registered their land for the first time to the National Land Agency Office with a 14-day announcement systematically Article 88 and sporadically 30 days while in Government Regulation No. 24 of 1997 concerning Land Registration, the announcement for the first time registration is Systematic *30 days* Article 26 and sporadic *60 days*, while it's not just a matter of announcement that is different but there are deficiencies in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration Units do not have new rights and there are no certificates issued, while in Government Regulation Number 24 of 1997 concerning Land Registration there are still new rights Article 23 and Certificates Issuing Article 31. The two Government Regulations are still valid and do not provide legal certainty to the applicant. This is because there has been no revocation from the Government of Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights for Flat Units and Land Registration are derived from the Job Creation Law Number 18 of 2020.

4.2. Procedures for Land Registration according to Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration

A. The Origin of Land Ownership

There are two ways regarding the origin of the occurrence of land ownership rights, namely: *derivatif* and *originair*.

By means of a *derivatif* that land rights are obtained through the transfer of rights, either by law (switching) or because of law making (transferred). The transfer is due to law, occurs because of inheritance, while the transfer is due to legal action, occurs due to buying and selling, exchanging or grants.

By *originair*, it is intended that the rights to the land are obtained in original (*originair*) meaning that the land has never been controlled or owned by anyone. In other words, the person who controls the land is the first person (in the case of movable objects, for example: a car, the person who first controls/owns the car is known as first-hand *originair*: the person who receives the transfer of rights: second, third, and so on) the same as the *derivatif*. Obtaining ownership rights to land (originally) can occur in three ways, namely: a) According to customary law, b) according to the provisions of the law, c) according to government stipulations, and d) according to customary law.

The process for the creation of property rights and other rights is regulated in two Regulations of the Minister of Home Affairs (*PMDN*), namely:

- a. PMDN Number 5 of 1973 concerning Provisions concerning Procedures for Granting Land Rights.
- b. PMDN Number 1 of 1977 concerning Procedures for Application and Settlement of the Granting of Rights to Parts of Land with Management Rights and their Registration.

Meanwhile, land registration according to Government Regulation Number 24 of 1997 which is a refinement of Government Regulation Number 10 of 1961 article 19 (paragraph 2) includes: Measurement, mapping, bookkeeping of land, registration and transfer of land rights and the provision of proof of rights as a strong sign of evidence (Harsono, 2008). The elements of the land registration can be described as follows:

1. There is a series of activities. Refers to the existence of various activities in the implementation of land registration that are related to one another, sequentially into a unified series which leads to the availability of data.
2. Done by the Government. The implementation of land registration in modern society is a state task produced by the government for the benefit of the people in order to provide legal certainty in the land sector (Santoso, 2010).
3. Continuously Continuously. Refers to the implementation of activities that once started will never end. The data that has been collected and available must always be maintained, in the sense that it is adjusted to changes that occur later, so that it remains in accordance with the latest state (Santoso, 2010).
4. Regularly
Shows that all activities must be based on appropriate laws and regulations, because the results will be evidence according to law, even though the power of proof is not always the same in the laws of the country that administers it (Santoso, 2010).
5. Plots of Land and Flats
Shows that land registration activities are carried out on Ownership Rights, Right to Business, Right to Build, Rights to Use, HPL, *Waqf* Land, Property Rights on Flat Units, Mortgage Rights, and State Land (Santoso, 2010).
6. Provision of Certificate of Evidence
Land registration activities for the first time use certificates of proof of rights in the form of certificates on land parcels that already have rights and certificates of ownership of flat units. Certificate is a certificate of proof of rights as referred to in the UUPA Article 19 paragraph (2) letter c for land rights, HPL, *waqf* land, property rights to flat units and mortgage rights, each

of which has been recorded in the relevant land book (Santoso, 2010).

7. Certain Rights That Overwhelm Him

In land registration, land registration objects can be encumbered with other rights, such as Ownership Rights, Right to Business, Right to Build, Rights to Use, and Ownership Rights to Flat Units as collateral for Debt with encumbered Mortgage Rights, or Ownership Rights to land encumbered with Rights. dependents, or ownership rights to land encumbered with Right to Build and Right to Use (Santoso, 2010).

Meanwhile, in Land Registration, the following conditions are required:

- a) The application form that has been filled out and signed by the applicant or his/her proxy on sufficient stamp duty.
- b) Power of attorney if authorized.
- c) Copy of identity (*KTP*, *KK*) of the applicant and his/her proxy if authorized, which has been matched.
- d) Proof of land owner/customary title/former customary property.
- e) Photocopy of the current year's *SPPT PBB* which has been matched with the original by the counter officer and submission of proof of *SSB (BPHTB)*.
- f) Attach proof of *SPP/PPH* in accordance with the provisions.

While in the land registration fee, the fee rate is in accordance with the provisions of the Government Regulation on the type and rate of the type of non-tax state revenue applicable to the National Land Agency of the Republic of Indonesia. Land Registration Fee Under the provisions of Article 61, which reads:

- (1) The amount and method of payment of fees in the context of implementing land registration activities are regulated by a separate Government Regulation.
- (2) Upon the request in question, the Minister or the appointed official may release the applicant from part or all of the costs as referred to in paragraph (1), if the applicant can prove that he is unable to pay the fees. (3) For registration of the transfer of rights due to inheritance which is submitted within 6 (six) months from the date of death of the testator, no registration fee is charged. (4) The procedure for obtaining exemption from land registration fees is regulated by the Minister.

First-time land registration, including Conversion, recognition and affirmation of rights:

- a. Conversion: defined as the conversion of land rights before the enactment of Law no. 5 of 1960 into land rights in Law no. 5 of 1960
- b. Recognition: is defined as a land right where there is no evidence of ownership but the fact that the person has physical control for 20 years or more has been proven or his predecessors can be recognized as property rights on behalf of the person concerned.
- c. Affirmation: Defined as affirmation of land rights that have been converted or have been recognized

In this case, land registration aims to:

- a. To provide legal certainty and legal protection to holders of rights to a plot of land, flats and other registered rights so that they can easily prove themselves as holders of the rights in question.
- b. To provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units.
- c. For the implementation of orderly land administration.

Meanwhile, there are fees regarding land registration services, such as:

1. Measurement service fee:

Land area x *HSBKu* + IDR 100,000
500

2. Land inspection service fee by Committee A:

Land area x *HSBKu* + IDR 350,000,
500

3. Certificate Issuance Rates (First Time Registration): IDR 50.000,- per field.

HSBKu : Special Cost Unit Price for measurement activities applicable for the year concerned.

HSBKu : Special Cost Unit Price for Land inspection activities by committee A for the year concerned.

Legal basis :

Regulation of the Head of BPN No. 1 of 2010 concerning service standards and land regulations.

Time : 98 (Ninety eight) days.

Note : The application form contains:

- a) personal identity
- b) The area, location and use of the land requested.
- c) The land statement is not disputed.
- d) The land claim is physically controlled.

The proof of ownership basically consists of proof of ownership in the name of the right holder at the time the UUPA comes into effect and if the right is subsequently transferred, the evidence of successive transfer of rights reaches the right holder at the time the book of rights is recorded.

Meanwhile, the written evidence intended can be in the form of Grosse deed of *eigendom* rights issued based on the *Overschrijvings Ordonnantie* (S.1834-27) the relevant *eigendom* is converted into property rights.

- a. Grosse deed of *eigendom* rights issued under the *Overschrijvings Ordonnantie* (S. 1834-27) since the enactment of the UUPA until the date the land registration is carried out according to Government Regulation no. 10 of 1961 concerning Land Registration in the area concerned.
- b. Proof of ownership rights issued based on the relevant *Swapraja* Regulation.
- c. Certificate of property rights issued based on Agrarian Regulation No. 15 of 1959 concerning the Granting and Renewal of several land rights as well as guidelines regarding work procedures for the officials concerned.
- d. Decision letter on granting property rights from authorized officials, either before or since the enactment of the UUPA, which is not accompanied by an obligation to register the rights granted, but is tired of fulfilling all the obligations mentioned in it.
- e. A deed of transfer of rights made under the hand which is affixed with a testimony by the Customary Head/Village Head drawn up before the enactment of this Government Regulation.
- f. Deed of transfer of land rights made by PPAT (Notary), whose land has not been recorded
- g. The waqf agreement deed/waqf commitment letter made before or since the implementation of Government Regulation Number 28 of 1977 concerning the addition of the capital investment of the Republic of Indonesia into the share capital of a state-owned company (*Persero*).
- h. Minutes of auction made by an authorized auction official, whose land has not been recorded.
- i. Letter of appointment or purchase of land plots in lieu of land taken by the government or local government.
- j. The form of land tax / *Landrente*, girik, pipil, kekitir and Verponding Indonesia before the enactment of Government Regulation Number 10 of 1961 concerning Land Registration.
- k. Land history certificate ever made by the Land and Building Tax Service Office.
- l. Other forms of written evidence under any name as referred to in Articles II, VI and VII of the provisions for the conversion of the UUPA.

B. Uses of Land Registration for Land Owners

With the enactment of Government Regulation Number 24 of 1997 concerning Land Registration, it is hoped that it will be useful, both to the community and to the government itself. There are several uses obtained by the land registration system through Government Regulation Number 24 of 1997, namely:

1. For the community

- a. With the new system, it will create a sense of security for land rights owners, because they will avoid feeling afraid of being sued. this is very important for the community and is a very vital need for every holder of land ownership rights. With the feeling of security from the owners of this land, they will work on the land in earnest. This will have a positive impact on soil productivity, where land production will be higher and the level of welfare of land owners or cultivators will also increase.
- b. Help make it easier for the community to obtain property rights to land, because the procedure for obtaining property rights to land is no longer rigid, especially in the provision of evidence. This facility is made possible because of the provisions regarding the convenience of proving ownership rights to land, as illustrated in Article 7, Article 24. Article 7 allows village heads as PPATs in remote areas. Article 24 allows a person who does not have evidence at all regarding the land he controls, to register his land only based on land tenure in good faith for 20 years provided that during that time there are no parties who sue, or if a person does not have complete evidence. who can be trusted,
- c. The community's economy is more advanced; this can happen, because in fact the certificate can be used as collateral for a loan in the bank. In this connection, for people who do not have the capital to do business, they can obtain business capital by making the certificate as bank collateral. Thus, it is possible that there will be more economic actors in the community, which in turn will have a positive impact on the possibility of better economic growth.
- d. Facilitate the transfer of rights;
With the certificate, the transfer of land rights will be easier to do, because it is enough to show the certificate to the National Land Agency along with other necessary conditions. The National Land Agency can effortlessly record and record the transfer of rights as soon as possible.
- e. Increase land prices;
Land that has been registered with certificates will usually have a higher selling value than those that are not certified. This is understandable because the buyer has confirmed the truth about the data on the land he wants to buy and already has legal certainty over the status of the land.
- f. It is easier for the community to obtain data on land because of the possibility of using sophisticated tools. As explained earlier, in the new land registration system through Government Regulation Number 24 of 1997 it is possible to use sophisticated equipment (see Article 35 paragraph (5)).

2. Benefits for the government

- a. The easier it is for people to register their land, it will lead to more requests from the community to register land rights. Thus, the government's efforts to register all land in each region of the country will be realized more quickly. In this regard, the ideals of the Basic Agrarian Law, which aims to create legal certainty and land rights, can be realized.
- b. Reducing anxiety due to land disputes;
Land that has been the target of the community often causes conflicts. Conflicts over land usually arise due to the lack of clarity about the real land owners. With the ease of obtaining proof of land ownership rights, it allows the community to be more motivated to register their

land.

- c. Makes it easier to set policies in the land sector, because land administration is more orderly.
- d. Profitable for banking institutions;
Banking institutions often provide credit to the public by using land as collateral. The existence of a land certificate submitted as collateral by the borrowing community will increase confidence in the security of the money given to the community.
- e. Facilitate the government in determining policies in other fields such as taxation, because it is easier to collect tax data.

With the description above, it can be seen that the use of land registration for the community (land owners) and the government is carried out by carrying out land registration as regulated in Government Regulation Number 24 of 1997.

Thus, it does not provide a sense of justice for citizens who feel entitled and object to land disputes over the announcement of land registration because the time for the announcement of land registration is too short with the Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration. Announcement of Article 88 Systematic 15 days and Sporadic 30 days while Government Regulation No. 24 of 1997 concerning Land Registration Announcement of Article 23 Systematic 30 days and Sporadic 60 days and even then, with long announcements there are still many disputes that occur especially with announcements that are as short as that.

4.3. The legal consequences of the amendment to Government Regulation Number 24 of 1997 concerning land registration with Government Regulation Number 21 of 2021 concerning management rights, land rights, apartment units, and land registration.

Until now, the rules regarding land registration are still in conflict between the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration and Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration.

In Article 26 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration it is explained that:

"The list as referred to in Article 25 paragraph (2) along with a map of the relevant land parcel or parcels as referred to in Article 20 paragraph (1) shall be announced within 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide opportunities for interested parties to file objections."

Furthermore, in Article 88 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, it is explained that:

- "(1) Announcement of the results of collecting physical data and juridical data:*
- a. in systematic land registration is carried out for 14 (fourteen) calendar days.*
 - b. in sporadic land registration for 30 (thirty) calendar days."*

With the issuance of government regulation number 18 of 2021 regarding management rights, land rights, apartment units, and land registration, this has led to a conflicting norm with government regulation number 24 of 1997 concerning land registration. Based on Government Regulation Number 24 of 1997, Land Registration Procedures include:

- a. Physical data collection and management
- b. Proof of rights and bookkeeping
- c. Certificate issuance
- d. Presentation of physical data and juridical data

- e. Storage of general lists and documents.

Meanwhile, the land registration procedure in government regulation number 18 of 2021 concerning management rights, land rights, apartment units, and land registration includes:

- a. The implementation and implementation of land registration can be done electronically
- b. The results of the implementation and implementation of electronic land registration as referred to in paragraph (1) are in the form of data, electronic information, and or electronic documents
- c. Electronic data and information and or their printouts are legal evidence
- d. Electronic data and information and or their printed results as referred to in paragraph (3) are extensions of valid evidence in accordance with the procedural law in force in Indonesia.
- e. The application of electronic land registration is carried out in stages by considering the readiness of the electronic system built by the ministry.

