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CONTENTS

LEGAL PROTECTION FOR CONSUMER OF DRUG PRODUCER THAT DOES NOT HAVE A DISTRIBUTION PERMIT FROM THE FOOD AND DRUG CONTROL AGENCY (BPOM)

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Abstract

For maintain health in carrying out daily activities, humans consume drugs as a healing solution for the ailments they experience. However, cases of illegal drug distribution threaten the health of someone who accidentally consumes illegal drugs without testing by the Food and Drug Monitoring Agency. The purpose of this research is to analyze the process of granting licenses to the distribution of drugs by BPOM and legal protection for consumers against the distribution of drugs that do not have distribution permits. This type of research is normative legal research with the Statue and Case Approach. Analysis data used descriptive qualitative analysis of existing laws and regulations to find answers to cases of drug trafficking that do not have a distribution permit. The results of the study prove that the process of granting permits for drug distribution by BPOM is carried out in two stages, namely the Pre-registration and Registration stages with the fulfillment of the required statements and documents. The evaluation process is carried out for 100 days for new drug products which is carried out by the Head of the BPOM Agency. Legal protection for consumers against the distribution of drugs that do not have a distribution permit is by imposing a maximum imprisonment of 15 years and a maximum fine of IDR 1,500,000,000.00 for the perpetrator. For producers who do not have the expertise and authority to carry out pharmaceutical practices, they will be fined a maximum of IDR. 100,000,000.00.

Keywords: *Distribution of Illegal Drugs, Distribution Permit, Health*

1. INTRODUCTION

Physical well-being stands as an essential human necessity, crucial for executing daily tasks effectively, maintaining enthusiasm, combating fatigue, and warding off illnesses (Firmansyah, 2020). Atmaja, Astra, and Suwiwa (2021) emphasize that a lack of sound physical health hinders the smooth execution of all human pursuits. In the realm of the Human Development Index, wellness emerges as a key metric for gauging human advancement. Furthermore, health assumes the role of a benchmark for evaluating the quality of human resources and the level of individual prosperity within a nation (Ocbrianto, 2012). Codified in Article 1, paragraph (1) of Law No. 36 of 2009 concerning Health, health encompasses a comprehensive state of well-being spanning physical, mental, spiritual, and social dimensions, empowering each person to lead a socially and economically fruitful life. In light of health's pivotal position as an indicator of national progress, governments allocate substantial attention to public health considerations.

The realm of health consists of a twofold perspective: the realm of health endeavors and that of health resources (Samosir, 2021). Among the avenues of health endeavors, healthcare is bifurcated into communal health support and individual health maintenance. The nurturing of individual well-being is labeled as medical preservation. Conversely, within the domain of health resources, lie healthcare establishments and infrastructures like hospitals, health centers, clinics, along with practicing medical professionals and

healthcare personnel, encompassing doctors, nurses, and pharmacists. The execution of healthcare activities is the responsibility of these health resources, and they are held steadfastly accountable to the codes of medicine, ethics, legality, propriety, and respectfulness (Supriadi, 2001).

As per the Law of the Republic of Indonesia, specifically Law Number 36 of 2009 concerning Health, it explicitly states the government's obligation to strategize, regulate, execute, foster, and oversee the implementation of fair and accessible healthcare initiatives for the community. Within the context of the 1945 Constitution, Article 28G, Paragraph 4 underlines the State's responsibility, particularly vested in the Government, for upholding, advancing, preserving, and ensuring human rights. Additionally, Article 28H, Paragraph (1) of the 1945 Constitution enshrines the right of every individual to a life marked by physical and spiritual well-being, a suitable dwelling, a wholesome and salubrious environment, and the right to avail healthcare services.

The establishment of health insurance mandates the government's regulation of treatment protocols. The government formulates policies to oversee the entire treatment spectrum, encompassing surgical interventions, therapeutic procedures, drug administration, and other healing methods. However, the most prevalent form of treatment within communities typically revolves around medication consumption. As elucidated by Lailiyah (2019), medications are substances intended for purposes such as diagnosing, preventing, mitigating, curing diseases, alleviating symptoms, tending to injuries, and addressing physical and spiritual imbalances in both humans and animals, often extending to aesthetic enhancements. The potency of these medications is contingent on individual body conditions and sensitivities, both of which vary widely. Yet, despite this diversity, it is feasible to broadly categorize dosages for different age groups, encompassing infants, children, adults, and the elderly (Kasibu, 2017).

Understanding the pivotal role that drugs play, the government instituted Government Regulation Number 51 of 2009 to address Pharmaceutical Practices. This regulatory framework encompasses the oversight of various aspects including the quality control, security, procurement, storage, and distribution of medications. Additionally, it encompasses services related to prescribed drug administration, drug information, as well as the advancement of drug components and traditional medicine. Notably, the comprehensive spectrum of drug management procedures necessitates the involvement of qualified personnel possessing the requisite expertise and authorized standing, in full alignment with statutory provisions.

One of the problems that often occur in health law that often occurs today is crime in the pharmaceutical sector. Pharmacy is the direct and responsible provision of drugs to achieve results that can improve the quality of life of patients (Wahyudi, 2020). Pharmacy is the art and science concerned with providing natural and synthetic substances suitable for distribution and use in the treatment and prevention of disease (Samosir, 2021). Pharmaceutical care involves not only drug therapy but also decision-making about drug use for each patient. One of the crimes that is often committed in the pharmaceutical industry is to distribute or trade drugs in large quantities without a distribution permit issued by the competent authority, in this case the Food and Drug Supervisory Agency (BPOM).

The widespread presence of illegal drugs in Indonesia serves as an indication of the government's negligence towards matters that are detrimental to the well-being of the

society. Allowing the illicit drug trade to thrive is equivalent to exposing the populace to various harmful risks, effectively nurturing the growth of criminal activities within the society, and diminishing the nation's standing in the eyes of the international community. This situation is exacerbated by factors associated with the likelihood of criminal occurrences, whether they are minor infractions or major offenses.

One of the cases regarding illegal drug distribution was found in Decision Number 94/Pidana Case/2021/Mungkid District Court where a pharmaceutical crime occurred in which a person without expertise and authority had practiced marfacy which was contrary to the Regulation of the head of the drug and food regulatory agency regarding criteria and administration of drug registration article 1 paragraph 1 and Law no. 39 of 2009 concerning Health. In this case, the perpetrator who traded drugs did not use the services of a pharmacist and without using a doctor's prescription was given a sanction in the form of a fine of Rp. 20,000,000.- (twenty million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 3 (three) months.

In light of the significant risks posed by the distribution of illegal drugs that have the potential to be consumed by the general public, it is evident that the existing punitive measures prescribed in Decision Number 94/Criminal Case/2021/Mungkid District Court do not appear commensurate with the gravity of the situation. Recognizing that the public, as consumers of these substances, is afforded protection under Law no. 8 of 1999 concerning Consumer Protection, it is imperative to underscore that consumers possess the right to seek restitution for losses incurred during commercial transactions. Addressing these considerations, the upcoming analysis will comprehensively examine the outcomes of Decision Number 94/Criminal Case/2021/Mungkid District Court.

Hence, this paper aims to meticulously explore the procedural nuances of authorizing drug distribution by BPOM and the legal mechanisms extended to consumers confronting the distribution of drugs lacking proper authorization. The overarching goal of this research endeavor is to provide prospective scholars with a foundational framework for the application of theoretical constructs, particularly in dissecting criminal activities related to drug trafficking that involve unapproved distribution. Furthermore, this investigation is poised to serve as a seminal reference for future explorations, concentrating on the legal ramifications surrounding the illicit distribution of drugs in the absence of requisite distribution permissions.

2. LITERATURE REVIEW

2.1. Drug

Drugs encompass substances purposed for employment in contexts such as diagnosing, preventing, mitigating, eradicating, or tending to ailments, injuries, or physical and spiritual imbalances in humans and animals. They can also extend to enhancing the aesthetics of the human form or its components (Anief, 2006). Engaging in self-medication demands a meticulous alignment with the specific ailment. Adhering to the principles of prudent drug utilization involves precise drug selection, accurate dosage, avoidance of adverse effects, absence of contraindications, evading drug interactions, and steering clear of polypharmacy (Depkes RI, 2008). In practical scenarios, errors in self-medication occasionally surface, often rooted in inaccuracies in drug choices and inappropriate dosing. Should these errors persist, they have the potential to jeopardize one's well-being (Depkes RI, 2007).

2.2. Drug Distribution Permit

The term "distribution" encompasses any form of activity or sequence of actions involved in the conveyance or transfer of pharmaceuticals, whether within trade, non-trade, or transfer scenarios. As per the guidelines set forth in BPOM Regulation Number 8 of 2020, governing the Oversight of Online Circulation of Medicines and Foodstuffs, the distribution of pharmaceuticals necessitates the possession of a valid distribution permit, coupled with adherence to stipulated protocols governing pharmaceutical manufacturing and dispensation. Entities functioning within the pharmaceutical sector, including pharmaceutical manufacturers, wholesalers, branch pharmacy wholesalers, and online pharmacies, are mandated to provide periodic reports in accordance with the prevailing legal framework. These reports encompass a range of crucial details, such as:

1) Identification of entities, including their names and addresses, involved in the pharmaceutical industry, pharmaceutical wholesaling, branch pharmacy wholesaling, and pharmacy operations.
2) Precise recording of the date, month, and year of online pharmaceutical distribution activities.
3) The designation of the Pharmaceutical Specialized Entrepreneur (PSEF) and the Uniform Resource Locator (URL) of the pharmacy collaborating with the PSEF in facilitating online pharmaceutical distribution.
4) A comprehensive inventory of pharmaceuticals distributed via online platforms.
5) Detailed records of online drug transactions.

2.3. Legal Protection for Consumers

Philipus M. Hadjon defines the essence of legal protection as an intertwining of shielding and legal provisions, encompassing both preventive and corrective aspects, whether documented or not. This notion underscores the multifaceted role of law, offering not just fairness and structure, but also assurance, benefits, and serenity. As Rahardjo (2006) asserts, legal protection becomes intertwined with the enforcement of law, constituting a distinct societal mechanism to uphold order. Conversely, Muchsin (2003) contends that legal protection is an endeavor that shields individuals by harmonizing the tenets and rules embodied in behavior, cultivating societal harmony among peers. This study adopts Rahardjo's (2006) conceptual framework concerning legal protection.

3. RESEARCH METHODS

The research employs a normative legal research methodology, focusing on the analysis of applicable laws and regulations relevant to the issue of drug distribution lacking proper permits (Benuf, Mahmudah, & Priyono, 2019).

Two problem-solving approaches are utilized. The statutory problem approach involves a comprehensive examination of all relevant laws and regulations related to the specific legal issue (Marzuki, 2011). Simultaneously, the case study problem approach involves an exploration of court decisions that carry enduring legal significance (Marzuki, 2014).

Primary legal materials encompass authoritative legal texts such as the Civil Code, Health Law (Law No. 36/2009), and Consumer Protection Law (Law No. 8/1999)

(Suardita, 2017). Secondary legal materials, including books, articles, journals, and research papers, provide supplementary explanations for interpreting primary legal materials (Suardita, 2017).

The research methodology relies on library research, encompassing data collection, rigorous reading, and meticulous processing of research materials. Library studies are instrumental in gathering theoretical underpinnings from reference books and prior studies (Supriyadi, 2017; Sarwono, 2006).

The study employs a descriptive qualitative analysis of existing legislation to gain insights into cases of unauthorized drug distribution. This approach is chosen due to its aptness for dealing with theoretical aspects such as legal principles, concepts, and norms, that are pertinent to unpermitted drug distribution scenarios.

4. RESULTS AND DISCUSSION

4.1. The process of granting permits for the distribution of drugs by BPOM

When it comes to promoting medicinal products to the public, pharmaceutical manufacturers are required to secure a distribution permit for the medications they produce. As articulated in the Decree issued by the Head of the Drug and Food Control Agency (BPOM), specifically numbered HK.00.05.3.1950, which pertains to the Criteria and Procedures for Drug Registration, Article 2 underscores that therapeutic products intended for distribution within Indonesia's borders and/or for export purposes must possess a valid distribution permit, attainable through a registration process that adheres to specified prerequisites.

Furthermore, as laid out in Regulation Number 13 of 2021 by the Drug and Food Control Agency (BPOM), specific criteria must be met by pharmaceutical manufacturers to qualify for a distribution permit. These criteria encompass:

a. Alignment with the governmental declaration of a public health emergency.
b. Substantial scientific substantiation of the drug's safety and efficacy in preventing, diagnosing, or treating serious and life-threatening diseases or conditions. This validation is rooted in comprehensive non-clinical data, clinical trial outcomes, and established guidelines for managing related illnesses
c. Compliance with rigorous quality standards and adherence to the stringent Good Manufacturing Practices applicable to pharmaceuticals.
d. Establishment of a favorable balance between benefits and risks (as determined through a meticulous risk-benefit analysis), substantiated by a comprehensive review of both non-clinical and clinical data for the proposed drug indications.
e. Demonstrating the absence of approved alternative treatments or management strategies for diseases that could trigger public health emergencies.

The drug registration process is carried out in 2 stages, namely the pre-registration stage and the registration stage. In the pre-registration application for drugs, the registration screening includes determining the registration category, determining the evaluation path, determining the evaluation fee, and determining the registration documents. Pre-registration requests are made by:

a. Fill out the form as listed in Appendix II which is an integral part of this Regulation of the Head of the Agency;

b. Submit proof of pre-registration fee payment; And
c. Attach the documents as listed in Appendix XIII which is an integral part of this Regulation of the Head of the Agency.

The issuance of Pre-registration results (HPR) is a process that should not exceed 40 days from the moment the application is received, as stipulated in Article 33. The HPR carries significant weight as it remains in effect for an entire year from the date of issuance. Should any insufficiencies be identified in the document, a formal request for supplementary data is communicated in writing to the Applicant, allowing a grace period of up to 20 days for response.

Throughout the intricate stages of pre-registration and registration, the Registrant formally presents their requests in written format to the Head of the Agency. These requests are accompanied by an array of documents covering both pre-registration and registration aspects. To account for the associated costs, applications for pre-registration and registration are accompanied by fees that contribute to non-tax state revenue. This financial aspect necessitates prompt attention, with payment required no later than 10 days after the issuance of the Public Service Payment Order (SPB-LP), as prescribed by established legal norms.

Several documents are fundamental to the registration process, including:

a. Part I: Encompassing an array of administrative documents, comprehensive product information, and intricate labeling specifics.
b. Part II: Delving into a detailed quality-focused document compilation.
c. Part III: Addressing the array of nonclinical documents that underscore the product's attributes.
d. Part IV: Encompassing a thorough compilation of clinical documentation, thereby presenting a holistic view of the product's clinical relevance.

In the course of the registration procedure, an extensive 100-day review will be executed for the New Registration of New Drugs, Biological Products, Generic Drugs, and Branded Generic Drugs. These categories are targeted for participation in national health programs, requiring accompanying documentation that fulfills program prerequisites or showcases prequalification results from the World Health Organization.

As the registration process unfolds, a comprehensive evaluation will be undertaken for pharmaceutical products submitted under the aegis of the Head of the BPOM. This assessment will be conducted with due regard to:

a. The outcomes emanating from the comprehensive evaluation of registration documents and/or recommendations from TPON (comprising Efficacy Safety Assessment Team, Quality Assessment Team, and Product Information and Label Assessment Team).
b. The insights drawn from on-site inspections conducted locally at the facilities responsible for pharmaceutical production.

The results of these considerations will determine whether the drug product is given approval or rejected. If approved, an approval letter will be issued which can be used by

drug manufacturers to manufacture drugs on a commercial scale; or carry out the entry of Imported Drugs. Approval is notified in writing to the registrant through a Distribution Permit, export special approval or Variation Registration approval. Meanwhile, for products that are rejected, applicants can submit a written request for review to the Head of the Agency for a maximum period of 6 months from the date of the rejection letter and can only be done once. The validity period of distribution permits and special export approvals is valid for a maximum of 5 (five) years as long as they comply with the provisions of laws and regulations.

4.2. Legal Protection for Consumers against distribution of drugs that do not have a distribution permit

The vital role of drugs in curing disease causes drug distribution in society to be of particular concern. Communities as consumers or drug users have the right to obtain consumer protection rights. Consumer protection laws are formed for the benefit of consumers, both physically and socio-economically. According to Law no. 8 of 1999, Consumer Protection is all efforts that guarantee legal certainty to provide protection to consumers. Regarding the physical aspects of consumers related to the security and safety of their bodies and or souls in the use of consumer goods or services. Meanwhile, in socio-economic terms, every consumer can obtain optimal results by using their economic resources in using goods or services for their needs for life.

In accordance with article 3 of Law no. 8 of 1999 concerning Consumer Protection, there are several objectives of protecting consumers, including:

1) "Increasing consumer awareness, ability and independence to protect themselves
2) Raising the dignity of consumers by preventing them from negative excesses in the use of goods and/or services
3) Improving consumer empowerment in selecting, determining, and demanding their rights as consumers;
4) Creating a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information;
5) Growing awareness of business actors regarding the importance of consumer protection so that honest and responsible attitudes grow in doing business;
6) Improving the quality of goods and/or services that guarantee the continuity of the business of producing goods and/or services, health, comfort, security and consumer safety."

Where in article 4 of Law no. 8 of 1999 also regulates consumer rights, namely:

1) "The right to comfort, security and safety in consuming goods and/or services;
2) The right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
3) Right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
4) The right to have their opinions and complaints heard about the goods and/or services used;
5) The right to obtain proper advocacy, protection and efforts to resolve consumer protection disputes;

6) The right to receive guidance and consumer education;
7) The right to be treated or served properly and honestly and not discriminatory;
8) The right to receive compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be;
9) The rights regulated in the provisions of other laws and regulations"

The government as a policy implementer in Indonesia has a responsibility to guarantee the consumer's right to protection from the public. Based on Law no. 8 of 1999 Article 29 states that: The government is responsible for fostering the implementation of consumer protection which ensures that the rights of consumers and business actors are obtained and the obligations of consumers and business actors are carried out" (Paragraph 1). In addition, "Guidance by the government on the implementation of consumer protection as referred to in paragraph (1) is carried out by the Minister and/or related technical ministers." (Verse 2)

Meanwhile, several parties supervise the implementation of consumer protection. The following is Article 30 of Law no. 8 of 1999, namely: "Supervision of the implementation of consumer protection and the implementation of the provisions of the laws and regulations are carried out by the government, the public and non-governmental consumer protection institutions" (Paragraph 1), "Supervision by the government as referred to in paragraph (1) is carried out by the Minister and /or related technical minister." (Paragraph 2), "Monitoring by the public and non-governmental consumer protection institutions is carried out on goods and/or services circulating in the market" (Paragraph 3), "If the results of the supervision as referred to in paragraph (3) turn out to deviate from the applicable laws and regulations and endanger consumers, the Minister and/or technical minister take action in accordance with the applicable laws and regulations" (Paragraph 4) and "the results of supervision carried out by the community and non-governmental consumer protection institutions can be disseminated to the public and can be submitted to the Minister and technical ministers" (Verse 5)