From the explanation above, there are differences in the implementation of land registration related to the announcement of land registration. The Government Regulation should be implemented properly, but in fact in the field the regulation still does not provide certainty whether it must be implemented within 60 days according to the provisions in Article 26 of Government Regulation Number 24 of 1997 or carried out for 30 days in accordance with the provisions in Article 88 of Government Regulation Number 18 of 2021.

As has been explained in several previous sub-chapters, the process of granting rights to an application for land rights does not only look at several procedures. Some applications are not enough to just be analyzed by whether the applicant meets the requirements, the application has been announced, physically examined, measured, and made a fatwa and so on and is procedural in nature, but must be studied in general.

Therefore, if the system adopted in the registration of land or rights as regulated in Government Regulation Number 10 of 1961 contains a negative setting (tends to be positive), in this case it provides an opportunity for those who feel more entitled and further prove that they are the owner of the land.

We can see that an application for land rights is legally appropriate for processing or not if the subject of the applicant can legally prove that he or she is the only party entitled to the land being applied for. The assessment of the evidence carried out by the agrarian implementing apparatus against the applicant is in terms of the history of land acquisition to the person concerned legally and can be accounted for.

There must be clear legal certainty regarding the legal consequences of the amendment to Government Regulation Number 24 of 1997 concerning land registration with Government Regulation Number 21 of 2021 concerning management rights, land rights, apartment units, and land registration, where legal certainty contains two meanings, namely first, the existence of general rules makes individuals aware of actions that may and may not be done, secondly in the form of legal security for individuals from government authority because with the existence of general rules individuals can know what the State may charge or do to individuals.

The teaching of legal certainty comes from dogmatic juridical teachings which are based on the positivist school of thought in the legal world, which tends to see law as something autonomous, independent, because for adherents of this thought, the purpose of law is nothing but guaranteeing the realization of legal certainty. This legal certainty is realized by law with its nature which only makes a general rule of law. The general nature of the rule of law proves that the law does not aim to achieve justice or benefit, but solely for certainty.

If the series of processes are not carried out according to the rules, the legal consequences that arise regarding the non-implementation of the installation of boundary markers or commonly referred to as the principle of *contradictoire delimitatie* are as follows:

1. It will cause land boundary disputes between one land owner and adjacent land owners due to

the absence of correct and clear boundaries.

2. It will lead to boundary disputes between the heirs of one right holder and another, in this case the owner of the adjacent land.
3. It takes a long time for the right holder or owner to return the land rights boundary in the future because of the unclear boundaries.
4. It will cause problems for rights holders if they want to make a sale and purchase because there is no clarity on the boundaries of the land.
5. There is no legal certainty of the land.

In dealing with or dealing with land disputes, the National Land Agency will make various efforts to guarantee a person's right to ownership of a plot of land. Normatively, the National Land Agency is the only institution in Indonesia that is given the authority to carry out the mandate and manage land. The basis for the formation of the National Land Agency, namely from Presidential Decree No. 26 of 1988 as an Operational Guide for the National Land Agency,

Even through the same process, the government has strengthened the role and position of the National Land Agency in forming Deputy V who specifically resolves and examines land disputes. Based on the regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2006 concerning the Organization and Work Procedure of the National Land Agency of the Republic of Indonesia, the handling and assessment of land disputes and conflicts is the area of Deputy V which is in charge of the following:

1. Directorate of Land Conflict
2. Directorate of Land Disputes
3. Directorate of Land Cases Article 346 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2006 concerning the Organization and Work Procedure of the National Land Agency of the Republic of Indonesia.

The National Land Agency will continue to seek solutions in dealing with land disputes based on the prevailing regulations by taking into account the sense of justice and respecting the rights and obligations of each party. The steps taken by the National Land Agency in resolving land disputes are through deliberation, as well as disputes regarding dual certificates. Currently, land disputes in terms of dual certificates can be resolved in several ways, namely:

Settlement by means of deliberation. Deliberation for consensus is stated in Pancasila as the basis of social life and is regulated in the 1945 Constitution. This deliberation is carried out outside the court without a mediator. The mediator is carried out by influential parties such as the Village Head/*Lurah*, customary leaders and the National Land Agency. In resolving land dispute cases through deliberation, that the disputed conflict is not in the form of determining the ownership of land rights which can give or eliminate a person's rights to the disputed land.

Using arbitration settlement and alternative dispute resolution Arbitration is a dispute resolution by a person or several judges who are appointed based on the agreement or agreement of the parties and it has been agreed that the decision made is binding or binding. The condition that must be used in the settlement of land disputes through arbitration is the agreement of the parties which is made in writing and approved by the disputing parties. If a contract has been written to resolve the dispute through arbitration and the other party wishes to settle the case through the courts, the court process must be postponed until the arbitration process is completed in the institution. Thus the court must respect and respect the institution of arbitration.

Settlement through judicial bodies In accordance with applicable regulations in the country, especially Indonesia, settlement of land disputes related to ownership disputes is submitted to the general court, disputes over decisions of the National Land Agency through the State Administrative Court and disputes relating to Waqf land are resolved through the Religious Courts. As has been explained by the litigation and non-litigation institutions that until now all these methods have not been able to completely resolve land disputes in a short time, but instead have become protracted.

And the mediation process carried out by the National Land Agency cannot solve the current land problems (Harianto, 2020).

Thus, it does not provide legal protection to the community who owns the actual land if it is registered by the new land owner without the knowledge of the actual land owner with the announcement of the land registration being too short, the real land owner feels disadvantaged by the announcement of the land registration being too short because land disputes.

4. CONCLUSION

The arrangement that is the legal basis that is still valid to Government Regulation No. 18 of 2021 on Land Rights Management Rights, Flat Units and Land Registration that is still being undertaken without not yet repealing Government Regulation No. 24 of 1997 on Land Registration whose announcement period differs between the two Government Regulations, namely, with the principle of *Lex Posterior Derogat Legi Priori* (The new Law). The old law, that is, if there is a law that regulates a thing replaced or renewed with a new law, then the old law no longer applies. Where in Government Regulation 24 of 1997 on Land Registration Article 25 paragraph (2) States, along with a map of the fields or plots of land concerned as a result of measurements as referred to in Article 20 paragraph (1) announced for 30 (thirty) days in the systematic registration of land or 60 (sixty) days in the sporadic registration of land to give an opportunity to interested parties to object, while Government Regulation No. 18 of 2021 on Land Rights Management Rights in article 88 states the Announcement of the results of the collection of physical data and juridical data; in the Systematic Registration of Land conducted for 14 (fourteen) calendar days; and in the sporadic Registration of Land for 30 (thirty) calendar days.

Furthermore, Fundamental differences in land registration procedures and procedures can be found through the National Land Agency Office which provides very clear information for people who do not understand the terms and procedures for land registration for the first time. Based on the provisions of Government Regulation 24 of 1997 concerning Land Registration, article 11 states that the implementation of land registration includes activities for registering land for the first time and maintaining land registration data, and in article 12 explaining that activities for registering land for the first time include: collecting and processing physical data, proving rights and bookkeeping, issuance of certificates, presentation of physical data and juridical data, storage of general lists and documents. Land registration data maintenance activities include: registration of changes to other land registration data, registration of maintenance and encumbrance of rights. However, in Government Regulation No. 18 of 2021 concerning Land Rights Management Rights, article 84 explains that the implementation of land registration can be done electronically and in article 86 the making of the deed of the Land Deed Maker Official can be done electronically. Moreover, there is an improvement in the practicality of the procedure.

Therefore, Legal Consequences regarding Amendment to Government Regulation Number 24 of 1997 concerning Land Registration to the community who own land, it must be given clarity so that the community feels safe when the community registers their land with the National Land Agency Office regarding the issue of different announcements due to the issuance of Government Regulation Number 18 of 2021 concerning, Management Rights, Land Rights, Flat Units and Land Registration. Where in the regulations, which must be based on clear legal certainty, that is, they must follow the new regulations as long as there are no other regulations that are more specifically regulated.

Suggestion

In order for the Government to make improvements or revisions related to registration announcements that are too short, the land owners actually feel disadvantaged and the Government must also conduct surveys or plunge into the field to find out what the people want.

The Office of the National Land Agency is to provide good services to the people who register their land and provide clear information to the community about the process and procedure for registering land.

Therefore, the community immediately takes care of registering their land at the National Land Agency Office so that they have a valid certificate of ownership of their land so as to obtain legal certainty and clear protection.

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**ANALYSIS RELATED TO JUDGES' CONSIDERATIONS IN THE
IMMEDIATE DECISION OF CRIMINAL ACTIONS AGAINST
CHILDREN**

Iskandar^{1*}, Ariza Umami², Dilla Fadilla³

^{1,2,3}

Universitas Muhammadiyah Metro

E-mail: ¹⁾ iskandarmt51@gmail.com, ²⁾ arizaumami86@gmail.com, ³⁾ fadillad813@gmail.com

Abstract

Analysis of Judges' Considerations in Imposing Decisions on Immoral Crimes Against Children and implementation of decisions related to Law Number 23 of 2002 concerning Child Protection Article 81 Paragraph (2). The purpose of this paper is to analyze the judge's considerations in deciding cases of immoral crimes against children. This research method uses an empirical juridical approach which is carried out by interviewing several respondents or related sources. The results of the study show that when judges are deciding on criminal cases involving children, they take into account both items that charge and things that relieve the issue. However, the implementation of the verdicts in criminal cases involving children is carried out in line with the Operational Standards of General Criminal Procedure, as well as with the Children's Criminal Justice System. There are three different types of decisions that can be made under the provisions of the KUHP, namely: court decisions in the form of a judgment (Veroordeling), court decisions in the form of a redeiving of all charges (Vrijspraak), and court decisions in the form of freedom from all forms of law (Onslag van all rechtsvervolging).

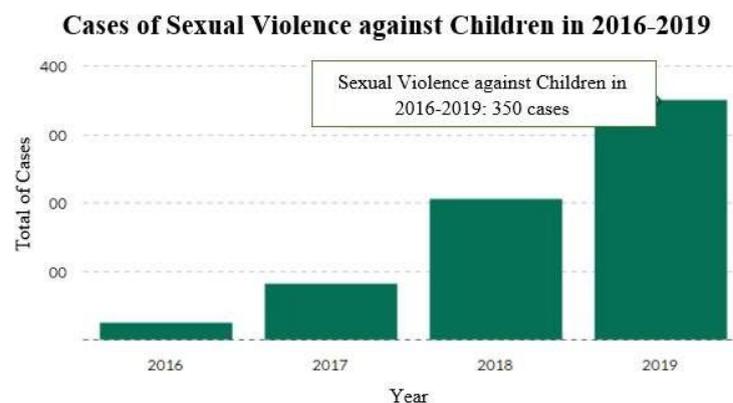
Keywords: *Judge's Consideration, Immoral Crime, Law Enforcement*

1. INTRODUCTION

As the nation's future and the next generation of its ideals, children require protection in order to ensure their survival and growth and development on all levels, including the mental, physical, and social. All children have the right to protection from acts of violence, discrimination, and exploitation of civil rights and freedoms that can interfere with their physical, spiritual, and social development; otherwise, they risk being harmed (Nashriani, 2012). The irony is that children are increasingly targets of crime, and as such, they should be provided with protection. As a major social problem, sexual crimes against children are on the rise, and the prevalence of criminal acts of sexual violence against children has a negative impact on the effectiveness of the law in our legal system.

Immoral violence can be committed in a variety of ways and using a variety of tools and methods. In accordance with the provisions of the Convention on the Rights of the Child (1989) and its additional protocol, the CRC (option protocol Convention on the Rights of the Child) states that the types of violence that occur to children are classified into four categories: physical violence, sexual violence, emotional violence, and sexual violence. Commercial sexual exploitation, which includes the selling of minors, child prostitution, and child pornography, are examples of immoral forms of violence. In other words, immoral violence includes sexual mistreatment in the form of sex, or through the vaginal area, penis,

orally, with tools, up to and including showing the genitals, sexual coercion, sodomy, oral sex, masturbation, and sexual harassment, as well as incest, which should no longer be considered a minor issue because the social situation is becoming increasingly serious. A considerable increase in occurrences of sexual violence against children was observed between 2016 until 2019, according to data from the Witness and Victim Protection Agency (LPSK). There were 350 cases of sexual abuse against children reported in 2019, 200 cases of sexual violence against children reported in 2018, 180 cases of sexual violence against children reported in 2017, and 30 cases of sexual violence against children reported in 2016.



Source: Liputan6.com

Figure 1 Cases of Sexual Violence against Children in 2016-2019

The data in the above table demonstrates that immoral crimes against minors are on the rise. In addition to the psychological consequences of child abuse, the act of sexual harassment itself can cause stress, depression or mental shock. Feelings of guilt may arise, and the victim may be afraid of communicating with others or even being ridiculed by the public. He may have nightmares, have trouble sleeping, have insomnia, be afraid of certain objects or places, or have issues related to self-esteem. Apart from that, the victim suffers from the physical, emotional/psychological, as well as the real consequences of acts of sexual abuse/violence. Most of the real consequences of acts of sexual abuse/violence experienced by children include sexual diffusion, somatic complaints, pregnancy and unwanted things, chronic pain, and sexually transmitted diseases. Clearly, the consequences of this crime of violence against children and immorality have a negative impact on the future generation of society, and as a result, a realistic approach to dealing with it both de facto and de jure is required.

2. RESEARCH METHOD

The method of empirical juridical analysis is the research method that was employed in the problem-solving process. 'Empirical' refers to something that is factual. An attempt to address the topic under investigation with an actual legal nature and in conformity with the facts of life in society is meant by the empirical method. For this study, secondary and primary data were combined by merging legal studies books connected to this research with laws and facts gathered in the field to create a comprehensive set of information. Researchers in the field must visit the community and communicate with members of the community as part of their research (Hadikusuma, 1995). This research was carried out at the Metro District

Attorney's Office and the Metro District Court, which serve as law enforcement agencies in the pursuit of justice. The purpose of conducting this research is to obtain an understanding of the legal analysis surrounding immoral offenses against minors in the city of Metro.

3. RESULT AND DISCUSSION

The protection and welfare of children necessitates the support of institutions, as well as rules and regulations that can ensure their implementation and enforcement. The definition of a child according to the Convention on the Rights of the Child (Convention on the Right of the Child) is not significantly different from the definition of a child according to several other laws. According to the Convention on the Rights of the Child, a child is defined as a person who has not reached the age of 18 (eighteen) years unless otherwise provided for by the Convention on the Rights of the Child (Convention on the Right of the Child). When it comes to minors, the law applies since maturity is acquired earlier. In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that children who are victims of criminal acts, hereinafter referred to as child victims, are children who are not yet 18 (eighteen) years old who experience physical, mental and/or economic losses caused by a crime.

"Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System" is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a crime. Children who are victims of criminal acts are called child victims. Child victims themselves are children who experience physical, mental, and/or economic losses caused by criminal acts.

The parties involved in the juvenile criminal justice process are Investigators, Public Prosecutors, Judges, Community Counselors and Social Workers.

1. Investigators are Child Investigators
2. Public Prosecutor is Child Public Prosecutor
3. Judge is a Child Judge
4. Community Advisor is a functional law enforcement official who carries out community research, guidance, supervision, assistance to children inside and outside the criminal justice process.
5. Social worker is someone who works in both government and private institutions who have the competence and profession of social worker and concern in social work obtained through education, and or experience of social work practice to implement social problems.

Investigation processes up to guidance after sentencing

Investigations can only be carried out by investigators who have been determined by the decision of the Chief of Police or other officials who have been directly appointed by the Head of the Police of the Republic of Indonesia, while in public prosecutions are determined based on the Decree of the Attorney General or other officials who have been appointed by the Attorney General. In the investigation of children's cases, investigators must ask for considerations or suggestions from the community advisor after the crime is reported or reported, then the Community Research Center is obliged to submit the results of the investigation to the community no later than 3 days counted from the investigator's request.

When investigating child victims, investigators are required to first obtain social reports from social workers or social welfare workers after the crime has been reported, and

then when investigating children who are proposed as children in legal conflict (ABH) at the level of investigation, prosecution, and examination of children's cases in court, they are required to first make diversion before proceeding with the investigation. For the purposes of this definition, diversion is defined as the process of transferring the settlement of a child abuse case from within the criminal justice system to outside the criminal justice system under the following conditions:

1. Was sentenced to less than seven (seven) years in prison.
2. And certainly not a recurrence of a crime

In addition to these provisions, it also applies to children who have been accused of committing a crime which is punishable by imprisonment for under 7 (seven) years or more in the form of subsidiary, alternative, cumulative or combined charges in accordance with Article 7 PERMA Number 4 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.

The process of examining court hearings on children in the first level is only carried out by a single judge, the Chairperson of the Court in the process of examining cases against children with a panel of judges in the case of a criminal offense punishable by imprisonment of 7 (seven) years or more difficult to prove. Judges in examining cases of child crimes in juvenile courts are declared closed to the public except for the reading of decisions. Furthermore, in the child trial process in accordance with Article 55 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Panel of Judges is obliged to order the parent/guardian or other legal aid provider in the event that the parent, guardian or companion is not present, the trial is continued with the accompanying by an advocate or other legal aid provider and/or community advisor.

Children in conflict with the law whose age is fourteen years and above can be given criminal penalties with various forms of crime as stipulated in Article 71 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, which are as follows:

1. The main crime consists of: warning, conditional punishment (guidance in institutions, community service, supervision), job training and coaching in institutions and prisons
2. Additional punishment in the form of deprivation of profits obtained from criminal acts, fulfillment of customary obligations.

In the judge's decision at the first level, children who are in conflict with the law and the public prosecutor can certainly take legal action, namely appeal, cassation and review.

The execution was carried out based on the Rules of the Attorney General of the Republic of Indonesia concerning Standard Operating Procedures (SOP) for the Handling of General Crime Cases. Article 48 Implementation of the Court's Decision which reads:

1. "The implementation of court decisions that have obtained legal force will still be carried out by the prosecutor based on an order from the head of the district attorney who handles the case
2. A warrant regarding the implementation of a court decision that has permanent legal force is issued no later than 3 (three) days from the receipt of the court's decision.
3. In the event that the verdict is acquitted of all charges or acquitted of all legal charges for which the defendant is detained, the prosecutor on the same day asks for a copy or excerpt of the court's decision and immediately releases the defendant from detention.

4. In the event that the convict applies for clemency or extraordinary legal remedies in the form of a review, the implementation of the court's decision shall be based on more specific provisions regarding clemency and judicial review.
5. The implementation of court decisions can be carried out by a prosecutor or in the form of a team that is adapted to the needs and circumstances by involving administrative/administrative staff.
6. In the event that the execution of a court decision is carried out by a team, one team member is appointed as the team leader by taking into account the competence in question
7. The appointment of prosecutors to carry out court decisions prioritizes Public Prosecutors who are appointed as the Prosecution Team and changes can be made in accordance with the policies of the Work Unit Leaders
8. The implementation of the court's decision is carried out completely (corporal punishment, fines, evidence, restitution and court fees) no later than 7 (seven) days
9. Administrative/administrative officers who are administratively responsible for the implementation of court decisions
10. In the case of a death penalty decision, its implementation is based on statutory provisions."

Legal Analysis of Cases of Immoral Crimes against Children

Efforts at consistent law enforcement must continue to be pursued by law enforcement officers, including those from the police and prosecutor's office, who function as investigators in every crime that occurs in society, before passing the case on to the judge, who then makes the final judgment. When law enforcement officers actually position themselves in accordance with the mandate of the law, law enforcement on a continuous basis will be carried out properly and effectively. In a free and open society, the role of the law is to enforce truth and justice, which is to say, to uphold the truth and to uphold the rule of law. As long as law enforcement is conducted without discrimination or favoritism, and there is no discrimination, or if the enforcement is not one-sided or impartial, this can be achieved. Law enforcement carried out in Metro City relating to the implementation of decisions has been consistent with the criminal law enforcement system, which affirms the division of responsibilities and authorities between the ranks of law enforcement officers of criminal procedure (Functional Differentiation) and the criminal justice system, which regulates how the enforcement of criminal procedure law is carried out (Integrated Criminal Justice system). So as to create a conducive situation in the life of the community.

Provisions regarding judges' considerations are regulated in Article 197 paragraph (1) letter d of the Criminal Procedure Code which states that "Considerations are compiled in brief regarding the facts and circumstances along with the evidence obtained from examination at trial which is the basis for determining the guilt of the accused. ". This was also put forward by Lilik Mulyadi (2007) who said that:

The Judge's Legal Basis regarding Judges' Considerations is regulated in Article 197 paragraph (1) letter d of the Criminal Code which states that "Considerations are compiled in a nutshell regarding facts and circumstances along with evidence obtained from examinations at trial which are the basis for determining guilt of the defendant".

During the decision-making process, the judge must actively ask questions and allow opportunity for the defendant, who is represented by an attorney, to challenge witnesses as well as the public prosecutor on the merits of the case. All are meant to reveal material reality, and in the end, it is the judge who bears ultimate responsibility for everything that is determined (Hamzah, 2000).

When a judge is faced with a case, a thought process takes place within him to then give his decision on the following matters: (Soedarto, 1986)

1. The decision regarding the incident, namely whether the defendant has committed the act that has been accused of him.
2. The decision regarding the sentence, namely whether the act committed by the defendant is a crime and whether the defendant is guilty and can be punished.
3. The decision regarding the punishment, namely the defendant can indeed be sentenced.

The judge of the Metro District Court, in deciding the case, considered that in order to punish the defendant, he must fulfill at least 2 pieces of evidence as specified in the Criminal Procedure Code. The judge's considerations in deciding cases of immoral crimes are guided by Article 81 paragraph (2) of the Republic of Indonesia Law no. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. In the case of immoral crimes against children, the judge gave a decision that was included in the Rehabilitation and Restitution process.

Restitution itself is in Article 1 Number 13 of the PTPPO Law explaining that Restitution is the payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs.

Elucidation of Article 71 D of the Child Protection Law provides a definition that restitution is:

"The payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. Especially for children who are in conflict with the law who are entitled to restitution are children of victims".

Furthermore, the Legal Basis for Implementing Court Decisions are:

- a. Article 1 number 6 letter a KUHAP
- b. Article 270 to Article 276 of the Criminal Procedure Code

The provisions in the Criminal Procedure Code are general in nature, so that in their implementation they must still be adjusted to the provisions of special events from various other laws and regulations (*lex specialist derogate legi generali*).

- c. Article 30 Paragraph (1) letter b of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia
- d. Article 54 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.
- e. Law Number 2/PNPS/ 1964 concerning Procedures for Implementing the Death Penalty handed down by Courts in General and Military Courts

- f. Regulation of the Attorney General of the Republic of Indonesia Number PER-036/A/JA/09/2011, dated 21 September 2011, Article 48 concerning the SOP for the Pidum.

Based on the provisions of the Criminal Procedure Code, there are 3 types of decisions:

1. Court Decisions in the form of Sentencing (*Veroordeling*)

The sentencing decision or *Veroordeling* is regulated in Article 193 paragraph (1) of the Criminal Procedure Code with the editorial that: "If the court stated that the defendant is guilty of committing the crime he is accused of, the court shall impose a sentence".

2. Court decision in the form of acquittal from all charges (*Vrijspraak*)

The provisions of Article 191 paragraph (1) of the Criminal Procedure Code, regarding the acquittal/*Vrijspraak* decision may be imposed by the Panel of Judges due to:

- From the results of the examination in court
- The defendant's guilt for the actions he was accused of was not legally and convincingly proven according to law.

3. Court decisions in the form of being free from all forms of lawsuits (*Onslag van alle rechtsvervolging*)

In accordance with the provisions of Article 191 paragraph (2) of the Criminal Procedure Code, it explicitly regulates "Decision on waiver from all lawsuits" or "*Onslag van alle rechtsvervolging*". In the provisions of this article, the decision to release from all lawsuits can be formulated editorially that:

"If the court stated that the act that has been charged against the defendant is proven, but the act does not constitute a criminal act, then the defendant is dismissed from all charges."

4. CONCLUSION

In light of the findings and discussion of the research, it is possible to conclude that when judges are deciding on criminal cases involving children, they take into account both items that charge and things that relieve the issue. However, the implementation of the verdicts in criminal cases involving children is carried out in line with the Operational Standards of General Criminal Procedure, as well as with the Children's Criminal Justice System. There are three different types of decisions that can be made under the provisions of the KUHAP, namely: court decisions in the form of a judgment (*Veroordeling*), court decisions in the form of being free from all forms of lawsuits (*Vrijspraak*), and court decisions in the form of freedom from all forms of law (*Onslag van all rechtsvervolging*).

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Prosecutor's Law

**CORPORATIONS AS WHISTLEBLOWERS IN THE CRIME OF
DEFAMATION BASED ON THE ELECTRONIC AND
TRANSACTION INFORMATION ACT**

Dwikarunia Setiawan Guntik¹, Dewa Gede Pradnya Yustiawan²

^{1,2} Faculty of Law, Universitas Udayana

Email: ¹⁾ guntikdua@gmail.com, ²⁾ pradnya_yustiawan@unud.ac.id

Abstract

The purpose of writing this article is to find out whether the corporation can be a reporting party in the criminal act of defamation under the ITE Law. The methods performed in writing this article are normative legal research methods that use a type of statutory approach and a conceptual approach. The results of the study showed that the regulation of defamation crimes stipulated in the Criminal Code and ITE Law, corporations cannot be the reporting party in the criminal act of defamation under the ITE Law because based on letter a guidelines for the implementation of Article 27 Paragraph (3) of SkB No. 2/VI/2021 on guidelines for the implementation of the ITE Law stipulate that the understanding of the content of insults and / or defamation must refer to the provisions of Article 310 and 311 of the Criminal Code in addition to letter f The implementation guidelines of Article 27 Paragraph (3) of the ITE Law stipulates that victims who can become whistleblowers are only individuals with a specific identity so that corporations cannot be reporting parties under the ITE Law. Corporations cannot be the reporting party should be included in the article explanation to be binding in an arrangement because the nature of the DECREE containing implementation guidelines is only binding on law enforcement only.

Keywords: Corporations, Defamation, Information and Electronic Transactions Act

1. INTRODUCTION

Indonesia is a state of law; nonetheless, there are numerous legal restrictions that protect the community's interests; one of these regulations is the KUHP (hereinafter referred to as the Criminal Code). The Criminal Code is a collection of laws that provide restrictions that apply in Indonesia to protect the community's interests. Defamation is one of the topics covered in the Criminal Code. Generally, defamation is prohibited under Article 310 (1) of the Criminal Code, which has the following article formulation:

“Whoever intentionally offends someone person's honor or character by accusing them of something, the intent of which is apparent so that it is known to the public, faces a maximum sentence of nine months in prison or a maximum fine of four thousand five hundred rupiahs for libel.”

Nowadays acts of defamation are often carried out through the internet, defaming through the internet can be said to be cybercrime (Supanto, 2016). Cybercrime is one of the new crimes that is significantly developing, both in terms of the modus operandi and the form of the crime (Maskun, 2013). Cybercrime is typically committed via computers or cell phones. The information and communication technology (ICT) mediums facilitate global connectivity. Today, practically all activities that connect humans may be conducted via the internet, and Indonesia is one of the top 10 (ten) countries in the world with the most smartphone users. In 2014, there were 57.7 million smartphone users; this figure increased to 71.6 million in 2015, and has continued to grow significantly till it is estimated to reach 100 million in 2017 (Samudra, 2020). The modus operandi of crime continues to develop along with the development of human civilization, cyber crime is an activity that uses a computer as a medium that is supported by a telecommunications system. The regulation of cyber crime in Indonesia's positive law is regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as UU ITE) and one form of cybercrime stipulated in the ITE Law is defamation.

Meanwhile, if the defamation is carried out through an internet platform, then the regulation that regulates it is Article 27 paragraph (3) of the ITE Law with the formulation of the article as follows:

“Everyone who distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents intentionally and without authority faces a charge of contempt and/or defamation.”

Those who violate the provisions above will be subject to criminal sanctions in the form of imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah) in accordance with the provisions of Article 45 paragraph (1) of the ITE Law.

The case of defamation carried out through an internet platform that was widely discussed was the case of Prita Mulyasari. Prita Mulyasari was charged with Article 27 Paragraph (3) Jo. Article 45 Paragraph (1) of the ITE Law, Article 310 Paragraph (2) of the Criminal Code, and Article 311 Paragraph (1) of the Criminal Code after pouring out his complaints against the OMNI International Hospital which was poured out via E-mail, which was deemed to have defamed the Hospital OMNI International, after that OMNI International reported Prita Mulyasari on charges of defamation. Based on the case of Prita Mulyasari, the question arises whether a corporation can be a whistleblower in a defamation case carried out through social media.

Therefore, this study aims to (1) identify and analyze the regulation of criminal acts of defamation in the prevailing laws and regulations in positive law (2) identify whether corporations can be the reporting party in criminal acts of defamation based on the ITE Law.

2. RESEARCH METHOD

The writing of this scientific paper uses the type of normative research. Normative legal research is legal research that has a concept as what has been written in laws and regulations, rules, and norms that become the benchmark for human behavior (Samudra, 2020). The type of approach in writing is to use a statutory approach and a conceptual approach. The technique of tracing legal materials uses the library method and grammatical interpretation with the aim of providing an interpretation of the words contained in the legislation.

3. RESULT AND DISCUSSION

3.1. Regulation of the Criminal Acts of Defamation in the Legislation that is currently applied in Indonesia

3.1.1. KUHP

The criminal act of defamation is regulated in CHAPTER XVI concerning Humiliation, precisely with the qualifications of the offense as follows:(Asikin, 2016):

- (1) Article 310 paragraph 1 of the Criminal Code regarding defamation.
- (2) Article 310 paragraph 2 regarding written defamation.
- (3) Article 311 regarding slander.
- (4) Article 315 of the Criminal Code regarding minor insults.
- (5) Article 316 of the Criminal Code regarding insults to state officials.
- (6) Article 317 concerning complaints of slander to the authorities.
- (7) Article 318 concerning giving rise to false suspicions.
- (8) Article 320 concerning defamation of dead person.

In the *a quo* case, the Constitutional Court Decision Number 50/PUU-VI/2008 provides a limitation on the scope of insult and/or defamation when referring to Article 310 and Article 311 of the Criminal Code (Wibowo, 2012). Article 310 of the Criminal Code stipulates as follows:

“(1) Whoever intentionally offends someone person's honor or character by accusing them of something, the intent of which is apparent so that it is known to the public, faces a maximum sentence of nine months in prison or a maximum fine of four thousand five hundred rupiahs for libel”

The criminal acts contained in Article 310 paragraph (1) of the Criminal Code have the following elements:(Zainal, 2016):

- a. The subjective element is intentional
- b. The objective element is whoever

- c. Offend someone's honor or reputation by accusing someone of something
- d. So that it is known to the public

As described above, the subjective element of a criminal act in Article 310 paragraph (1) of the Criminal Code is an intentional element (*opzettelijk*) (Disemadi & Jaya, 2019). It can be seen that the intentional element (*opzettelijk*) is placed in the formulation of a criminal act regulated in Article 310 paragraph (1) of the Criminal Code which includes actions such as attacking someone's honor or good name by accusing something and so that it is known to the public. The objective element of a criminal act intentionally (*opzettelijk*) offends the reputation of a person by accusing something and so that it is known to the public as regulated in Article 310 paragraph (1) of the Criminal Code is an element of whoever. Whoever here is a person or persons, which if the person or persons fulfills the elements of a criminal act contained in Article 310 paragraph (1) of the Criminal Code, that person or persons can already be classified as the perpetrator of the crime.

Article 311 of the Criminal Code regulates the following:

“(1) If that commit a crime of libel or written defamation it is allowed to prove what is alleged is true, or no prove about it, and accusations are made contrary to what is known, then he is threatened with slander with a maximum imprisonment of long four years”

3.1.2. ITE Law

The criminal act of defamation in the ITE Law is regulated in Article 27 Paragraph (3) which regulates the following:

“Everyone intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents that have a charge of contempt and/or defamation”

The criminal acts contained in Article 27 paragraph (3) have the following elements:

- a. The subjective element is intentionally
- b. The objective element is everyone
- c. Distribute and/or transmit and/or make accessible electronic information and/or electronic documents
- d. Has the insults and/or defamation.

The intentional element (*opzettelijk*) is a subjective element and includes a form of error. The consequences of this form of error can have an impact on the severity of the punishment threatened (Andrianto, 2013). In the *a quo* article the form of error is clearly stated, therefore the public prosecutor must prove that there was an intentional act in the prohibited act. The theory of intentionality has 2 (two) concept, namely:

- a. Will theory (*wils theorie*)(Hendrawan et al., 2015)

Intentionally is the will to make an action and the will can trigger a result of the action. In other words, it can be said to be intentional if the result of an action is desired, and it may be said that the result is desired if the result is the true intention of the action taken.

b. Theory of knowing (*voorstelling theory*)

Intentionally is the will to act by knowing the elements required by law

Another subjective element is without rights. This word is used to show the illegitimate nature of an action or intention. This is in line with the two groups classified by van Hamel regarding the opinion of *wederrechtelijk*, namely (Hendrawan et al., 2015):

a. Positive understanding

Simons defines it as "against the law" or Noyon which defines it as "violating the rights of others"

b. Negative understanding

Interpreting it as "not based on law" or "without rights" such the understanding adopted by Hoge Raad.

The objective element of a criminal act as regulated in Article 27 paragraph (3) of the ITE Law is everyone, what is meant by everyone in this Article refers to Article 1 number 21 of the ITE Law which stipulates as follows "people are individuals, whether Indonesian citizens, citizens of foreign countries, as well as legal entities."

The criminal threat is regulated in Article 45 paragraph (1) which regulates as follows:

"Everyone who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)"

The ITE Law is a regulation that aims to regulate criminal acts in the field of information and electronic transactions, because the object of the act and the object of the crime are information and/or electronic documents. Base on this point of view, related with the location or nature of the prohibition, the legal interest that Article 27 Paragraph (3) wants to protect is a legal interest so that insults or defamation do not occur on the internet.

The element of "distributing and/or transmitting and/or making accessible electronic information and/or electronic documents" was originally a verb that became an element of a prohibited act not being described in more detail. However, for the sake of legal certainty, in the end, this phrase was added with an explanation, namely:

- a. What is meant by "distributing" is sending and/or disseminating Electronic Information and/or Electronic Documents to many People or various parties through Electronic Systems.

- b. What is meant by “transmitting” is sending Electronic Information and/or Electronic Documents addressed to one other party through the Electronic System
- c. What is meant by “make accessible” are all actions other than distributing and transmitting through Electronic Systems that cause Information and/or Electronic Documents to be known to other parties”

The element of “having insults and/or defamation” at first led to the draft regulated in the articles in the Criminal Code, then the Constitutional Court gave an interpretation that this article could not be separated from the norms of criminal law as regulated in Article 310 and Article 311 of the Criminal Code, then the legislators add an explanation section of Article 27 paragraph (3) that the provisions in this paragraph refer to the provisions for defamation and/or slander as regulated in the Criminal Code.

3.2. The legitimacy of a corporation as a reporter in a criminal act of defamation based on the ITE Law?

Before discussing the legitimacy of a corporation as a reporter in a criminal act of defamation based on the ITE Law, we need to first discuss what a corporation is. Initially, the Criminal Code did not identify corporations as the subject of criminal acts. However, along with the times and science, the legislators began to include corporations as the subject of criminal acts outside the Criminal Code (Ningrum, 2018), because many legislators have the idea that humans can commit criminal acts with corporations as the means. Corporations as the subject of criminal acts, apart from being formulated outside the Criminal Code, are also formulated in the 2019 RKUHP (Widowaty, 2012), namely Article 45 to Article 50 of the 2019 RKUHP. Regarding the theory of corporate criminal liability, there are several theories as follows (Nasution, 2015):

1. “Strict Liability” Theory

Stricky Liability theory or absolute responsibility theory applies if a criminal act is committed by an employee to carry out or carry out his duties for and on behalf of the corporation without the need to see the fault in the corporation when committing a crime. The imposition of criminal liability is imposed without the need to prove the element of guilt. This theory deviates from the general principle of criminal law, namely the principle of "*geen straf zonder schuld*" or "no crime without fault". There is a need for an expansion of criminal liability so that if the defendant is a corporation, he does not have *mens rea*. *Mens rea* does not need to be proven because with the existence of *mens rea* the process of proof becomes more difficult for crimes related to public peace, compliance with certain regulations is required for the peace of society, and the many problems caused by corporate actions.

2. The "Vicarious Liability" Theory

Vicarious Liability is a model of Stricky Liability, namely the actions of company representatives, employees, or someone who receives direction from the company or

anyone who is permanently related to the company can be related or mandated by accountability for certain actions of someone who commits an act.

3. Identification Theory

Identification Theory asserts that the *mens rea* owned by the officials of a corporation is also owned by the corporation. For example, the board of directors

4. Aggregation Theory

This theory applies if the employees together have fulfilled the elements of "*actus reus*" and "*mens rea*" then the corporation is responsible based on one act or several employees who have fulfilled the elements of the crime. This is a development of Strict Liability which can account for the corporation on the basis of a person's actions cumulatively. The important thing in this theory is the *actus reus* and *mens rea* and in this theory it is obligatory to meet the requirements for the corporation to be held criminally responsible.

5. Delegation Theory

Delegation Theory is a form of Identification Theory in a very broad corporation, where more than one can be said to be the controlling or "directing mind"

6. The theory of Corporate Culture

This theory refers to evaluation, it is contained in the Australian Penal Code subsection 12.3(6). What is meant by corporate culture is an attitude, policy, rule, and course of practice behavior that exists within the corporation.

Regarding the criminal liability of corporations in committing criminal acts of defamation through the internet, it is contained in Article 1 number 21 of the ITE Law which stipulates that "people are individuals, whether Indonesian citizens, foreign citizens, or legal entities". its arrangement in the ITE Law is regulated in Article 27 Paragraph (3) which at the beginning of the provision contains an element of "everyone"(PRIYATNO & SH, 2020). So that based on the explanation that has been described, corporations can become the subject of criminal acts other than individuals because there is a shift in views regarding only individuals who can be held criminally responsible.

Meanwhile, regarding whether a corporation can become a reporting party in a criminal act of defamation based on the ITE Law, we must refer to the Joint Decree of the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the State Police of the Republic of Indonesia Number KB/2/VI/ 2021 Regarding Guidelines for the Implementation of Certain Articles in Law Number 11 of 2008 concerning Information and Electronic Transactions as Amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as SKB 2 /VI/2021). In letter a the implementation guidelines of Article 27 Paragraph (3) of the ITE Law stipulates as follows "according to the considerations of the Constitutional Court's decision Number 50/PPU-VI/2008 of 2008, and the Elucidation of Article 27 paragraph (3) of the ITE Law, the meaning of the content of insults and/or defamation must refer to and cannot be separated from the provisions contained in Articles 310 and 311 of the Criminal Code. Article 310 of

the Criminal Code is an offense against someone's honor by accusing something to be known to the public. Meanwhile, Article 311 of the Criminal Code relates to the act of accusing someone whose accusation is known to be untrue by the perpetrator. Moreover, in letter f the implementation guidelines of Article 27 paragraph (3) of the ITE Law stipulates as follows "the victim as a reporter must be an individual with a specific identity, and not an institution, corporation, profession, or position".

If we refer to the *a quo* arrangement, it can be seen that corporations cannot be the reporting party in criminal acts of defamation based on the ITE Law. There is a reason why a corporation cannot be a reporting party in a criminal act of defamation based on the ITE Law, the first when we refer to Article 310 of the Criminal Code there is an element of "one's good name" in the Criminal Code that a person cannot be interpreted as a corporation, because in The corporate Criminal Code has not been identified as a legal subject.

4. CONCLUSION

The regulation of criminal acts of defamation is regulated in the Criminal Code and UU ITE, corporations cannot be the reporting party in criminal acts of defamation based on the UU ITE because based on letter a the implementation guidelines of Article 27 Paragraph (3) SKB No. 2/VI/2021 concerning guidelines for the implementation of the ITE Law stipulates that the meaning of the content of insults and/or defamation must refer to the provisions of Articles 310 and 311 of the Criminal Code in addition to letter f of the implementation guidelines of Article 27 Paragraph (3) of the ITE Law which governing that victims who can become whistleblowers are only individuals with a specific identity so that the corporation cannot be a reporting party under the ITE Law. Corporations cannot be the reporting party should be included in the article explanation to be binding in an arrangement because the nature of the DECREE containing implementation guidelines is only binding on law enforcement only.

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REGIONAL AUTONOMY : SYTEMATIC LITERATURE REVIEW

Dany Try Hutama Hutabarat¹, Anisyah², Tiara Divani Sary³, Eka Widya Lestari⁴, Riski Adila Manja⁵, Handayani⁶

¹⁻⁶ Universitas Asahan

E-mail: ¹⁾ danytryhutamahutabarat@gmail.com, ²⁾ Anisyahnisa111@gmail.com,
³⁾ tiaradipanisari062017@gmail.com, ⁴⁾ eka241126@gmail.com, ⁵⁾ Riskiadila773@gmail.com,
⁶⁾ Handayani26123@gmail.com

Abstract

Regional autonomy refers to the authority that regulates the community's interests or acts as a regulator in areas where the federal government empowers local governments to manage their own government. This research technique utilizes five book sources in order to learn about regional autonomy, its various forms, and legal foundations. Community engagement in governance, particularly at the village level, is one of the foundations of regional autonomy that requires attention in this regard. Concerning the village government system's role in development implementation, many village development initiatives have been conceived and determined primarily on considerations and techniques from above, without involving the community being developed.

Keywords: *Autonomy, Decentralization, Authority*

1. INTRODUCTION

Regional autonomy is currently one of the most significant things in a region since it is concerned with the interests of every community as a source of regulators within the region itself (Umar, 2021). As a part of the national development process, regional development cannot be distinguished from the concept of regional autonomy. A self-governed area has the authority and obligation to organize community interests on the basis of openness, community participation, and accountability to the people of the region (Siraj, 2018).

Having broad, real, and responsible authority in the regions that is exercised professionally and fairly is essential to facilitating the implementation of regional autonomy. This includes avoiding corrupting practices such as collusion and nepotism and maintaining a balance between the financial affairs of the central and regional governments.

Therefore, the government issued Law No. 22 of 1999 regarding local government as well as Law No. 25 of 1999 on financial balance between central and local governments, and Law No. 28 of 1999 was issued to ensure a clean and free state that is not corrupted by collusion or nepotism.

The three laws that are recorded in one volume need to be read and owned by government officials, students majoring in government administration and social and political affairs, as well as observers of government, socio-political, or legal issues.

The explanation of local politics will be clearer if the concept of locality itself is well understood, the meaning of locality is diverse and can be divided into three main categories of legal territory and socio-cultural.