In the Health Law, legal protection is explained as a form of health effort where in article 1 of the Health Law Number 36 of 2009 it is stated that: public health in the form of disease prevention, health promotion, disease treatment, and health restoration by the government and/or the community"

So it can be interpreted in forming a healthy and prosperous society, it is necessary for the government's role in preventing, improving health and health protection. The government, represented by the Food and Drug Supervisory Agency (BPOM), has the duty to provide efforts to protect consumers for the distribution of drugs and food that do not have a distribution permit, which can be carried out in a preventive and repressive manner in efforts to enforce the rule of law (Noviantari 247-257: 2021). Preventive legal action is a preventive measure taken before the crime occurs. Meanwhile, repressive legal action is an effort that is carried out after the crime has occurred. In terms of countermeasures against the circulation of illegal drugs and food that do not have a distribution permit, then, efforts to protect the law are needed. Efforts to protect the law that can be carried out include those that have been regulated in the Law, namely:

1) Preventif Action

In carrying out preventive efforts in providing consumer protection efforts for the distribution of drugs and food that do not have a distribution permit, supervision is carried out to ensure that all work has been carried out properly or in accordance with what was previously planned. The supervision efforts carried out by BPOM in preventing the circulation of illegal drugs and food are listed in Article 3 of Presidential Regulation No. 80 of 2017 concerning the Drug and Food Control Agency, namely:

a. BPOM makes arrangements and stipulations of norms, standards, procedures and criteria for drugs and food regarding distribution permits in the field of control before circulation and supervision during circulation.
b. BPOM carries out drug and food supervision related to distribution permits, before they are circulated and during circulation on a regular basis. Control before Distribution is control of Drugs and Food before distribution as a preventive measure.
c. BPOM coordinates with central and regional government agencies in supervising drugs and food, especially regarding distribution permits, as well as providing better technical guidance and supervision in the field of drugs and food.
d. BPOM cooperates with government apparatus to conduct outreach to the public about the impacts and dangers arising from drugs and food that do not have a permit, by disseminating information through advertisements or slogans in the mass media and print media, or providing information or education directly to the public through a government-held meeting.

2) Repressive Action

This repressive effort is carried out based on statutory regulations that have been specifically regulated, especially with regard to criminal law. In this case a special regulation is needed to carry out repressive actions. For cases of distribution of illegal drugs, refer to Law Number 36 of 2009 concerning Health which clearly describes the provisions for personnel entitled to procure, store, process, promote and distribute drugs and medicinal substances. Where in this Law provides legal certainty for anyone who deliberately produces or distributes pharmaceutical preparations and/or medical devices that do not have a distribution permit with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 1,500,000. 000.00 (one billion five hundred million rupiah). In addition, manufacturers or sellers of medicines who do not have the expertise and authority to practice pharmacy are subject to a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

In the decision Number: 94/PID.SUS/2021/PN MKD it can be seen that the Legal Protection provided by the Government to Actors selling drugs illegally, namely without having to be accompanied by a doctor's prescription, has been subject to a fine of Rp. 20,000,000.- (twenty million rupiah), provided that if the fine is not paid then it is replaced by imprisonment for 3 (three) months. Then there is evidence in the form of illegal drugs that were obtained without a permit which it is clear will be confiscated to be destroyed by the relevant agencies. This proves that legal protection in the decision Number: 94/PID.SUS/2021/PN MKD is carried out in the form of fines and confiscation of illegal drugs to improve the attitude or

behavior of the convict and on the other hand the punishment is also intended to prevent other people from possibly committing prohibited acts. In addition, the deprivation can be a means of preventing the public from obtaining drugs illegally. Another legal protection given to the public is by providing a means of reporting for people who know or suspect that illegal drug sales are being carried out through the "HaloBPOM" Call Center.

5. CONCLUSION

In light of the in-depth exploration conducted in alignment with the research problem, several crucial takeaways emerge from this study: Firstly, the intricate journey of granting authorization for drug circulation, overseen by BPOM, involves a dual-phase approach - Pre-registration and Registration. Both stages necessitate meticulous adherence to the requisite declarations and documentation. For emerging drug products, a thorough 100-day evaluation period is orchestrated under the vigilant supervision of the BPOM Agency's Head. Approval culminates in the acquisition of the coveted distribution permit and a corresponding endorsement letter. Conversely, a rejection opens a brief six-month window for reconsideration, accessible only once. Secondly, the assurance of legal protection for consumers in the context of drug distribution devoid of proper permits is fortified through rigorous measures. This encompasses the possibility of a prison term extending up to 15 years, coupled with a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah) for transgressors. Additionally, manufacturers or vendors devoid of the requisite expertise and authority mandated for pharmaceutical practice face potential fines reaching up to Rp. 100,000,000.00 (one hundred million rupiah), aligning with the parameters defined within Law no. 36 of 2009.

Conclusively, the insights garnered from this research offer tangible recommendations for practical application: Firstly, a compelling proposal necessitates the government to provide a lucid and unambiguous framework regarding the imposition of sanctions, particularly as outlined in Law no. 36 of 2009. Notably, this is pertinent in cases of illicit drug trafficking, often encompassing multiple articles and degrees of gravity. Secondly, an advisable course of action involves enhancing the clarity surrounding the legal safeguards extended to individuals negatively affected by illicit drug activities. This could be effectuated through intensified public awareness campaigns, effectively disseminating information about illegal drugs and avenues available for affected individuals to seek restitution and protection against such illicit activities.

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EFFORTS MADE BY POLRI AS LAW ENFORCEMENT OFFICIALS IN COMMITTING CRIME WITH VIOLENCE (BEGAL)

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Abstract

The crime of robbery involves theft that can lead to the loss of a person's life. To address this issue, the police are empowered with authority and responsibilities outlined in Article 13 of Law Number 2 of 2002. These responsibilities include maintaining security and public order, upholding the law, and providing protection, services, and assistance to the community. This research aims to (1) understand the role of the National Police in combating criminal acts involving violence (such as "begal"), and (2) explore efforts to uphold the rule of law when addressing such criminal acts. This study adopts a normative legal research approach, incorporating statutory, case-based, and conceptual legal analyses. Legal materials are examined through interpretation and relevant legal theories, leading to deductive conclusions. The findings of this study reveal that (1) Robbery is classified as a criminal act punishable under Criminal Code Articles 365 and 368. The National Police employs preventive measures by advising the public to exercise caution in areas susceptible to robberies. Additionally, repressive legal actions are taken through investigations and trials to administer punishments. (2) If certain conditions for accountability are met, an individual displaying deviant behavior may commit specific criminal acts. Therefore, a perpetrator utilizing a planned approach to commit robbery, accompanied by the required evidence, could be sentenced to up to 12 years of imprisonment.

Keywords: *Robbery, National Police Role, Rule of Law*

1. INTRODUCTION

One form of crime that is now rife in society is robbery crime (theft by force), from the media, both mass media and electronic media, it can be seen that lately it often occurs in the community, both in cities and in regions, with various types of background. behind because of the insufficient necessities of life. With the development of the crime of theft, other forms of theft also develop, one of which is the crime of robbery or it can also be called the crime of theft which is accompanied by physical violence against the victim. Order and security in society will be maintained if every member of the community obeys laws that apply in society.

As a constitutional state as stated in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), everything must refer to the law (Michael & Boerhan, 2020). This crime is regulated in book II of the Criminal Code. The Criminal Code is a source of material criminal law, which contains general rules of criminal law and formulations of other criminal acts, where these actions are prohibited from being carried out by roles accompanied by certain criminal threats for those who commit acts that are prohibited. then it will be subject to sanctions according to the law in force (Soesilo, 1996).

Lack of legal literacy makes people not aware that they have violated the rule of law (Astutik et al., 2020). This gives rise to crimes committed by thieves, corruptors, etc. When a thief intends his actions, then actually someone wants his wealth to be added to

the wealth of other people and that person sets aside halal businesses. This person is also not grateful for the results of his own efforts, but expects the results of other people's efforts, so that this person does not work hard which is the driving factor for the crime of robbery (theft with violence). *Begal* is a criminal act that greatly disturbs the comfort of the community, for this reason consistent action is needed that can uphold the law, so that harmony is established. Poverty which greatly influences the behavior of theft is the reality that occurs in society, this can be proven from crimes of this type which are increasing amid the objective conditions of the perpetrators in carrying out their activities, this condition can have an impact on several aspects, namely, the economic, social and environmental aspects of the perpetrator's life, but the extent to which these activities can provide positive value in building a law-abiding society (Sahetapy, 2005).

Crime is a problem that continuously requires serious attention from all parties, both by law enforcement and society in general. Many efforts and efforts have been made by law enforcers to reduce the growth rate of criminal acts, but criminal acts still often occur with the quantity and mode of operation constantly changing, this fact often occurs in various regions, especially in big cities such as Jakarta, Surabaya, Bandung, Jogjakarta and their forms are very varied, ranging from fraud, theft, and also persecution, all of which are carried out both individually and in groups, while the mode of operation for several robbery crimes (theft with violence) is still using conventional methods. Likewise, targets are still motivated by economics and only on certain immaterial crimes, where not only on the specifics of robbery (theft with violence), but many other crimes have been committed (Soekanto, 2002).

According to Article 365 Paragraph (1), (3) and (4) of the Criminal Code which reads: Paragraph (1) “Punished with a maximum imprisonment of nine years for theft which was preceded, accompanied or followed by violence or threat of violence, against a person with the intention of preparing or facilitating theft, or in the case of being caught red-handed, to enable the person or other participant to escape or to take possession of property. stolen goods". On Paragraph (3) "If said act results in death, it is punishable by a maximum imprisonment of fifteen years". On Paragraph (4) “Punished with life imprisonment or for a specified period of twenty years at the most, if the act resulted in serious injury and death and was committed by two or more people in partnership, accompanied by one of the paragraphs described in numbers (1) and (3).