2. RESEARCH METHOD

The writing of this scientific paper uses the type of normative research. Normative legal research is legal research that has a concept as what has been written in laws and regulations, rules, and norms that become the benchmark for human behavior (Samudra, 2020). The type of approach in writing is to use a statutory approach and a conceptual approach. The technique of tracing legal materials uses the library method and grammatical interpretation with the aim of providing an interpretation of the words contained in the legislation. This research method uses 5 book sources which aim is to find out things related to regional autonomy and its types and legal basis.

3. RESULT AND DISCUSSION

3.1 Definition of Regional Autonomy

Regional autonomy is the authority to regulate a community interest or as a regulator in an area (Hasba, 2017). In regional autonomy there is local politics which is an effort to achieve good and just social goals.

Local politics can be divided into 3, namely:

- 1) Territorially local: explains the use of a space to regulate various types of actions that occur in it, in this local space there are also various institutions formed. Discussing local in a political context in a territorial manner is a form of regional classification according to certain criteria, so the locality of local political finance discusses a regional area.
- 2) Local in the legal context: in a regional autonomy there are two approaches, namely legal and socio-political. Regional autonomy is contained in Law No. 32 of 2004, which discusses regional autonomy. Law no. 32 of 2004 article 1 number 5 defines that regional autonomy: the rights, powers, and obligations of autonomous regions to regulate and manage their own government affairs and interests of local communities in accordance with statutory regulations. Article 6 of Law No. 32 of 2006 states that autonomous regions, hereinafter referred to as regions, are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs and the interests of the local community according to their own initiatives based on the aspirations of the people in the system of the Unitary State of the Republic of Indonesia. Meanwhile, regional obligations are regulated in Article 22 of Law No. 32 of 2004. In carrying out regional autonomy, they have the following obligations: (a) protect the community, maintain national unity and harmony; b) improve the quality of people's lives; (c) develop democratic life; (d) realizing justice and equity; (e) improve basic education services; (f) providing health facilities; (g) provide adequate public facilities and social facilities; (h) develop a social security system; (i) preparing regional spatial planning and layout; (j) developing productive resources in the regions; (k) preserving the environment; (l) manage population administration; (m) preserving socio-cultural values; (n) establish and implement laws and regulations in accordance with their authority; and (o) other obligations regulated in laws and regulations. Furthermore, Law No. 32 of 2004 states that Article 23 (1) of regional rights and obligations as referred to in Articles 21 and 22 are realized in the form of regional expenditure and financing plans which are managed in the regional financial

management system; (2) regional financial management as referred to in paragraph (1) is carried out efficiently, effectively, transparently, and accountable (Idris, 2021), orderly, fair, proper and obedient to laws and regulations. Regional Autonomy Law No. 32 of 2004 which is the result of the revision of regional autonomy law no. 22 of 1999, is very problematic, especially regarding a consideration between a regional center and a region. LIPI researcher Syamsudin Haris said that in Law No. 32 the authority is still the same as in Law No. 22. Moreover, according to Haris, substantially, Law No. 32 in the context of supervision and development has been undermined by the central government in almost all fields.

- 3) Sociologically and anthropologically local, local politics in a sociological and anthropological context triggers pluralism and multiculturalism. Pluralism and multiculturalism are factors that put local communities in certain social and cultural forms.

Pluralism is a framework of interaction in which groups show sufficient respect and tolerance of each other, that they fruitfully coexist and interact without conflict or assimilation. Moreover, the main conditions for the existence of plurism: *first*, reject all forms of truth, truth claims that tend to deny people others, *secondly*, the pluralism of society, relativism, understanding, interpretation, articulation and whole group reasoning (Syahputra, 2017).

Meanwhile, multiculturalism is a reflection of the locality of a society that has cultural diversity. Farida Hanum argues about multiculturalism, namely the acknowledgment of cultural pluralism. Pluralism is not a "given" event but is a process of values that become social behavior in a community. The term "Multiculturalism" consists of two words "multi" (many) and "culture". Schein said that there are several things related to the concept of culture, such as: a) the regularity of human behavior when interacting with others, which includes communication language, customs, traditions and rituals; b) group norms, which are standard values that develop in a group; c) the value that will be achieved by one group and known by the public; d) a philosophy or a belief by a community; e) rules of play, which must be done by members of the community; f) climate, which is an environment enjoyed together; g) the skills that exist in the self can be passed on to the next generation; h) habits of thinking, in mental models and the way people view themselves and their environment about language science.

The dialectic of power in the Era of Regional Autonomy, in discussing local politics cannot be separated from the principle of Deceleration which is the basis for the formation of a regional government. In the context of regional economic politics, decentralization is divided into 3 concepts according to Dorneier-Freire & Maurer (2002), namely: *first* as the responsibility of certain tasks to institutions or organizations outside the government structure; *second*, the handover of various affairs and central government to various affairs from the central government to other agencies triggers a shift in decision-making in a country that is through a centralized system. The third devolution is concerned with the actual transfer of power to lower levels of government. Further, Tri Ratnawati added one more concept, namely privatization or debureaucratization.

There are 4 things to explain an incident of rebellion - a regional uprising that crushed (KBBI, 2021) a decentralization policy in the old order (*orde lama*): *first*, regional rebellions outside Java which were described by the inequality of the economic structure, *secondly*, regional rebellions were based on centralized government policies so that they did not provide adequate free space for regions to manage themselves. The three non-regional issues, the four debates on the basis of the state that led to rebellions in various regions (Sommaliagustina, 2019).

Decentralization through democratization, procedurally (Panca, 2016) decentralization policy is carried out in the context of democratization, even in Law no. 32/2004 concerning regional autonomy, the principle of a democracy becomes a consideration in the formation of the law. In the regional autonomy law, namely Law No. 22/1999, it is expressly stated that a democratic principle is the basis in carrying out regional autonomy apart from other principles.

The establishment and implementation of regional autonomy are the basic principles of democracy, as confirmed in Law No. 22/1999, namely:

- a) The implementation of regional autonomy is carried out by taking into account an aspect of democracy, justice, equity and limited regional potential and diversity;
- b) The implementation of regional autonomy based on broad, realistic, and responsible;
- c) The implementation of broad and complete regional autonomy which is placed in regency and city areas, while provincial autonomy includes limited autonomy;
- d) The implementation of regional autonomy must be in accordance with the contribution of the state so that harmonious relations between the center and the regions as well as between regions are maintained;
- e) The implementation of regional autonomy must further increase the independence of regional autonomy, and therefore in the regency / city area there is no longer an administrative area;
- f) The implementation of regional autonomy must further enhance the role and function of the legislative, supervisory function or budget for the administration of regional government;
- g) The implementation of the deconcentration principle is placed in a provincial area in its position as an administrative area to carry out its authority as a regional representative; and
- h) The implementation of the principle of co-administration is ensured not only from the government to the regions, and the regions to the villages, which is accompanied by financing, facilities and infrastructure, as well as human resources, with the obligation to report on the implementation and be accountable to those who assigned them.

Furthermore, the forms of local political power are:

- 1) Visible power: a form of contestation that is seen in public spaces or institutions that make policy (e.g., institutions - executive institutions, judiciary political parties / other mass organizations). There are two assumptions involved in this, *first*, in the concept of the visible power approach, there is an assumption that access to the policy-making arena, (decision making arenas), is relatively open to groups who do not have power. *Second*, by looking at who participates in the contestation and struggle of interests, the end result is that there are parties who win and those who lose.
- 2) Hidden power: hidden power according to Gaventa is power used for personal interests. One of the hidden powers can be seen from several cases of regional election disputes handled by the Constitutional Court (referred to as MK). Furthermore, it was reported that the Honorary Council of the Constitutional Court (referred to as MKMK) resumed the trial regarding the alleged violation of the code of ethics by the non-active chairman, namely MK Akil Muchtar. Secretary General of the Constitutional Court, Janedjri M Gaffar, said that the examination would ask for information from two panels of judges and the court clerk, but the trial was closed and not open to media coverage. As Janedjri said to reporters at the Constitutional Court, "Because the material presented later is related to the case and it is very substantial in nature, because the case is a constitutional matter, so it can't be told."

Sessions that can be held and witnessed by the public are contained in this law:

- a) Article 141 paragraph (2) of Law No. 31 of 1997 concerning Military Courts ("Military Court Law");
- b) Article 64 of Law no. 8 of 1981 concerning the Criminal Procedure Code ("KUHAP");
- c) Article 95 paragraph (1) of Law No. 2 of 2004 concerning the settlement of Industrial Relations Settlement (Linda & Achlisia, nd); and
- d) Article 121 paragraph 93) Law no. 14 of 2001 on patents.

Likewise, the legislative-institutional basis for holding trials in private can be found in the law:

- a) Article 70 paragraph (2) of the Administrative Court Law: If the Panel of Judges considers that the dispute being tried is related to public order or state safety, the trial can be declared closed to the public;
- b) Article 0 paragraph (2) of the Law on Religious Courts, the trial for examining divorce claims is carried out in a closed manner;
- c) Article 141 paragraph (2) and paragraph (3) of the Military Court Law, cases involving decency, military secrets and/or state secrets are heard behind closed doors; and
- d) Article 8 paragraph (1) and paragraph (2) of Law no. 3 of 1997 concerning Juvenile Court, initially the juvenile court trial was conducted in private, but for certain cases the judge can say the trial is open to the public (in the Elucidation of Article paragraph (2), an example of a certain case is a traffic violation). Article 51 of the Juvenile Justice System Law which has been ratified by the DPR (The

House of Representatives of the Republic of Indonesia) states that judges examine children's cases in a trial which is declared closed to the public.

- 3) Invisible Power: People completely lose consciousness because of the effects of the values and ideology of the rulers. Through the ideology of the rulers, they can deceive and hegemony people's consciousness so that they are instigated and controlled without realizing it, ideology and values that subtly permeate consciousness. society including invisible power participation according to Milbert and Goel as quoted by Leo Agustino divided into 4:

First, apathetic: people who withdraw from the political process, *second*, speculators: people who have previously voted in general elections, *third*, gladiators: those who are actively involved in politics, and *fourth* critics: in unconventional forms of participation.

Thus, what is mean by local political power spaces are divided by 3 space, namely:

- 1) Closed space: by declaring a system of transparency, demands to be given the right and freedom to access information and accountability to the public about something that is created "behind the door"
- 2) Invited spaces: spaces that have been arranged in such a way as to be a place for the wider community to participate. However, in the space of power that is allowed not only at the local level, but also at the national and global levels.
- 3) Created / claimed space: a special space for people who do not have power, this space is outside the formal institutions of local government, which is created by the local community itself. According to Comwel this space is an "organic" space that arises regardless of public attention and it can lead to community mobilization, as in the case of certain issues, to mobilize common forces in fighting for the public interest.

Meanwhile, regarding the levels of Local Political Power are:

- a) Global Level Power, globalization has created a number of wide participation spaces, both in formal and non-formal contexts, in state and non-state albums.
- b) National Level Power, this power arises within the national government, namely the right to decide whether or not it has the right to implement international agreements, for example, government regulation No. 29 of 1999 states that foreign parties may control 99 percent of banking shares in Indonesia, Law no. 22 of 2001 concerning the oil sector, where the law provides equal treatment between Pertamina as a national company and a foreign private company.
- c) Local Power: if the national government is caught in the trap of global power, then the local power will automatically be under global threat. The dominance of PT. Freeport in Papua and Exxon Mobile in Cepu are evidence that the local government is not operating under the influence of national and global interests. According to Syamsul Hadi, most of the oil and gas industry in Indonesia is controlled and managed by foreign parties, more than 85% of crude oil production is controlled by companies from the United States, China, Japan and Europe.

A. Regional Autonomy

Law No. 22 of 1999 concerning Regional Government which is a form of theoretical national politics and strategy (Hayati, 2021) has given two forms of autonomy to two regions, namely limited autonomy for provincial areas and broad autonomy for districts/cities. As a consequence, the central authority is limited. With the enactment of Law No. 22 of 1999, legally formally, the Law replaced Law No. 5 of 1974 on the principles of regional government and Law No. 5 of 1979 on village governance. Therefore, the differences between the old and new laws are:

1. The old law, the point of view of citizenship starts from the centre (central government looking); and
2. In the new law, the point of view of citizenship starts from the region (control government looking). Law No. 22 of 1999 concerning regional autonomy is in accordance with the demands of reform which expects equitable distribution of development and its results for all regions, which in turn is expected to create a civil society.

B. Regional Authority

1. With the enactment of Law No.22 of 1999 concerning regional autonomy, regions have broad powers compared to Law No.5 of 1974 concerning the principles of local government and Law No.5 of 1979 concerning village governance is still in effect. Based on Law No. 22 of 1999, regional authority covers all authorities in the field of government, except for authorities in the fields of foreign policy, defence and security, justice, monetary and fiscal (Maulida, 2018), religion, and authority in other fields;
2. Other areas of authority, as referred to in point (1), include national planning and macro control of national development, financial consideration funds, state administration systems and state economic institutions, development and empowerment of human resources, conversion, and national standardization;
3. Form and composition of regional government:
 - a. DPRD (Regional People's Representative Council) as a regional legislature and regional government as a regional executive are formed in the regions. Regional government consists of regional heads and other regional apparatuses.
 - b. DPRD (Regional People's Representative Council) as a people's representative institution in the regions is a vehicle for implementing democracy based on Pancasila. The DPRD has the following duties and powers:
 - 1) Elect governors/deputy governors, regents/deputy regents, and mayors/deputy mayors;
 - 2) Elect members of the People's Consultative Assembly from regional representatives;
 - 3) Propose the appointment and dismissal of governors/deputy governors, regents/deputy regents, mayors/deputy mayors;
 - 4) Have regional regulations with governors, regents, mayors;
 - 5) Establish regional revenue and expenditure budgets with governors, regents or mayors; and

- 6) Supervise regional implementation, implementation of governor, regent or mayor decisions, implementation of regional revenue and expenditure budgets, regional policies, and implementation of international cooperation in the regions. Provide opinions and considerations to the government on plans for international agreements concerning regional interests. Accommodating and following up on regional and community aspirations.

The form and structure of the regional government above are the apparatus for administering regional government in the context of regional development.

Therefore, the success of regional development depends on the implementation of decentralization. One of the advantages of decentralization is that local governments can make decisions more quickly. Thus, development priorities and the quality of public services are expected to better reflect the real needs of local communities.