The case contained in Decision Number: 303/Pid.B/2016/PN.Sky, that the crime of robbery is not a crime committed alone. This case was carried out jointly by Muhammad Ari Saputra Alias Atok Bin Budi Laksono together with witness Muhammad Oki Zulkarnain Bin Samsu, witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno, witness Dodi Andriansyah, S.Pdor Bin Kartawinata. This crime resulted in the loss of life of the victims Piyadinata and Yulyana. The crime of robbery is a crime of theft which results in the loss of a person's life.

Then in the context of preventing criminal acts against the community, the Police have the authority and duties that have been compiled in Article 13 of the Law of the Republic of Indonesia Number 2 of 2002 concerning the Police of the Republic of Indonesia which reads: (a) Maintain public security and order. (b) Upholding the law. (c) Providing protection, shelter and service to the community. The Indonesian National Police (Polri) is the National Police in Indonesia, directly responsible under the President.

Crime is a serious criminal act. Threats of punishment can be in the form of fines, prison sentences, death sentences, and sometimes it is added to the confiscation of certain

goods, the revocation of certain rights, and the announcement of a judge's decision (Masriani, 2009). Based on the background above, the writer is interested in conducting research in the form of a thesis with the title "Efforts Made by the National Police as Law Enforcement Officials in Combating Violent Crime (Begal)"

The objectives of conducting this research are to answer the main issues previously described, including: 1) Knowing the role played by the National Police in tackling criminal acts accompanied by violence (begal). 2) Know the efforts to implement the rule of law in tackling criminal acts accompanied by violence (begal). This research can be a means for researchers to implement theories obtained from lectures in the efforts made by the National Police as Law Enforcement Officials in Combating Violent Crime (Begal). This research also can be a reference for further research which will conduct research on the same topic, namely regarding the efforts made by the National Police as Law Enforcement Officials in Overcoming Violent Crime (Begal).

2. LITERATURE REVIEW

2.1. Law Enforcement Officers

In maintaining state security and order it is not enough if it is only regulated by criminal law, but there are police as investigators, prosecutors as public prosecutors, and judges as apparatus that can maintain and maintain state order. In criminal procedural law there is an initial process that accompanies before the trial, namely investigations carried out by investigators, in the event that the investigation is the authority of the Indonesian National Police (POLRI) and prosecution is carried out by the Public Prosecutor (JPU) (Lamintang, 2004).

2.2. Police

Authority is an understanding derived from government law, which can be explained as a whole of rules relating to the acquisition and use of government authority by public law subjects in public law relations. The authority of the police in carrying out investigations into criminal acts is an attribution authority that has been granted by law. The authority of the police is regulated in the Law of the Republic of Indonesia Number 2 of 2002 concerning the Police (hereinafter referred to as the Police Law).

2.3. Crime

According to Moeljatno, (2008) states that criminology is the science of crime and bad behavior and about the people involved in the crime and bad behavior. By crime referred to as violations, it means that acts according to law are punishable by crime and crime is part of human problems in everyday life (Moeljatno, 2008).

2.4. Robber (Begal)

Robber (Begal) is a criminal act that greatly disturbs the comfort of the community, for this reason, consistent action is needed that can uphold the law, so that harmony is established. Poverty which greatly influences the behavior of theft is the reality that occurs in society, this can be proven from crimes of this type which are increasing amid the objective conditions of the perpetrators in carrying out their activities, this condition can have an impact on several aspects, namely, the economic, social and environmental

aspects of the perpetrator's life, but the extent to which these activities can provide positive value in building a law-abiding society (Sahetapy, 2005)

3. RESEARCH METHODS

In this study, normative legal research was employed to explore legal norms, encompassing both positive law and draft laws (Soekanto & Mamuji, 2004). The research approach integrated a statutory examination of laws related to the addressed legal issues, along with a conceptual exploration of legal perspectives and doctrines (Hasbullah, 2017). The legal materials for this thesis were derived from three sources:

1) Primary Legal Materials: These included The Criminal Code (KUHP), The Criminal Procedure Code (KUHAP), and Law of the Republic of Indonesia Number 2 of 2002 regarding the Indonesian National Police.
2) Secondary Legal Materials: Literature reviews incorporated opinions of experts and legal practitioners sourced from the internet, along with legal theories.
3) Tertiary Legal Materials: This category comprised legal dictionaries, scientific papers, and encyclopedias.

The collection process began by understanding supportive legal norms and regulations. Secondary legal materials—opinions of legal experts—were then gathered and systematically organized to develop a comprehensive understanding.

Data analysis involved legal interpretation and pertinent legal theories to draw deductive conclusions. Starting with foundational laws and regulations, these were applied to relevant cases, leading to the formulation of conclusions.

4. RESULTS AND DISCUSSION

4.1. The Role of the Police in Overcoming Crimes Accompanied by Violence (Begal)

In the case of a crime, especially the crime of robbery, of course there is a modus operandi of the causes of the actions taken by the perpetrators of the crime of robbery which in the case of the crime of theft with murder. It can be said that every person who commits a crime or crime must have an inherent evil nature, because not only environmental factors or opportunities are factors of a crime, but must be accompanied by personal traits. Personal and environmental factors always reciprocate, they cannot even be separated from one another.

The law recognizes the term robbery crime is not clearly stated in statutory regulations. If you look at the concept of law enforcement that relies on the principle of legality as Article 1 paragraph (1) of the Criminal Code, "*nullum delictum nulla poena siena praevia lege poenali*", it explains that no act can be punished unless there is a law that regulates it. 2 A crime has not been criminalized, does not mean that the act cannot be subject to legal sanctions. Even though the mention of the term *begal* comes from the habits used by everyday people, this crime is still included in the classification of criminal acts. The term is identified with a crime committed by intercepting the victim on the street and confiscating the victim's property which is usually accompanied by violence and threats. In general, this robbery crime is included in the category of criminal acts that can be charged with the Criminal Code (KUHP), including Articles 365 and Article 368.

Begal is categorized as a crime against property as outlined in book III of the Criminal Code.

In the process of law enforcement against robbery crimes and to suppress this increase in numbers, steps can be taken for law enforcement and road safety. These steps are formulated into two efforts, namely through preventive efforts and repressive efforts.

1) Prevention Efforts (Preventive) The number of crimes of theft with violence (*begal*) is getting higher, the police can carry out this patrol. In this patrol, the public is also advised to always be vigilant against crimes. The National Police through the BIMAS Unit always provide advice and counseling to road users and the public to be more careful and increase their vigilance when outside the home, while driving or when in a place far from crowds. This is what causes the frequent occurrence of crimes, especially for people who park their vehicles in places that are prone to crime, so that they always pay attention to the safety of their vehicles when they are abandoned so that the crime of theft, especially motorized vehicles, does not occur.
2) Enforcement Efforts (Repressive). In addition to preventive efforts, the Polsek through the Intelligence Unit also conducts investigations and takes action, especially in cases of robbery/*curas*. Assisted by the Polres and Polsek, this effort is carried out to the fullest extent possible so that every case that occurs can be resolved and the perpetrators of crimes can be acted on firmly and as quickly as possible. Polsek which is the task of the police in the area. One of the duties/authorities of the Polsek is to carry out investigations, detention and investigations in the field of justice.

4.2. Efforts to Implement the Rule of Law in Overcoming Crimes Accompanied by Violence (Begal)

4.2.1 Chronology of the Begal Case

At the time and place mentioned above, starting at around 24.00 WIT, the defendant met the witness Muhammad Oki Zulkarnain Bin Samsu, witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno, witness Dodi Andriansyah, S.Pdor Bin Kartawinata and Rendi at " internet cafe 86" then the witness Muhammad Oki Zulkarnain Bin Samsu said to the defendant "payo nak melok begawe dak" then after agreeing, at around 02.00 WIB the defendant and witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno went on foot to the rambutan garden area where located on Jalan Komplek Azhar, Tanah Mas Subdistrict, Talang Kelapa District, Banyuasin Regency, then a few moments later the witness Muhammad Oki Zulkarnain Bin Samsu together with witnesses Dodi Andriansyah, S.Pdor Bin Kartawinata And Rendi followed the defendant and witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno with using a black Honda Beat motorbike (not yet found) owned by the witness Muhammad Oki Zulkarnain Bin Samsu where before leaving for the scene, witness Muhammad Oki Zulkarnain Bin Samsu first took his machete from inside the cafe and put it on the motorbike he was driving to the scene and Rendi carrying a knife tucked into his waist

That when witnesses Muhammad Oki Zulkarnain Bin Samsu, witnesses Dodi Andriansyah, S.Pdor Bin Kartawinata and Rendi arrived at the scene of the incident, the defendant and witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno were installing bamboo in the middle of the road, and after the bamboo was installed then the defendant together with the witness Muhammad Oki Zulkarnain Bin Samsu, witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno,

Witness Dodi Andriansyah, S.Pdor Bin Kartawinata and Rendi sat in the garden by the side of the road while waiting for a motorbike to pass by at the scene of the incident.

That at around 03.30 WIB, the victim Piryadinata crossed the scene using a Honda Vario Techno BG 6833 JAD motorbike while carrying the victim Yuliana (wife of the Piryadinata victim) and because of the bamboo that had been installed by the defendant and the witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno was in the middle of the road so the victim Piryadinata slowed down his vehicle, saw the victim Piryadinata slow down his vehicle then the witness Muhammad Oki Zulkarnain Bin Samsu immediately confronted the victim while swinging his machete at the victim Piryadinata's body which hit the right back shoulder then the witness Muhammad Oki Zulkarnain Bin Samsu returned swung his machete, but was parried by the victim Piryadinata so that it hit the victim Piryadinata's right hand and the witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno immediately hit the victim Piryadinata on the back of the shoulder many times using a piece of bamboo then together the witness Dodi Andriansyah, S .Pdor Bin Kartawinata immediately punched the victims Piryadinata and Yuliana 2 (two) times each using a bamboo stick then Rendi using his knife immediately stabbed the victim Piryadinata repeatedly in the back and armpit and the defendant slashed the victim Piryadinata's right neck and right ribs with used a machete then when the victim Yuliana tried to run away, Rendi chased the victim Yuliana then Rendi stabbed the victim Yuliana in the right side of the chest and face repeatedly then after the victim Piryadinata fell down next witness Muhammad Oki Zulkarnain Bin Samsu and witness Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno immediately took the victim's motorbike without permission from the victim Piryadinata then the witness Dodi Andriansyah, S.Pdor Bin Kartawinata together with RENDI left the scene using the witness Muhammad Oki Zulkarnain Bin Samsu's motorcycle while the defendant left the scene on foot.

4.2.2 Accountability for Criminal Acts of Begal

The panel of judges in Decision Number: 303/Pid.B/2016/PN.Sky. decided that the defendant was proven guilty of committing a crime in Article 365 paragraph (2) 1st, 2nd, paragraph (3) of the Criminal Code and Law No. 8 of 1981 concerning the Criminal Procedure Code and other provisions related to this case. With the following decisions: (1) Declaring that the Defendant Muhammad Ari Saputra Aka Atok Binudi Laksono has been legally and convincingly proven guilty of committing the crime of "Theft with Violence which resulted in the death of the victim"; (2) Sentenced the defendant against the accused with imprisonment for 12 (twelve) years; (3) Determine that the period of arrest and detention that has been served by the Defendant is deducted in its entirety from the sentence imposed; (4) Stipulating that the Defendant remains in custody; (5) Establish evidence in the form of: (a) 1 (one) piece of bamboo with a length of approximately 2 (two) meters; (b) 1 (one) pair of navy blue trousers, brand Brooklyn; (c) 1 (one) black T-shirt with the brand Maternal; (d) 1 (one) broken machete 40 centimeters long; Used in case Number 302/Pid.B/2016/PN.Sky on behalf of Muhammad Andika Pratama Alias Dika Alias Selontok Bin Sukatno; (6) Burdening the Defendant to pay court fees in the amount of Rp. 2000, - (two thousand rupiahs);

Criminal responsibility in criminal law is intended to determine whether a criminal can be held accountable for a crime he has committed or not. In the case of a crime, it can be accounted for if there is an error. Because in the principle of criminal responsibility

there is a principle that coexists with the principle of legality, namely the principle of no crime without any mistakes. Criminal liability is determined based on the fault of the maker and not just by fulfilling all the elements of a crime. Thus, mistakes are placed as a determining factor for criminal responsibility and are not only seen as mere mental elements in criminal acts. However, there is also another view that departs from the principle of no crime without fault, namely the theory of separation of criminal acts and criminal responsibility or known as the dualistic teaching (Soekanto, 2002). In essence, this theory teaches that even though he has committed a crime, but the maker is not covered in a mistake, he can still be held responsible for his actions, because in the case of committing a crime, the maker is not always guilty of his actions. From the teachings of this dualistic theory, it can be concluded that mistakes are only an element of criminal responsibility, not as an element of a crime, because criminal acts only regulate actions that are against the law.

In general, theories about criminal law regarding criminal responsibility according to civil law adhere to guilt as an element of a crime, so because of that in discussing criminal responsibility it will simultaneously discuss errors in which this teaching is called monistic theory. From these theories, it can be concluded that error is the basis for determining criminal responsibility, and criminal responsibility will also determine whether the perpetrator of a crime can be punished. It's just that mistakes as a basis for criminal responsibility are not elements of a crime. The relationship between guilt, criminal responsibility and sentencing is that first of all we have to talk about guilt, after it can be determined that there was a mistake it can be determined about the accountability of the perpetrator of the crime, only after that will determine sentencing.

In terms of criminal responsibility, the element of error in a criminal act is a very fundamental element that cannot be separated from criminal responsibility, although there is a dualistic theory which explains that error is not always the main element in terms of criminal responsibility. However, the element of error is still very important in terms of criminal liability. Because mistakes are not only the basis for being held accountable for a crime, but also the basis for not being held accountable for committing a crime.

Error which is a fundamental element in criminal law, then develops into a doctrine which states that error is not only an element of a crime, but also an element of criminal responsibility (Abdullah, 2003). The notion of self-mistake is not only accepted as an element of a crime or criminal act, but also focuses on the actions of people and their consequences and also on the person who committed the act. In addition, mistakes are generally also related to the thoughts of the perpetrators of criminal acts, where from the use of the minds of the creators a behavior or result is born which is something that is prohibited in criminal law (Noor, 2021). Because if further investigated, a criminal act cannot be covered with an error if the criminal act that occurs because of it, occurs not because of the desire or thought of the perpetrator. criminal act, then it can be concluded the emergence of an error. When formulated from these definitions, it can be concluded that wrongdoing is the existence of a certain psychological (mental) condition in a person who commits a criminal act and there is a relationship between this condition and the act carried out in such a way intentionally or negligently, so that person can be reproached for commit a criminal act (Moeljatno, 2008).

Error itself consists of two forms of signs, namely intentional and negligence. Deliberateness in assessing the fault of a person who commits a crime considers that an act that can be punished is an act committed intentionally. The element of intent must be

considered in terms of a sign of an error or in terms of holding someone responsible for a crime. Deliberation is classified into three styles, namely intentional as intention, deliberate as a necessity, and intentional as a possibility. Intentional as a necessity is intentional that occurs because the goal to be achieved by the perpetrator of the crime can be realized by carrying out the act. whereas intentionality because of possibility is if the maker knows that his actions also have the scope for under certain circumstances a consequence will occur, or the maker thinks predictably to achieve a certain goal of committing a criminal act.

Then the form of negligence error, is an exceptional form of error, which means that not all actions that occur due to the negligence of the maker can be blamed (Soekanto 1984). In negligence, an act that occurs due to negligence resulting in the emergence of a new crime can be reproached or said to be a crime only if it is regulated in law. Forgetfulness itself consists of conscious forgetfulness and unconscious forgetfulness. A conscious mistake occurs when the creator does not use his mind properly, so that the prohibited result arises. The maker also does not realize that what he should know, can be known or guessed what he can predict. Meanwhile, in unconscious negligence, the creator does not think at all that his actions could result in a crime, even though the maker should have thought of this.

The difference between intent and negligence in the formulation of a sign of error in a criminal act can be seen in the criminal procedure. This can be seen from the difference in the sound of the judge's decision from the two forms of error. If the maker's negligence is not proven, he will be declared 'released'. Meanwhile, if it is not proven that it was intentional on the part of the maker, then the decision will be 'abandoned from all lawsuits'. This is because negligence is a core part (*bestdeel*) of a crime, while intention is not formulated in the formulation of the core part of a crime.

5. CONCLUSION

The research findings have led to the following insights: The first key observation is that robbery is firmly established within the category of criminal offenses that fall under the jurisdiction of the Criminal Code (KUHP), specifically encompassing Articles 365 and Article 368. The notorious act of "*begal*" is legally classified as a crime against property, precisely defined in book III of the Criminal Code. The prevalence of robbery in society has raised significant concerns, prompting the National Police to shoulder substantial responsibility in effectively addressing these criminal activities. Rooted in the authority attributed by law, the Police of the Republic of Indonesia (Polri) takes on a crucial role in managing issues that disrupt the harmony of the community. Polri, functioning as a dedicated law enforcement entity, undertakes a multifaceted approach involving both preventative and repressive legal strategies. Preventative initiatives center on public awareness campaigns, urging caution in areas susceptible to criminal activity. On the other hand, repressive measures entail thorough investigations leading to eventual trials. Moreover, it is essential to emphasize that irrespective of an individual's deviant behavior, the criteria for holding them accountable in a legal context must be met. This principle particularly holds true in cases involving murder. The imperative to uphold justice mandates that individuals who engage in criminal acts, even with deviations from societal norms, must bear criminal responsibility. This principle was exemplified in a specific case, where the defendant meticulously orchestrated their actions, gathering

evidence in advance to commit robbery. As a result of their actions, the perpetrator received a sentencing of twelve years' imprisonment.

Turning to potential improvements in light of the research, two recommendations arise: Firstly, the National Police should amplify their efforts in both preventive and protective measures. The National Police, entrusted with the mandate of safeguarding the community, should engage in collaborative endeavors with the public to collectively combat criminal activities like robbery. Secondly, it is essential to address the issue of sentencing adequacy. While the twelve-year prison term is imposed as a consequence for criminal acts, it raises concerns over its deterrent effect and proportionality relative to the loss of life and property experienced by victims. If the potential penalties are not deemed sufficiently impactful, individuals may not perceive them as significant deterrents, potentially undermining the broader goals of justice and crime prevention.