Regional authority is a right to manage and regulate existing communities and resources, which are based on the aspirations of the people who are under the auspices of the Unitary State of the Republic of Indonesia. Meanwhile, regional authority is regulated in the Law of the Republic of Indonesia Number 22 of 1999 concerning Regional Government

Article 7

- (1) Regional authorities include authorities in all areas of government, except for the authorities in the fields of foreign policy, defense and security, judiciary, monetary and fiscal matters, religion as well as authorities in other fields;
- (2) The authority of other fields, as referred to in paragraph (1), includes policies on national planning and the national development court on a macro basis (Shaid & Idris, 2022) financial balance fund, state administration system and state economic institutions, development and empowerment of human resources, utilization of natural resources and strategic high technology, conservation, and national standardization.

Article 8

- (1) Government authority delegated to the regions in the context of decentralization must be accompanied by the delivery and transfer of financing, facilities and infrastructure, and human resources in accordance with the suggested authority;
- (2) The authority of the government which is delegated to the governor in the context of deconcentration must be accompanied by financing in accordance with the authority that has been delegated.

Article 9

- (1) The authority of the province as an autonomous region includes authority in the field of government that is cross-district and city in nature as well as authority in certain other areas of government;
- (2) The authority of the province as an autonomous region includes the authority that is not or cannot be implemented in the regency and city areas;
- (3) the authority of the province as an administrative area includes the authority in the field of government which is delegated to the governor as the representative of the government.

Article 10

- (1) Regions are authorized to manage the national resources provided in their territory and are responsible for preserving the environment in accordance with statutory regulations
- (2) Regional authority in the sea area, as referred to in article 3, includes:
 - a. Exploration, exploitation (Sitoresmi, 2021b), conservation and management of marine wealth to the extent of the marine area;
 - b. Administration of interest;
 - c. Spatial arrangement;
 - d. Law enforcement on regulations issued by the regions or those delegated to authority by the government;
 - e. Assistance in upholding state security and sovereignty;
- (3). The authority of the regency and city areas in the sea area, as referred to in paragraph (2), is as far as one third of the sea boundary of the province;
- (4). Further regulations regarding the provisions as referred to in paragraph (2) shall be stipulated by government regulations.

Article 11

- (1) The authority of the regency and city regions includes all government authorities other than those excluded in article (7) and regulated in article (9);
- (2) The areas of government that must be carried out by regencies and cities include public works, health, education and culture, agriculture, transportation, industry and trade, investment, environment, defense, and manpower.

3.2 Decentralization and the Authority for Establishing Regional Regulations

3.2.1 Decentralization and Regional Autonomy

A. Definition and types of Decentralization

In a constitutional sense, decentralization is the transfer of government power from the center to the regions. According to Litvack & Seddon (nd) Decentralization is the transfer of victories and responsibilities related to public and central government functions to subordinate government organizations, or semi-free organizations, or the private sector.

Furthermore, Sadu in (Wasistiono & Wiyoso, 2009) concluded that what became decentralized, namely, there is a transfer of authority and responsibility regarding public functions, such as:

- a. The transfer comes from the central government;
- b. The transfer is given to the entity, which can be in the form of: a. subnational government organizations, b. sub-autonomous government agencies, c. organizations

- or central government officials who are outside the capital city of the State, d. non-government organization;
- c. The purpose of the transfer of authority and responsibility is so that the goals of the State can be achieved more effectively, efficiently, and democratically.

Decentralization variants can be classified based on their characteristics, including:

- a. Territorial decentralization;
- b. Functional decentralization;
- c. Political decentralization;
- d. Cultural decentralization;
- e. Economic decentralization; and
- f. Administrative decentralization.

In developing the characteristics of decentralization and regional autonomy, there are at least two benchmarks that must be considered. First, they are given the authority to make decisions on matters concerning their area. Second, it is given the freedom to control the transfer of various potential sources of the area concerned.

B. Relationship between Decentralization and Regional Autonomy

Autonomy or autonomic etymologically comes from the Greek “*autos*” which means self and “*nomous*” which means law or regulation. According to the Encyclopedia of Social Science, autonomy in the original sense is the legal self-sufficiency of social body and is actual independence. Therefore, there are two characteristics of the essence of autonomy, namely legal self-sufficiency and actual independence. In relation to politics or government, regional autonomy means self-government which is regulated and managed by own laws. Hence, autonomy focuses more on aspirations than on conditions. In addition, Koezumahatmadja states that according to the historical development of Indonesia, autonomy always means legislation (*regeling*), and also means government (*bestuur*) (Faisal, 2013).

C. Regional Regulation Concept

In the order according to the provisions of Law Number 32 of 2004 and its successor which is Law Number 23 of 2014 concerning Regional Government, the Regional Regulation is a form of statutory regulation under laws and regulations, government regulations, and presidential regulations, but in terms of content and the mechanism of its formation, local regulations are similar to laws. The legislative and executive branches of government are both involved in the process of developing regional regulation, just as they are in the formation of national law.

As stipulated in Article 1 points 7 and 8 of Law Number 12 of 2011 concerning the establishment of laws and regulations that:

“Provincial regulations are statutory regulations established by the Provincial Regional People's Representative Council with the mutual consent of the Governor. Regency or City Regional Regulations are statutory regulations established by the Regency/City Regional People's Representative Council with the joint approval of the Regent/Mayor.”

Meanwhile, in article 1 number 2 formulates the definition:

“Legislation as a written regulation that contains legally binding norms in general and is formed and determined by state institutions or authorized officials through the procedures set out in the laws and regulations.”

There are four types of legal norms, namely:

- a. Abstract general legal norms, for example laws;
- b. Concrete individual norms, for example State administrative decisions;
- c. Concrete general norms, for example traffic signs installed in certain places (the signs apply to all road users, but only apply to that place);
- d. Abstract individual norms, e.g. nuisance permission.

As a product of the people's representatives together with the government, local regulations, like laws, can be called legislative products, while other forms of regulation are regulatory products (Sitoresmi, 2021a) or regulatory products.

Bagir Manan argue that considering that local regulations are made by an independent or autonomous government with an independent scope of authority, in testing higher laws and regulations, it should not be based solely on "levels" but also on the "environment of authority".

In Article 7 paragraph 1, the formulation of the type and hierarchy of laws and regulations is determined, as follows:

- a. 1945 Constitution of the Republic of Indonesia
- b. Decree of the People's Consultative Assembly
- c. Laws/Government Regulations in Lieu of Laws
- d. Government regulations
- e. Presidential decree
- f. Regional or Provincial Regulations
- g. Municipal or District Regulations

Furthermore, in Article 14 of Law Number 12 of 2011 it is emphasized that:

“The content of the Provincial Regulations and Regency/City Regional Regulations contains material for the implementation of regional autonomy and co-administration tasks and accommodates special conditions of the region and further officials of higher laws and regulations.”

Moreover, there are three things that require regulation in the form of a local regulation:

- a. *Perda* (Local regulations) in the field of regional autonomy and co-administration
- b. *Perda* (Local regulations) to accommodate special regional conditions
- c. *Perda* (Local regulations) as a further elaboration of higher laws and regulations

The above provisions indicate that the content of local regulations is essentially nothing but regulating government affairs that have been handed over to the regions, except for government affairs which naturally remain the affairs of the central government, such as foreign, defense, security, judicial, monetary and fiscal policies, as well as national and religious.

3.2.2 Implications of Regional Autonomy for Village Government

The regional autonomy policy also has implications for the village administration system as well. This means that village residents as the lowest government in the national government system in Indonesia treat adaptation and anticipation of these developments. One of the principles of regional autonomy that needs attention in this regard is community participation in governance, especially at the village level. Law number 72 of 2005 concerning villages, article 14, paragraph 2.g explains that the village head in carrying out the tasks of administering government, development and community affairs, has the authority to coordinate it in a participatory manner (Bappeda, 2017).

Besides that, a democratic system that emphasizes the importance of public participation in realizing a government that is accountable, transparent, and responsive to the needs of the community. That is, every citizen has the opportunity to access or influence policy making, which includes access to public services and access to information; (3) control, namely that every member of the community has the opportunity and right to supervise the running of the government as well as the management of government policies and finances. More operationally, the substance of participation is explained by Cohen and Uphoff in Ndraha (1990:104) which states that citizen participation can be divided into 4 (four) types, namely: “(1) Participation in decision making; (2) participation in implementation; (3) participation in benefits; (4) participation in evaluation”.

Regarding the village government system in the implementation of development, there are many villages development programs that designed and decided based on considerations and approaches from the top (top-down), and do not involve the community who are the subject of development so far (Desmon, 2019). As a result, many development programs experience problems in their implementation, because the community felt that the program is not line with their needs and interests. Even often encountered in the community, if there is a new policy from the center that is not in accordance with the conditions and expectations of the community, it often creates an attitude of apathy or public rejection of the program.

More rationally, the regional autonomy law mandates, (“Implications, Affairs And Prospects of Regional Autonomy,” 2020) that the administration of government is directed to give wider authority to regional governments with the aim of further improving services and active community participation in the implementation of development in all fields.

In terms of the composition and administration of regional government, after the amendment to the 1945 Constitution of the Republic of Indonesia, village arrangements or referred to by other names in terms of government refer to the provisions of Article 18 paragraph (7) which emphasizes that “the structure and procedures for administering regional government are regulated in law”, it means that Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia opens the possibility of a government structure in the Indonesian government system.

4. CONCLUSION

Community engagement in governance, particularly at the village level, is one of the foundations of regional autonomy that requires attention in this regard. In terms of the village government system's role in development, many village development plans have been conceived and determined on the basis of considerations and approaches from above,

without involving the community that is being developed. In terms of the composition and administration of regional government, village arrangements or referred to by other names in terms of government refer to the provisions of Article 18 paragraph, which emphasizes that the structure and procedures for administering regional government are regulated in law after the 1945 Constitution of the Republic of Indonesia was regulated in law.

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**LAW ON THE PROTECTION OF CHILDREN FROM DOMESTIC
VIOLENCE ACCORDING TO LAW NO. 23 OF 2004**

Dany Try Hutama Hutabarat¹, Evi Yulyantika², HikmaRotun³, Dewi Syamsiah⁴, Laila Siti Nurhaliza⁵, Khairunnisa Nasution⁶, Ade Hastina Puri⁷, Sri Indah Lestari⁸, Nurainul Mardiah⁹, Mimi Arimbi¹⁰, Ahmad Fajar Mukti¹¹

¹⁻¹¹

Universitas Asahan

E-mail: ¹⁾ danytryhutamahutabarat@gmail.com, ²⁾ eviiylyntka20@gmail.com,
³⁾ hikmahhrtn@gmail.com, ⁴⁾ syamsiahdewii@gmail.com, ⁵⁾ lailasitinurhalizah31@gmail.com,
⁶⁾ khairunnisa69007@gmail.com, ⁷⁾ adehastinapurisinurat@gmail.com,
⁸⁾ indahlestariv0308@gmail.com, ⁹⁾ ainulpanjaitan133@gmail.com,
¹⁰⁾ mimivivo89@gmail.com, ¹¹⁾ ahmadfajarmukti11@gmail.com

Abstract

The violence in the family is frequently difficult to detect, and the public paradigm continues to assume that something happens in the family is private. The presence of Laws number 23 of 2004 on the elimination of domestic violence is expected to protect state citizens from unsettling senses and forms of violence, but the number of incidents of domestic violence in everyday life instantly increases. As the Writer will examine the function of Laws number 23 of 2004 prohibiting domestic violence in providing protections for state citizens, particularly those who are victims of domestic abuse. By focusing on the following questions: Is it sufficient to safeguard state citizens who are victims of domestic violence? and What should be done to reduce the number of domestic violence cases in Indonesia? The conclusion drawn by the author is that Laws number 23 of 2004 prohibiting domestic violence have been sufficient to protect victims and offer an elementary level of protection to law enforcement. However, its implementation must be coherent and systematic, not only with the country according to its instruments of power, but also with the population that supports the eradication of domestic violence.

Keywords: Domestic Violence Protection Law, Domestic Violence, Law Enforcement

1. INTRODUCTION

The family is the smallest unit of society, where each member of the family grows and develops socially, and where the formation of one's character is heavily influenced by one's upbringing and family background. Family members are typically comprised of a father, mother, and children, all of whom have deep emotional and social bonds with one another and exert influence over one another. Conflicts and differences of view are typical in a family, but what is being discussed is how to respond to or respond to these differences of opinion in a constructive manner.

According to the law, family difficulties are private matters that cannot be arbitrarily interfered with by the government or others. When viewed in light of the social paradigm that the internal difficulties of the family are internal problems where there is frequently violence.

Indonesia has enacted Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which is a significant progress for the state in providing protection and guarantees of human rights for individual citizens, especially as family members.

Specifically, it is believed that by enacting Law Number 23 of 2004 about the Elimination of Domestic Violence, citizens will be protected against insecurity as well as other forms of violence that are not in accordance with the Pancasila and 1945 Constitutional ideals. As a consequence, citizens are protected or released from acts or threats of acts of violence, torture, or other treatment that brings down human dignity and standing, which is very likely to occur inside the family environment (household) (Pandiangan, 2017).

Based on data from the National Commission on Human Rights of Women (Komnas HAM Perempuan, 2018) In 2018, there were a total of 348,446 cases of violence against women that were reported and handled. Of the total number of cases, violence in the private/personal sphere was recorded at the highest at 71% or around 9,609 cases. From this data, it is clear that in Indonesia cases of domestic violence are still very high despite the protection provided by Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Hence, the author will try to describe about the role of Law Number 23 of 2004 concerning the Elimination of Domestic Violence in providing guarantees of protection for citizens, especially those who have become victims of domestic violence.

2. RESEARCH METHODS

The approach method used is a normative juridical approach or a statutory approach. As a specification of the research is descriptive analytical juridical research, with data sources in the form of primary, secondary and tertiary legal materials, as well as supported by primary data, and analyzed qualitatively juridically.

This type of research is socio-juridical or includes descriptive research with a non-doctrinal approach, which views law as a socio-empirical phenomenon observed in experience. For this reason, it is not only studied from the normative aspect, but also the law as in reality. Until now, the methods of overcoming violations of child protection are mostly still at the level of assistance, both children who are in conflict with the law or children who are victims.

3. FINDINGS AND DISCUSSION

Based on the provisions of Article 1 point 1 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence, what is meant by the definition of domestic violence, namely: any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, or neglect of the household including threats to commit such acts, coercion or deprivation of liberty against the law within the scope of the household.

When the definition of domestic abuse is studied in light of the wording of Law Number 23 of 2004, it becomes clear that the victims are primarily women. Because women's positions are often weak physically and socially when coupled with the patriarchal culture prevalent in many places of Indonesia. Women are frequently the targets of violence, threats of violence, sexual, psychological, and other forms of abuse. Indeed, not only women, but

also children, occupy a weak and vulnerable position within the family. Where youngsters are under parental supervision, and so forth.

Women and children are victims of various forms of violence they experience. According to the provisions of Article 2 of Law Number 23 of 2004, the scope of this law is: (Saraswati, 2015)

- 1) Husband, wife, and children;
- 2) People who have family relations with their husbands, wives and children, because of blood relations, marriage, breastfeeding, parenting, and guardianship, who live in the household; and/or
- 3) People who work to help the household and stay in the household.

The state, government, society, family, and parents are all responsible for protecting children in the areas of religious life, education, health, and social. There are many parts of life in which children play a role that must be safeguarded, and their lives are no different from those of other people.

The protection of children is crucial because children are the successors to the life of the nation and the state, and if they have reached a mature stage in their physical, mental, and social development, it is time for them to take over for the preceding generation of leaders.

The achievement of legal certainty for children is one kind of child protection. Legal clarity, according to Arif Gosita, serves to avoid discrimination against children, which will inevitably have a detrimental influence on the child himself or herself (Gosita, 2004).

Child protection is a critical issue that should be sought from things that grow in people's life, such as prostitution, which is inextricably linked to the economic component. Another issue that frequently affects children is the violence they encounter at home and at school as a result of poverty, societal norms, religion, and rituals. Additionally, as technological advancements continue, children are frequently implicated in criminal activities such as child trafficking and child pornography.

The nature of child protection itself can be divided into two parts according to the author, both of which are the core elements in child protection. The two parts that the author means are:

- 1) Juridical child protection includes:
 - a) Protection in the field of public law; and
 - b) Protection in the field of civil law.
- 2) Non-juridical child protection includes:
 - a) Social protection,
 - b) protection in the health sector,
 - c) Protection in the field of education.

Indonesia has ratified the Convention on the Rights of the Child and its protocol, through Presidential Decree no. 36 of 1990 and Law no. 5 of 1998 as ratification of the Convention against Torture and other cruel treatment or punishment. Inhumane which demeans human dignity. Therefore, it is legally bound to implement the convention and make it part of the applicable laws and regulations. In Indonesia itself, regulations regarding child protection have been issued in accordance with the needs of the people in Indonesia, the role of the international community in supervising the fulfillment of children's rights based on the

Convention of The Right of a Child where this also has a positive effect on the development of child protection in Indonesia (Salam et al., 2021).

Law Number 35 of 2014 concerning child protection emphasizes that the organizers of child protection are parents, family, government and the state, the first burden in implementing child protection falls on the parents, but in this modern era, most parents are busy with their work and start ignore his son.

Crimes against children each year increase very rapidly, based on the results of monitoring by KPAI (Indonesian Child Protection Commission) from 2011 to 2014 before the enactment of Law No. 35 of 2014 concerning Child Protection, there were 2178 cases of violence in 2011, while in 2012 there were 3512 cases, in 2013 there were 4311 cases and in 2014 there were 5066 cases (Citradewi et al., 2022). The number is children who are victims, while children in conflict with the law from 2011 to 2015 amounted to 6006 cases, followed by 3160 cases of caregiving, 1764 cases of education, 1366 cases of health and drugs and 1032 cases of pornography and cybercrime (Mamesah et al., 2018).

According to the most recent data available from the Indonesian Child Protection Commission, the commission received 3,851 public complaints in 2016 alleging infringement of children's rights. This demonstrates that children who live in tough circumstances either become victims of violence or are in dispute with the law have not developed properly.

Apart from the facts mentioned above, another matter of concern is the exploitation of children in the sexual sector. The government admits that there is no accurate data, but it is estimated that from all cases of sexual exploitation around 60% of the victims are children. While the majority of the 60% of the victims were women and some were boys.

Women and children are victims of various forms of violence they experience. According to the provisions of Article 2 of Law Number 23 of 2004, the scope of this law is:

- 1) Husband, wife, and children;
- 2) People who have family relations with their husbands, wives and children, because of blood relations, marriage, breastfeeding, parenting, and guardianship, who live in the household; and/or
- 3) People who work to help the household and stay in the household.

Child protection is endeavored by everyone, both parents, family, community, government and state. Article 20 of Law Number 35 of 2014 stipulates: "The State, Government, Regional Government, Community, Family, and Parents or Guardians are obliged and responsible for the implementation of Child Protection."

Therefore, the one who seeks child protection is every member of the community according to his ability with various kinds of efforts in certain situations and conditions (Maemunah, 2019). Every citizen is responsible for the implementation of child protection for the welfare of the child itself.

Children's happiness is shared happiness, protected happiness is protective happiness. There is no anxiety in children, because child protection is carried out properly and children become prosperous (Sukadi, 2013). Child welfare has a positive influence on parents, family, community, government, and the state. Child protection benefits children and their parents, families, communities, governments, and the state.

Coordination of cooperation in child protection activities needs to be carried out in order to prevent an imbalance in child protection activities as a whole (Said, 2018). The obligations and responsibilities of the State and Government in child protection efforts are regulated in Law Number 35 of 2014 namely:

- a. The State, Government and Regional Governments are obliged and responsible for respecting the fulfillment of children's rights without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, and physical and/or mental condition (Article 21);
- b. The State, Government and Regional Governments are obliged and responsible for providing support for facilities, infrastructure, and the availability of human resources in the implementation of Child Protection (Article 22);
- c. The State, Government and Regional Governments guarantee the protection, maintenance of welfare and supervise the implementation of Child protection by taking into account the rights and obligations of Parents, Guardians, or other people who are legally responsible for the Child (Article 23);
- d. The State, Government, and Local Government guarantee the Child to exercise his right to express his opinion according to the child's age and level of intelligence (Article 24).
- e. Community obligations and responsibilities for Child Protection involve community organizations, academics, and child observers, carried out through community role activities in the implementation of Child Protection (Article 25).

Efforts to protect children are motivated not only by a desire to provide them with care and financial security, but also by a feeling of "fairness" in dealing with the fate of these vulnerable individuals. Children's physical and spiritual well-being and even their lives are at risk if they do not receive the care and attention they require. A sense of justice provides a bond in the form of a moral obligation to meet various needs that, if not met, threaten their physical and spiritual well-being and even their lives.

4. CONCLUSION

The establishment of Law No. 23 of 2004 on the Elimination of Domestic Violence has been significant to provide protection for domestic violence victims and law enforcement for domestic violence perpetrators. Only at the implementation level must comprehensive and synergistic efforts be made by law enforcement agencies, specifically the police, prosecutors, courts, and advocates, to reduce the occurrence or recurrence of acts or cases of domestic violence. Systematic and comprehensive efforts are required, both from the State through its institutions and tools of power, and from the community that supports efforts to eliminate domestic violence. It is vital for law enforcement to collaborate in informing the community in order to prevent violence in the home, and it is necessary to raise awareness in the community in order to develop a family in carrying out everyday activities.

Legal protection for children is essentially an effort made by parents, government and society to fulfill and guarantee all children's rights that have been guaranteed in the convention on children's rights and Law Number 35 of 2014 concerning Child Protection. Legal protection for children in the perspective of human rights is not implemented because

the government has not carried out its obligations in fulfilling children's rights so that there are still violations of the law against children.

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LEGAL POSITION OF CHILD ADOPTION WITHOUT A JUDGE'S DECISION

Anggie Natasia Theis^{1*}, Wika Yudha Shanty²

^{1,2}

Faculty of Law, Universitas Merdeka Malang

E-mail: ¹⁾ anggie.theis@student.unmer.ac.id, ²⁾ wika.yudha@unmer.ac.id

Abstract

This research focuses on adoption cases where prospective adoptive parents carry out the adoption process without obtaining a court decision, which contradicts the stipulations of Article 20 paragraph (1) PP Number 54 of 2007. According to this provision, child adoption must be formally conducted through a court order. The main objectives of this study are to determine the legal status of adoptions conducted without a court order and to examine the legal protection available to adopted children whose adoptions have not undergone a court process, particularly in terms of their rights and obligations within the adoptive family. The research employs the normative legal method, utilizing the statute approach and the case approach to address the problem at hand. A literature study is conducted to collect relevant data, and qualitative methods are employed to analyze the legal materials. The findings of the research highlight that adoptions carried out without a court order lack legal standing, leaving adopted children without adequate legal protection, especially concerning their rights and obligations in the adoptive family. The court's involvement in the adoption process is crucial to establish a proper legal status for the adopted child and to ensure their legal protection, particularly regarding their rights and obligations within the adoptive family.

Keywords: Adoption, Court Determination, Legal Standing

1. INTRODUCTION

Humans are considered God's most perfect creation, but it cannot be denied that behind that perfection, there are still deficiencies. As God's unique and special creation, humans are instinctively inclined to form pairs, and this is realized through marriage. Human life begins when humans are born, and marriage is one of the most common ways this happens.

Broadly speaking, every average human being desires to marry and form a household. However, "forming a household" doesn't necessarily mean that a marriage consists of only a man and a woman; it must also have a purpose. The purpose of marriage and having a household is to complement each other and build a shared commitment to married life, both in joy and sorrow. Furthermore, the purpose of marriage is to form an ideal and harmonious family. (Sanjaya, 2017)

As time has progressed, there are now various ways for married couples without children to have children, one of which is through adoption. Although self-adoption is generally carried out by married couples, it doesn't rule out the possibility of single parents, whether widows, widowers, or unmarried individuals, later choosing to adopt children. However, the majority of adoptions are still carried out by married couples.

According to Article 1 point 2 of Government Regulation Number 54 of 2007 concerning Adoption of a Child (hereinafter referred to as PP Number 54 of 2007), adoption is defined as a legal act that diverts a child from the environment of parental authority, legal

guardian, or another person who is responsible for the care, education, and upbringing of the child to the adoptive parents' family environment. Adoption, or the act of adopting children, is no longer an uncommon practice in Indonesia, as it has been a part of society for a long time with different motives and goals. Despite these different motives and objectives, Article 2 of PP Number 54 of 2007 and Article 3 paragraph 1 of the Minister of Social Affairs Regulation Number: 110/HUK/2009 (hereinafter referred to as *Permensos* Number: 110/HUK/2009) explicitly regulate the purpose of adopting a child, which is for the best interests of the child and to provide welfare and protection for the child to be adopted.

Considering the importance of ensuring that adoption serves the best interests of the prospective adopted child, this can be seen in the application to obtain a court order for adoption. In the past, Supreme Court Circular Letter (SEMA) No. 6 of 1983: Section IV.A.2.2.2 stated that the child's interests must be stated or indicated in a letter of application for a court determination. Now, this indication is manifested in the form of a written statement from the prospective adoptive parents, declaring that the adoption is done in the best interest of the child and for the child's welfare and protection, as stated in Article 13 letter j of PP Number 54 of 2007. This statement will be attached to the application for a court order. (Rusli, 2012)

In general, adoption, as defined by Article 1 number 2 of the Minister of Social Affairs Number: 110/HUK/2009, is the transfer of a child from the power of their biological parents to the hands of adoptive parents as a whole, carried out based on the rules that apply to the child's environment. This means that the biological parents no longer have custody of the child, and the responsibility is transferred to the adoptive parents. However, it should be noted that adoption does not sever the blood relationship between the child who has been adopted and their biological parents.

The process of adopting a child involves specific procedures dictated by applicable laws and regulations. According to Government Regulation Number 54 of 2007 and *Permensos* Number 110/HUK/2009, one of the conditions for adopting a child and applying for a court determination is that the prospective adoptive parents must obtain permission from the Minister of Social Affairs and/or the head of a social agency. To obtain this permit, prospective adoptive parents must submit an application for parental permission for child care to the Minister of Social Affairs and/or the head of a social agency. Subsequently, a feasibility assessment will be conducted to determine whether the prospective adoptive parents can meet the physical and spiritual needs of the adopted child, thereby ensuring that the purpose of adopting a child, namely the child's best interests, can be achieved.

Once the stages of coaching, guidance, and supervision are completed, the Minister and/or heads of social agencies assess whether the prospective adoptive parents meet the requirements specified in PP Number 54 of 2007, which are more clearly regulated in *Permensos* Number: 110/HUK/2009. If they fulfill these requirements, a Decree on Permits for Child Adoption will be issued, which will then be further processed in court to obtain a court order. After receiving the court's approval, the adoption is legally valid and holds legal consequences. This means that adoptive parents have an obligation to fulfill their responsibilities towards their adopted children, providing welfare and protection, as well as meeting the physical and spiritual needs of the child.

In adopting a child, specific procedures designated by law must be followed. The minimum process required by prospective adoptive parents is a statement when handing over

the child. However, in the case where the prospective adopted child comes from an orphanage, the foundation must possess a written permit from the Minister of Social Affairs, indicating that the foundation is allowed to engage in child adoption activities.

Legal problems within orphanages have arisen due to caretakers and owners of the orphanages adopting children without obtaining a court order, but only through the Department of Population and Civil Registry. Such practices are not in accordance with the provisions of Article 20 paragraph (1) of Government Regulation Number 54 of 2007. Regarding the procedure for adoption, once the requirements are met, an application for a court determination must be submitted. Based on the description provided above, the researcher will describe the Adoption Law from an Indonesian Civil Law Perspective.

2. THEORETICAL BASIS

2.1. Child Adoption

The term "child adoption", which has developed in Indonesia today, is actually a translation of the English "adoption" which means adopting another person's child as one's own and giving them the same rights as biological children. (Djatikumoro, 2011)

According to customary law, adoption is an act of taking another person's child into one's own family, so that between the person who picks up the child and the child who is picked up there is the same family relationship as between parents and biological children. (Wignjodipuro, 1982)

According to Soerjono Soekanto, child adoption means adopting a child to be one's own child, or it can be interpreted in general to mean adopting a person in a certain position which results in a relationship that seems to be based on blood relations (Soekanto, 1980).

The definition of child adoption according to laws and regulations, among others, according to Article 1 point 2 of Government Regulation No. 54/2007 and Article 1 point 2 of Minister of Social Affairs Regulation No. 110/ HUK/2009, defines child adoption as a legal action that transfers a child from the sphere of authority of parents, legal guardians, or other people who are responsible for the care, education and raising of the child into the family environment of the adoptive parents.