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ANALYSIS OF INFORMED CONSENT AS THE LEGAL PROTECTION OF PHYSICIAN RELATIONSHIPS AND PATIENTS IN MALPRACTICE CASES

(Case Study of Supreme Court Decision Number 21/Pdt.G/2018/PN Mnk)

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Abstract

The implementation of medical behavior involves two parties, namely doctors or other health workers as executors of medical behavior and patients as recipients of medical behavior bound in Informed Consent. However, the occurrence of malpractice cases causes the role of Informed Consent to be doubted both from the patient and doctor's side because the validity of Informed Consent becomes biased if there is no legal basis and knowledge of the agreement. The research aims to analyze the role of Informed Consent as legal protection for the relationship between doctors and patients in cases of malpractice and to analyze the legal remedies given to doctors and patients in malpractice cases in Supreme Court Decision Number 21/Pdt.G/2018/PN Mnk. This type of research is normative research using a statutory-based approach. The process of collecting data through a literature study with an analysis of legal materials through a qualitative descriptive analysis. The results of the study prove that the role of informed consent as legal protection is not entirely a determinant of a case being declared as malpractice. From the decision Number 21/Pdt.G/2018/PN Mnk it was concluded that the existence of Informed Consent could not be used as legal protection because the doctor was proven to have made a mistake in setting the drug dosage. Related to the legal protection given to patients who are victims of malpractice is the Health Law no. 23 of 1992 which gives everyone the right to ask for compensation for mistakes and negligence committed by health workers.

Keywords: *Informed Consent, Malpractice, Medical Treatment*

1. INTRODUCTION

An accident, disaster and other adverse event is something that cannot be predicted to whom when and where it occurs. This inability to predict can also be referred to as uncertainty, which is further interpreted as a risk. Every day humans face risks, both as individuals and as companies (Suryanto, 2017). Risk is a potential event that can be detrimental due to uncertainty over the occurrence of an event, where uncertainty is a condition that causes the growth of risks originating from various activities (Syah, 2017). According to Jaka (2015), risk cannot be eliminated but its impact can be minimized. This is what causes guarantees in the implementation of an activity.

Every human being has the right to health as a manifestation of human rights which are guaranteed by the state constitution. This is why the right to health can no longer be considered a personal matter or just a gift from God and is not the responsibility of the state, but has become a legal right guaranteed by the state itself (Inriani, 2021). The importance of health as a human right and as a necessary condition for the fulfillment of other rights has been recognized internationally (Tampubolon, Siregar, dan Siburian 2022). Therefore, every human being has the Right to Health which includes the right to a healthy life and work, the right to receive health services, and special attention to the health of mothers and children (Ardinata, 2020).

Informed Consent is the consent given by the patient or his legal guardian to the doctor to perform a medical action on the patient after obtaining complete and understandable information about the action (Octaria and Trisna 2016). The use of Informed Consent begins from the first time the patient arrives with the intention of seeking help where the arrival of the patient for treatment indicates the patient's trust in the doctor to take action on the patient. In addition, on the doctor's side, an attitude of prioritizing patient health will also be instilled. Informed consent can help provide information to patients so that patients understand the actions of medical personnel who will take action as an effort to cure their illness, and also get information about their illness. Whereas for health workers Informed Consent can be used as a basis by health actors to provide a sense of security in carrying out medical actions as an effort to cure patient illnesses, as well as as a defense if the results of medical action are not in accordance with the wishes of the patient and the patient's family.

The implementation of medical behavior involves two parties, namely doctors or other health workers as executors of medical behavior and patients as recipients of medical behavior. The participation of both parties in carrying out medical actions is regulated by ethical and legal norms so that these medical actions can be carried out properly and no party is harmed. The ethical norms of medical behavior for doctors are regulated in the code of ethics for the medical profession, which serves as a guideline for the attitude and behavior of the medical profession. In addition, ethical norms also instruct members how to behave while at the same time ensuring the moral character of the profession to be respected by society.

Ethical norms are usually stated in writing. Based on the Indonesian Medical Code of Ethics (KODEKI), 4 (four) obligations are defined as ethical norms that must be obeyed, namely ethics related to general obligations, ethics related to patients, ethics related to colleagues and ethics related to oneself. The purpose of implementing this code of ethics is to ensure that medical practice is carried out in a dignified and professional manner according to the noble traditions of the medical profession and upholds the dignity and dignity of patients as whole human beings. Several ethical norms exist in the Indonesian Medical Ethics Code (KODEKI), among others; humble, honest, fair, compassionate, respecting patient decisions, caring for others, trustworthy, working to the highest standards and so on.

Apart from the existence of ethical norms for health workers, there are also legal norms that must be met. This legal norm aims to regulate the attitude and behavior of doctors in carrying out medical actions in accordance with applicable laws and regulations. Legal norms stipulate that doctors are required to carry out medical procedures in accordance with professional standards, standard operating procedures and in accordance with patient needs, as a patient's right to obtain quality medical services or behavior. This legal norm is intended to provide legal certainty and legal protection for doctors and patients.

In principle, ethical norms and legal norms for health workers have differences. Ethical norms focus on good or bad attitudes and behavior, while legal norms focus on right or wrong attitudes and behavior. Violations of ethical norms can occur if a doctor deliberately ignores a patient and does not provide timely assistance, but if there is an act of treatment that causes loss, injury or death, this behavior is a violation of legal norms. At the same time, medical actions that are carried out without the consent of the patient's

behavior can violate legal norms and ethical norms, because they ignore the patient's humanity. So, it is concluded that not all violations of ethical norms are included in violations of legal norms.

Lack of legal literacy makes people not aware that they have violated the rule of law. Not only can they be sentenced to imprisonment, but also compensation according to civil law (Astutik et al., 2020). This can be proven from malpractice violations that often occur. Malpractice violations are violations that occur several times in society. According to Fitriono, Setyanto, dan Ginting (2016), Malpractice is any wrong attitude, lack of skills at an unreasonable level. Malpractice is the result of a default which causes unlawful acts, because of malpractice caused by the doctor not taking action according to what has been agreed or according to the procedure for medical action with the patient or doctor (Pratama dan Ngadino 2022). This malpractice action is an act that violates legal norms because it can cause harm to patients, both financial losses and health losses guaranteed by law.

One example of a malpractice case is found in the decision of the Supreme Court Number 21/Pdt.G/2018/PN Mnk. In this case there was a malpractice action carried out by the hospital which caused the patient to experience an overdose of Paracetamol. Even though in every treatment action carried out by a doctor based on approved Informed Consent. However, this Informed Consent cannot be used as legal protection if it is proven that the health worker has indeed made a mistake in the process of handling the health. Based on the background of the problems above, researchers will conduct a study regarding the position of Informed Consent as a legal umbrella for doctors and patients in carrying out treatment measures. Researchers will analyze the results of the Supreme Court decision No. 21/Pdt.G/2018/PN Mnk. Therefore, the researcher will conduct a study entitled Analysis Of Informed Consent As A Legal Protection Of Physician And Patient Relationships In Malpractice Cases (Case Study Of Supreme Court Decision Number 21/Pdt.G/2018/Pn Mnk). The purpose of this study is to analyze the role of Informed Consent as legal protection for the relationship between doctors and patients in cases of malpractice in the Supreme Court Decision Number 21/Pdt.G/2018/PN Mnk and to analyze the legal remedies given to doctors and patients in malpractice cases in the Supreme Court Decision. Number 21/Pdt.G/2018/ PN Mnk.

This research can be a means for researchers to implement theories obtained from lectures in analyzing the function of Informed Consent as Legal Protection for the Relationship between Doctors and Patients in Malpractice Cases. This research also can be a reference for further research which will conduct research with the same topic, namely regarding the analysis of the function of Informed Consent as Legal Protection for the Relationship between Doctors and Patients in Malpractice Cases

2. LITERATURE REVIEW

2.1. Informed Consent

The term Indonesian Informed Consent is translated as consent to medical action which consists of two English syllables, namely Inform which means Information and consent means consent. So that in general Informed Consent can be interpreted as the consent given by a patient to a doctor for a medical action to be performed, after obtaining clear information about the action (Achadiat, 2006). Informed Consent according to Permenkes No.585 / Menkes / Per / IX / 1989, Approval for Medical Actions is approval

given by patients or their families on the basis of an explanation regarding the medical actions to be performed on patients.

2.2. Malpratice

Malpractice is any wrong attitude, lack of skill in an unreasonable degree. This term is generally used for the behavior of doctors, lawyers and accountants. Failure to provide professional service and to perform it to the standard of skill and intelligence that is reasonable in the community by the average colleague of the profession, resulting in injury, loss or damage to those recipients of those services who tend to place their trust in them. This includes any professional misconduct, improper skill deficiency or lack of due care or legal, bad or illegal practice or immoral behavior.

2.3. Legal Protection

According to Moeljatno (2008) law functions to protect human interests. In order for human interests to be protected, the law must be implemented. The implementation of the law can take place normally, peacefully, but it can also occur due to violations of the law. Legal protection is the protection of human rights owned by legal subjects based on legal provisions from arbitrary actions or as regulations that can protect one thing from another. With regard to consumers, it means that the law provides protection for the rights of customers from something that results in non-fulfillment of these rights.

3. RESEARCH METHODS

This study adopts the normative legal research method, also referred to as library research, which involves tracing, studying, and analyzing readily available materials such as laws and books, particularly those pertinent to malpractice cases (Arianto, 2011).

The research approach employed here is the normative legal problem approach, which delves into the positive legal principles embedded in legislation, operating under the conceptual framework that law is a set of rules. This approach centers on the examination of secondary data, including literature (Muhaimin, 2020). This choice is aligned with the intention to employ a statutory research approach, where the focus is placed on scrutinizing regulations and literature to extract theories and viewpoints from prior researchers.

Both primary and secondary legal materials are utilized in this study. Primary legal materials encompass statutory regulations, such as the 1945 Constitution of the Republic of Indonesia, the Civil Code (Burgerlijk Wetboek), Law Number 36 of 2009 concerning Health, Government Regulation Number 47 of 2021, and Law Number 8 of 1999 concerning Consumer Protection. Complementing this, secondary legal materials are drawn from sources like books, literature, newspapers, and law journals that pertain to the research's subject matter.