Article 171 letter (h) of the Compilation of Islamic Law (KHI) also states that an adopted child is a child whose responsibility in terms of maintenance for daily life, education costs and so on shifts from the original parents to the adoptive parents based on a court decision.

Based on this description, it can be concluded that child adoption is an act of transferring responsibility for caring for, maintaining, raising, and financing the maintenance of the child's daily life from parents, legal guardians to adoptive parents carried out based on the provisions of applicable laws and regulations.

2.2. Procedure for Child Adoption in Indonesia

The implementation of child adoption regulated in the Minister of Social Affairs Regulation Number: 110/HUK/2009 on Requirements for Child Adoption. Article 22 paragraph (1) of the Minister of Social Affairs Regulation states that direct child adoption is carried out in the following manner: prospective foster parents apply for a childcare license to the Head of the Provincial Social Agency on sufficient stamped paper by including all administrative requirements for prospective foster children and prospective foster parents as

referred to in Article 5 and Article 21 paragraph (1), then the Head of the Provincial / District / City Social Agency assigns a Provincial / District / City Social Worker to conduct an eligibility assessment of prospective foster parents, After passing the eligibility assessment, the prospective foster parents submit an application for child adoption to the Head of the Provincial Social Agency through the District/City Social Agency and then the Head of the District/City Social Agency issues a recommendation for further processing to the province. After that, the Head of the Provincial Social Agency issues a Decree on Child Adoption Permit to be processed further in court. After the issuance of the court decision and the completion of the child adoption process, the prospective foster parents report and submit a copy to the Social Agency and to the District/City Population and Civil Registration Office and the Social Agency records and documents and reports the child adoption to the Indonesian Ministry of Social Affairs.

Article 27 of the Minister of Social Affairs Regulation Number: 110/HUK/2009 also regulates the procedure for adopting a child through a Foster Care Institution. The appointment of a child through a Foster Care Institution is carried out in the following manner: prospective foster parents apply for a childcare license to the Head of the Provincial Social Agency on sufficient stamped paper by attaching all the administrative requirements for prospective foster children and prospective foster parents as referred to in Article 5 and Article 26 paragraph (1), then the Head of the Provincial Social Service Agency assigns the Provincial Social Worker and Social Worker of the Child Care Institution to conduct an assessment of the eligibility of prospective foster parents by conducting a home visit to the prospective foster parents' family, after conducting an eligibility assessment the Head of the Provincial Social Service Agency issues a Temporary Foster Care Permit and after that the Social Worker provides guidance and supervision during temporary foster care to prospective foster parents.

The next process is the submission of an application for a child adoption permit by the prospective foster parents to the Head of the Provincial Social Agency on sufficient stamped paper and then after submitting an application for child adoption to the Head of the Provincial Social Agency, Social Workers from the Provincial Social Agency and Social Workers of the Child Care Institution conduct a home visit to find out the development of prospective foster children while being cared for by prospective foster parents, after the home visit the Head of the Provincial Social Agency discusses the results of the assessment of the eligibility of prospective foster parents, and examines and examines the files/documents of the application for child adoption in the forum of the Child Adoption Advisory Team in the Province. After going through the process of assessing the eligibility of the prospective foster parents and if the prospective foster parents are deemed eligible, the Head of the Social Affairs Agency issues a letter for permission to adopt a child so that it can be processed further in court. If the application for child adoption is rejected, the child will be returned to the Childcare Centre. After the issuance of the court decision and the completion of the child adoption process, the prospective foster parents report and submit a copy to the Social Agency; and to the district/city Civil Registry Population Office and then the Head of the Social Agency records and documents and reports the child adoption to the Indonesian Ministry of Social Affairs.

Permensos Number 110/HUK/2009 also regulates the procedure for adopting a child by a single parent, which is more clearly regulated in Article 34, the procedure for adopting a

child by a single parent is carried out in the following manner: prospective foster parents apply for a childcare licence to the Minister of Social Affairs on sufficient stamped paper by attaching all administrative requirements for prospective foster children and prospective foster parents as referred to in Article 5 and Article 33 paragraph (1), after which the Minister of Social Affairs c.q. Director of Children's Social Services assigns Social Agency Social Workers to assess the eligibility of prospective foster parents by conducting home visits to the families of prospective foster parents. After conducting an assessment of eligibility through the home visit, the Minister of Social Affairs c.q. Director of Children's Social Services issues a Decree on Temporary Childcare Permit given to prospective foster parents through the Ana Foster Care Institution and then the child is handed over from the Childcare Institution to prospective foster parents. After the child is handed over to prospective foster parents Social Workers will provide guidance and supervision during temporary foster care. After passing the guidance and supervision, prospective foster parents apply for a child adoption permit along with a statement regarding the motivation for child adoption to the Minister of Social Affairs on sufficient stamped paper, then after submitting an application for a child adoption permit, a home visit will be carried out again by the Social Worker of the Ministry of Social Affairs and the Child care Institution to find out the development of prospective foster children while being cared for by prospective foster parents.

After the home visit, the Minister of Social Affairs c.q. Director of Children's Social Services discusses the results of the assessment of the eligibility of prospective foster parents, and examines and examines the files/documents of the application for child adoption in the PIPA Team, and after conducting an eligibility assessment with the PIPA Team and if the prospective foster parents are considered eligible, a recommendation letter from the PIPA Team will be issued regarding the licensing of consideration for child adoption. After receiving the recommendation letter, the Minister of Social Affairs c.q. Director General of Social Services and Rehabilitation will issue a child adoption license to be determined by the court.

If the application for child adoption is rejected, the child will be returned to the biological parents/legal guardians/relatives or determine other alternative care in accordance with the best interests of the child. After the issuance of the court order and the completion of the child adoption process, the prospective foster parents report and submit a copy to the Department of Social Affairs; and the Department of Social Affairs records and documents the child adoption.

Article 22 paragraph 2, Article 27 paragraph 2 and Article 34 paragraph 2 of the Minister of Social Affairs Regulation Number: 110/HUK/2009 states that the application for child adoption to the court is made by the prospective foster parents or their proxies by registering the application for child adoption with the court.

From the description of the appointment procedure that has been described, it can be concluded that in essence every application for the appointment of a child will be carried out in accordance with the procedures that have been determined and after fulfilling the specified requirements, a court decision must be requested by registering an application for the appointment of a child with the court. This has also been outlined in Article 20 paragraph (1) of Government Regulation No. 54/2007 on the Implementation of Child Adoption which states that applications for child adoption that have fulfilled the requirements are submitted to the court to obtain a court order

3. RESEARCH METHOD

This research utilizes normative legal research, which involves reviewing laws, regulations, and library materials. Normative legal research is often referred to as doctrinal legal research.

In this study, the law is conceptualized as what is written in laws and regulations (law in the book) or as norms that serve as benchmarks for people's behavior in accordance with what is considered appropriate. (Jonaedi Efendi et al., 2018)

The problem approach method used is the statute approach. The statutory approach is implemented by understanding and reviewing all laws and regulations relevant to the legal issues under investigation.

For this case, the author will utilize laws relating to child adoption, child protection, and other regulations concerning children. The second approach employed is the case approach. This approach involves conducting a case study related to the issues in question, focusing on court decisions that have permanent legal force. The case approach in normative research aims to study how norms or rules of law are applied in legal practice. (Jonaedi Efendi et al., 2018)

4. RESULT AND DISCUSSION

4.2. Result

Child adoption is a method that must be carried out by prospective adoptive parents to be able to adopt a child and in its implementation is carried out based on procedures determined by laws and regulations. To be able to obtain legality and legal certainty from child adoption, after fulfilling the requirements, prospective adoptive parents must submit a child adoption application to the court to obtain a court order. This is stated in Article 20 paragraph (1) of Government Regulation No. 54/2007 on the Implementation of Child Adoption.

The purpose of adopting a child through a court order is to obtain legal certainty, legal legality, legal justice and legal documents (Juniarti, 2021). This legal document has a very important role in proving that the adoption of a child is legal and legally valid. The court's decision letter regarding child adoption has a very important role in providing legal standing for the adoption of children.

Legal position is a situation where a party is in the law. A party that has a legal position can carry out actions and authorities as appropriate to its status but still must not conflict with existing laws and regulations. Legal standing is a condition in which a person is deemed to have fulfilled the requirements to apply for dispute resolution in court (Soeroso, 1993).

Child adoptions are generally carried out in accordance with the procedures outlined in Government Regulation No. 54/2007. The important thing that should not be forgotten in the appointment of the child is the determination letter from the court. The determination letter from the court in this case is important to provide legality and legal certainty in order to provide legal status for the child adoption that has been carried out. Unlike the case with the appointment of a child through a court order, if the appointment of a child is carried out without a court order, the appointment of the child does not have legal standing. This is

because to be able to obtain legal standing in child adoption, after carrying out the procedures regulated by the Law, an application for a court order must be made and then submitted to the court to obtain a court order or decision.

In the case of the appointment of a child through customary law, it is indeed valid in customary law, but in the law, the appointment of a child through customary law does not have legal certainty, meaning that it does not have a legal position. So to obtain legal certainty of the appointment, a court order must be requested. This is regulated in Article 17 paragraph (3) of Permensos Number: 110/HUK/2009, which states that "Child adoptions based on customary law can be requested for a court order to obtain the child's legal status and legal certainty in accordance with statutory provisions". Although there is some ambiguity in this article, the word "may" is used in the article, which means that it is optional, meaning that a court decision can be requested or not. However, if we look at the whole article, we can conclude that the appointment of a child through customary law must still be requested for a court decision in order to obtain legal certainty over the appointment of the child. Therefore, although the appointment of a child through customary law is different from the appointment of a child through legislation, it is also very important to apply for a court order.

This is in line with Supreme Court Circular Letter (SEMA) No. 6 of 1983 on the Improvement of SEMA No. 2 of 1979, that because the need for child adoption in society is increasing day by day and it is felt that the guarantee of legal certainty of child adoption can only be obtained after obtaining a court decision. Not only in SEMA No. 6 of 1983, child adoption is further regulated in Law Number 23 of 2002 concerning Child Protection which has been amended into Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which stipulates that child adoption is carried out based on a court decision or determination. (Meliala, 2016)

Not much different from other laws and regulations, Islamic law also permits the adoption of children as long as the child is not adopted as a biological child. In Islamic law itself provides limitations in terms of child adoption, the meaning of the word limited means that the appointment of children is limited to providing maintenance, education, and fulfilling all their needs. This is further regulated in Article 171 letter h of the Compilation of Islamic Law (KHI) which stipulates that an adopted child is a child whose maintenance for daily life, education costs and so on switches its responsibility from the original parents to the adoptive parents based on a court decision. This means that the appointment of the child must be done based on a court decision.

From the descriptions above, it can be concluded that to obtain legal certainty and legality in order to obtain legal position in child adoption, it can only be obtained through a court decision or stipulation. Therefore, if the child's adoption is not carried out through a court decision, the child's adoption has no legal standing.

4.2. Discussion

4.2.1. Legal Protection of Adopted Children Whose Adoptions Are Made Without A Judge's Decision

Child adoption is a legal action that transfers a child from the sphere of authority of parents, legal guardians, or other responsible individuals, into the family environment of the adoptive parents. The purpose of child adoption, as stated in Article 2 of Government Regulation No. 54/2007 on the Implementation of Child Adoption, is to serve the best interests of the child and ensure child welfare and protection. Child protection is crucial to ensure that children remain safe and thrive.

According to Article 3 of the Child Protection Law, the purpose of child protection, including foster children, is to guarantee that children's rights are fulfilled. This includes the right to live, grow, develop, and participate optimally in accordance with human dignity, as well as to receive protection from violence and discrimination. The aim is to realize quality, noble, and prosperous Indonesian children.

Adopted children, like all children in general, are a gift and responsibility from God Almighty. It cannot be denied that they possess inherent rights as children, which need to be upheld and respected by their adoptive parents and society as a whole. The rights of adopted children encompass, among others:

1. The right to live, grow, develop, and participate reasonably in accordance with the dignity of humanity, and to receive protection from violence and discrimination.
2. The right to have a name as a personal identity and citizenship status.
3. The right to worship according to their religion, to think, and to express themselves according to their level of intelligence and age, under the guidance of parents or guardians.
4. The right to know their parents, to be raised, and to be cared for by their biological parents. In cases where the parents are unable to ensure the child's growth and development, or if the child is neglected, the child has the right to be cared for or appointed as a foster child or adopted child by other individuals in accordance with applicable laws and regulations.
5. The right to access health services and social security according to their physical, mental, spiritual, and social needs.
6. The right to receive education and guidance to develop their personality and level of intelligence in alignment with their interests and talents.
7. The right to express themselves, be heard, seek, and provide information in accordance with their level of intelligence and age, promoting their development in line with values of decency and propriety.
8. Every child with a disability is entitled to rehabilitation, social assistance, and maintenance of social welfare.
9. Every child in the care of parents, guardians, or any other responsible party is entitled to protection from discrimination, exploitation (both economic and sexual), neglect, cruelty, violence, abuse, injustice, and other forms of mistreatment.
10. The right to be cared for by their biological parents, unless valid reasons and/or legal rules indicate that separation is in the best interest of the child and is the last consideration.

11. The right to protection from abuse in political activities, involvement in armed disputes, participation in social unrest, involvement in events containing elements of violence, and involvement in war.
12. Furthermore, children are entitled to protection from abuse, torture, or inhumane punishment.
13. Every child has the right to freedom in accordance with the law. If deprived of liberty, every child has the right to receive humane treatment and placement separate from adults, the right to obtain effective legal or other assistance at every stage of applicable legal remedies, and the right to defend themselves and obtain justice before an objective and impartial children's court in a closed hearing.
14. Finally, every child who is a victim or perpetrator of a criminal offense is entitled to legal and other assistance. (Kamil & Fauzan, 2008).

5. CONCLUSION

Child adoption must be carried out through a court order to ensure legal certainty and legality. Prospective adoptive parents must fulfill the requirements and then submit a child adoption application to the court in order to obtain a court order. This requirement is stated in Article 20, paragraph (1) of Government Regulation No. 54/2007 on the Implementation of Child Adoption. The court determination is crucial to provide certainty and legal status for child adoption, granting legal standing to the child. When child adoption does not go through a court decision, the adoption lacks legal standing.

To offer legal protection to the adopted child, especially concerning the fulfillment of the child's rights and obligations by the adoptive parents, the adoption process must be carried out through a court decision. Without a court order, there is no legal protection provided to the adopted child. This is because child adoptions without a court order lack legal certainty and legal standing.

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