The research methodology and data collection process revolve around library research. Library studies involve a sequence of activities encompassing the collection, reading, recording, and processing of research materials (Supriyadi, 2017). This approach entails gathering and studying reference books, written materials, and other relevant forms of content tied to the research topic.

For data analysis, a qualitative approach is adopted. This qualitative analysis aims to discern the pertinent legal principles, laws, and regulations related to malpractice, offering a scientifically grounded understanding.

4. RESULTS AND DISCUSSION

4.1. The role of Informed Consent as legal protection for the relationship between doctors and patients in cases of malpractice in the Supreme Court Decision Number 21/Pdt.G/2018/PN Mnk

The relationship between doctor and patient is a relationship that is intertwined in a transaction that creates the rights and obligations of each party that must be respected by both. The relationship between doctors and patients gives rise to two legal aspects, namely "*inspanning verbintenis and resultant verbintenis*" (Hanafiah et al., 2016). *Inspanning verbintenis* is a legal relationship between two legal subjects (doctors and patients) and creates rights and obligations for those concerned. This legal relationship does not promise anything certain, because the object of the legal relationship is in the form of maximum efforts made carefully and carefully by doctors based on their knowledge and experience to cure patients (Koeswadji, 2002).

Informed consent is a form of patient agreement and approval of medical actions that doctors will take on patients after receiving information from doctors regarding medical actions that can be performed and the risks that may occur. The obligation to make informed consent is contained in several laws, including:

a. Law Number 29 of 2004 concerning Medical Practice Article 45 paragraph (1) to (6).
b. RI Minister of Health No. 1419/Menkes/Per/X/2005 concerning Implementation of Medical Practice.
c. RI Minister of Health No. 585/Men.Kes/Per/IX/1989 concerning Approval of Medical Actions.

According to the Medical Practice Act Article 45 paragraph 4 states that consent to medical action can be given in writing or orally. In general, there is a requirement to have written informed consent signed by the patient prior to carrying out certain medical actions related to documentation in the medical record. Signing informed consent in writing by the patient is actually intended as confirmation or confirmation of the consent that has been given after the doctor has given an explanation regarding the medical action he will take (Octavia, 2020). From Articles 3 and 4 of Permenkes 585/Men.Kes/Per/IX/1989 it also states that the signing of written informed consent is done after the patient or family has received complete information. By signing the information in writing, it can be interpreted that the signatory is responsible for handing over part of the responsibility for himself to the doctor concerned along with the risks he will face (Widjaja and Firmansyah 2021).

The nature of the signature of the Informed Consent as validation/confirmation/affirmation causes the doctor not to be free from all forms of responsibility for something that happens to the patient when carrying out an action. Medical actions performed by doctors must be accountable according to professional standards and existing laws. The doctor must provide information about the side effects or risks of the treatment given so that the patient or patient can choose which treatment to take. For example, when a risky operation occurs, the doctor must provide information

on this risk and allow the patient to choose and determine his own destiny in the form of an approval for surgery that has been given by the patient or his family or not approved.

In general, explanation of information by doctors is far more important than signing a written agreement, because it is the basis for determining decisions to be taken by patients and their families. But an unwritten agreement will be difficult to prove when a deviant event occurs. In accordance with Article 351 of the Criminal Code, when a medical action that is not preceded by the presence of informed consent causes a deviation, then the sanctions are regulated, namely:

a. Persecution is punishable by a maximum imprisonment of two years and 8 (eight months) or a maximum fine of Rp. 4,500, - (four thousand five hundred rupiah).
b. If the act results in serious injury, the offender is subject to imprisonment for a maximum of 5 (five) years.
c. If it results in death, it is threatened with imprisonment for a maximum of 7 (seven) years.
d. With persecution equated deliberately damage to health.
e. Attempts to commit these crimes are not punishable

Even though the absence of Informed Consent in medical action is the cause of Malpractice cases. However, there are several elements that must be proven in the act of persecution in article 351 of the Criminal Code, namely:

a. There is an intention
b. There is an act.
c. There are consequences of actions
d. There is a causal verband between the form of action and the emergence of forbidden consequences.

The law is flexible, meaning that anything that deviates from the rules can be tolerated on condition that it is still within the scope of reasonableness and does not cause harm and which legal interests have a major impact (Ardhani 2020). The existence of informed consent in medical action actually functions as a basis for the abolition of criminal offenses in addition to protecting patients and doctors. When there is an urgent medical action because of the patient's critical condition, the doctor is allowed to take medical action without informed consent. Even though this action is still categorized as an act of violation, according to Article 531 of the Criminal Code which states: “Anyone who, when he witnesses that a person who is facing death does not provide the assistance that can be given to him without due cause for danger to himself or others, shall, if the person subsequently dies, be punished by a maximum light imprisonment of three months or a maximum fine of four thousand five hundred rupiahs.”

So medical action in an emergency condition that ignores informed consent can be justified according to the principle of subsidiarity. The law provides a way to defend legal interests that face each other, meaning that it cannot defend both. So what should be chosen is a larger legal interest (for example: the risk of death) rather than defending a smaller legal interest (the interests of doctors to get legal protection against malpractice lawsuits due to the absence of informed consent). The provisions of Article 541 of the Criminal Code and the principle of subsidiarity are used as a basis for doctors to carry out

emergency medical actions without informed consent, either verbally or in writing, in urgent situations in order to save the patient from a fatal risk, namely death.

From the explanation above, it can be concluded that the role of Infomed Consent as evidence of malpractice cannot be determined simply. In some emergency cases that threaten the patient's life, doctors are allowed to provide medical treatment without the consent of the patient or the patient's family. The following is a detailed description of the position of informed consent in malpractice cases, namely:

Table 1. Position of Informed Consent in Malpractice Cases

	Malpractice	Not Malpratice
There is Informed Consent	1. There is deviation of obligation in medical action. 2. There is a loss in the patient 3. There is a direct relationship between medical action and losses	1. Medical action is carried out according to medical indications and in accordance with professional standards. 2. There is no deviation from medical obligations. 3. There is no harm to the patient
No Informed Consent	1. There is a doctor's obligation to obtain informed consent. 2. Not carried out without juridical justification 3. There is a loss on the part of the patient. 4. There is a causal relationship between the absence of informed consent and the loss.	In an emergency situation (the risk of death takes precedence over the legal protection of a doctor because there is no informed consent).

Source : Astuti (2009)

Based on the table above, it can be seen that the role of Informed Consent as evidence of Malpractice or cannot be used. The existence of Informed Consent in a Malpractice case must have adequate evidence and in accordance with the legal theory of proof, namely:

a. Allowed by law, in this case informed consent is an obligation that must be made by doctors who have been stipulated by the Medical Practice Act
b. Reability, namely the validity of the evidence can be trusted (for example: not fake). Informed consent must be obtained after the patient really understands the information that has been conveyed along with the risks that after agreeing to the action to be taken and must comply with the provisions contained in Article 45 paragraphs (1) to (6) of the Medical Practice Act. In this study it was found that even though the doctor had tried to give an explanation before carrying out a medical action, he was not fully convinced that the patient could understand all of the explanation.
c. Necessity, namely the evidence is indeed needed to prove a fact.
d. Relevance, namely the evidence has relevance to the facts to be proven

Although informed consent can be used as evidence in letters or instructions in accordance with Article 184 of the Criminal Procedure Code, informed consent does not have full binding force in proving malpractice cases. In accordance with the Indonesian evidentiary system which adheres to the theory of proof based on the law in a negative way, then there are other legal pieces of evidence that are needed for the judge's conviction of the evidence.

When viewed from the case in the decision of the Supreme Court Number 21/Pdt.G/2018/PN Mnk it is known that even though there was an agreement for treatment from the patient, the loss suffered by the patient due to an overdose of paracetamol caused the case to be included in a malpractice case. The existence of Informed Consent here cannot be used to protect the actions taken by doctors because they cause harm to patients.

4.2. Legal remedies given to doctors and patients in malpractice cases in Supreme Court Decision Number 21/Pdt.G/2018/PN Mnk

Legal sanctions regarding malpractice cases that occur are regulated in several statutory policies. Based on the Criminal Code (KUHP), acts that cause other people to be seriously injured or die accidentally are formulated in Articles 359 and 360 of the Criminal Code. Where in Article 359 it reads:

"Whoever because of his mistake (negligence) causes another person to die, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year."

Meanwhile, Article 360 states that:

"Whoever because of his mistake or negligence causes another person to be seriously injured, is threatened with imprisonment for a maximum of five years or a maximum imprisonment of one year" (Article 360 Paragraph 1)

"Anyone who through his fault (negligence) causes another person to be injured in such a way as to cause illness or obstruction to carry out work or occupation or search for a certain time, shall be punished by a maximum imprisonment of nine months or a maximum light imprisonment of six months or a maximum fine of four thousand five hundred rupiah high" (Article 360 Paragraph 2).

For malpractice perpetrators who cause disability or death related to their duties or work, Article 361 of the Criminal Code provides for a punishment of one third heavier. In addition, the judge can also impose a penalty in the form of revocation of the right to do work used to carry out the crime and order the announcement of the decision.

Based on Law Number 36 of 2004 concerning Health, it also regulates legal sanctions for malpractice cases. Criminal provisions in chapter XX are regulated in article 190 which reads:

(1) *"Leaders of health service facilities and/or health workers who practice or work at health service facilities who deliberately do not provide first aid to patients in an emergency as referred to in Article 32 paragraph (2) or Article 85 paragraph (2)*

shall be punished with imprisonment for a maximum of 2 (two) years and a fine of a maximum of Rp. 200,000,000 (two hundred million rupiahs)

(2) In the event that the act as referred to in paragraph (1) results in disability or death, the head of the health service facility and/or the said health worker shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to one billion rupiahs"

In terms of the Code of Ethics, several legal sanctions are given for malpractice as violations of the code of ethics, namely postponement of salary or rank increases, reductions in salary or rank as well as written and verbal warnings.

The legal protection provided by the state can be in the form of the provision of special legal institutions and instruments, which include protection from acts of violating the law or statutory regulations relating to the doctor-patient relationship, especially in health services (Jalilah, 2005). Protection is protection against all kinds of victimization that can cause mental, physical and social suffering to someone (Ghisita, 2004). In addition, victim protection also means an effort to protect victims so that they can carry out their rights and obligations in a balanced and humane manner based on law.

Legal protection for patients is regulated in various laws and regulations that describe the rules and norms that protect related to rights and obligations as well as other arrangements that protect patients in order to achieve the goals expected by patients, namely healing. This legal protection can be in the form of a legal relationship between patients and health workers, both rights and obligations, legal responsibilities and methods of settlement (Azzahra & Haflisyah, 2019).

In providing legal protection for the relationship between doctors and patients will use the Civil Code (Code of Civil Code). An agreement can arise both because of an agreement, as well as because of a law, so that in determining the legal basis for a therapeutic transaction, the two sources of the agreement cannot be separated because in essence the therapeutic transaction itself is clearly an agreement, namely a legal relationship that occurs between a doctor and a patient. in medical services.

In this case what is meant by a therapeutic transaction is an agreement between a doctor and a patient in which the doctor tries his best to cure the patient's illness, this is called an oral agreement in the Civil Code, so what is needed is not an agreement on verbal results or results, but asking for doctors to do their best to achieve patient recovery. Medical responsibility is based on breach of contract (Article 1243 of the Civil Code) and violation of the law (*onrechtmatige daad*) in Article 1365 of the Civil Code, when a doctor has made a mistake or neglected the agreement, in accordance with the treatment agreement. Meanwhile, the definition of default and unlawful act (*onrechmatige daad*) is different.

In civil procedural law there is no need to prove the existence of elements of negligence, but it is sufficient to prove the facts. His goal is to serve justice. Where this doctrine is commonly used in malpractice cases. The conditions for the validity of Res Ipsa Loquitur are, first, the incident does not usually occur; secondly, the loss was not caused by a third party; third, the instruments used in the supervision of the perpetrators of the action; and fourth, not the victim's fault.

Considering that patients are ordinary people in the medical field, this doctrine is believed to give more justice to patients. If the patient becomes a victim of negligence, it is very contrary to the principle of justice to have to prove that negligence occurred. Even

patients do not realize how negligence occurs because they have entrusted their lives and health to doctors who are considered more professional. For this reason, the Res Ipsa Loquitur doctrine places the burden of proof on medical personnel who are believed to know more about the processes and standards used to carry out these medical actions. The patient does not need the process of proving/disclosing negligence, it is enough to show the consequences he has suffered. So, the Res Ipsa Loquitur doctrine is actually a type of indirect evidence, namely evidence about a fact from which a conclusion can be drawn (Heryanto, 2010).

In addition, provisions regarding legal protection for patients who suffer losses due to malpractice by doctors or medical personnel are regulated in several policies. Based on Health Law No. 23 of 1992 which stated:

"Everyone has the right to compensation due to errors or negligence committed by health workers"

Where in the article shows the right to compensation due to losses that occur from malpractice. This right is guaranteed by Health Law No. 23 of 1992 to be used by patients or victims of malpractice. Apart from Health Law No. 23 of 1992 is also contained in article 1365 of the Civil Code which states:

"Every person (medical worker) who because of his negligence causes harm to another person (patient), is obliged for the health worker to provide compensation for the patient."

The granting of the right to compensation is an effort to provide protection for everyone against any consequences that arise, both physical and non-physical due to the negligence or mistakes of health workers. In addition, to prevent or reduce losses that can be detrimental to patients or recipients of health services, it is necessary to have professional standards that must be obeyed by medical personnel. Where medical personnel must meet the standards of the medical profession and respect patient rights.

5. CONCLUSION

The research findings lead to the following conclusions: Firstly, the role of Informed Consent as a legal safeguard is not solely determinative in categorizing a case as malpractice. If a medical procedure adheres to standards and involves informed consent, resulting in a loss, the incident may not qualify as malpractice, and the doctor is afforded legal protection through informed consent. However, a case exemplified by Decision Number 21/Pdt.G/2018/PN Mnk shows that Informed Consent's existence might not always guarantee legal protection, as evident when a doctor is found to have erred in setting drug dosages. Secondly, legal remedies granted to proven malpractice cases, as illustrated by Decision Number 21/Pdt.G/2018/PN Mnk, align with Article 359. This article states that negligence leading to another person's death is punishable by a maximum of five years' imprisonment or up to one year for minor cases. Law Number 36 of 2004 concerning Health prescribes a maximum of 2 years' imprisonment and a fine of up to Rp. 200,000,000. For cases causing death, the penalty increases to a maximum of 10 years' imprisonment and a fine of up to one billion rupiah. Furthermore, Code of Ethics

violations trigger various sanctions, including salary postponement, rank reduction, and written/verbal reprimands.

Research suggestions are as follows: Firstly, medical errors attributed to doctors extend beyond the presence of Informed Consent. Various types of evidence, properly positioned, should support claims of malpractice. Yet, Informed Consent's significance as legal protection for both doctors and patients remains. It's recommended that medical personnel, especially doctors, consistently issue consent letters complete with signature sections. Such letters serve as proof that patients and their families comprehend and accept potential medical action risks. Correctly performed actions in line with Standard Operating Procedures grant doctors legal protection, but deviations from these procedures void such protection even with patient consent. Secondly, government intervention, particularly by the Ministry of Health, is advised. The government should formulate a clear, distinct rule defining medical malpractice and educate the public on reporting procedures in case of victimization. Proactive patient engagement in reporting malpractice is encouraged, reinforcing the role of the rule of law in offering protection. Hospitals and government entities could establish mechanisms for victims to report incidents and gain legal protection.

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RATIO DECIDENDI IN DETERMINING TOOLS OF EVIDENCE INSTRUCTIONS FOR SETTLEMENT OF CRIMINAL CASES IN THE MURDER TRIAL

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Abstract

Evidence is needed to show the truth of the crime that occurred. The importance of evidence as evidence in legal cases greatly influences the outcome of the decision determined by the judge. The completeness and validity of evidence is the most important factor in determining a case decision. So based on the problems above, researchers will conduct an analysis of the application of evidence and obstacles to the application of evidence in Decision Number: 1342 K/Pid/2022. This study uses a normative legal research type with the Statue Approach and Case Approach approaches. Sources of legal material come from the Civil Code (KUHAP) Articles 183 to 189 and Articles 55 and 56 of the Criminal Code. The process of collecting data through a literature study will be analyzed using a qualitative descriptive analysis. The results of this study are: 1) The application of evidence in the court decision Number: 1342 K/Pid/2022 concerning the Criminal Act of Murder is in accordance with the existing requirements and has the force of law in proving the murder case that occurred, and 2) The Judge does not encountered obstacles in the use of evidence to drop Court Decision Number: 1342 K/Pid/2022 concerning the Crime of Murder where evidence was available from the Defendant's Statement, Witness Statement and Physical Evidence that corroborated the occurrence of a violation of the law.

Keywords: *Evidence, Murder, Ratio Decidendi*

1. INTRODUCTION

Indonesia is a state based on law which is clearly proven from the content of Article 1 Paragraph 3 of the 1945 Constitution that “Indonesia is a state based on law”. In this case, the role of law is to create an orderly atmosphere in social life, making law a means to regulate the behavior of everyone in society, so as to create peace and order in people's lives (Riskiyono, 2015).

Self-declaration as a rule of law has an impact on the Indonesian constitutional system which is marked by the limitation of power as one of the characteristics of a rule of law as outlined in the 1945 Constitution, so that arbitrariness does not occur in the state (Kurniaji, 2017). The existence of law in Indonesia aims to create a society that is prosperous, just, prosperous, which is evenly distributed both materially and spiritually as set forth in the preamble of the 1945 Constitution (Isnaini, 2021). The consequence of the state for the establishment of a rule of law state in Indonesia is to guarantee that every citizen gets protection and at the same time his/her standing rights in law and government so that a balance can be created in a just, prosperous and prosperous society in all aspects of life.

To guarantee that there will be fair law enforcement, valid evidence is needed and shows the reality of the cases that occurred. Evidence plays an important role in court hearings and is the central point of examining court cases. Evidence is everything that has

to do with an act, where with the evidence, it can be used as evidence to generate a judge's belief in the truth of a crime that has been committed by the defendant (Alfitra, 2018).

In deciding whether someone is guilty or not in a case, the judge must prove his guilt with at least two types of evidence as stated in the Criminal Procedure Code Article 183 "a judge may not impose a sentence on a person unless with at least two valid evidences he obtains conviction that a crime actually occurred and it was the defendant who was guilty of committing it". If the evidence does not reach at least two valid pieces of evidence in the Criminal Procedure Code, then the violation automatically sets aside the Beyond a reasonable doubt standard (benchmarks for applying standards proven legally and convincingly) and the sentence imposed can be considered arbitrary (Imron and Muhamad 2019).

In order to realize justice for existing court decisions, judges must be careful in using available evidence. Judges use the Ratio Decidendi theory in considering all aspects of the court. The Ratio Decidendi theory is based on a fundamental philosophical foundation, which considers all aspects related to the subject matter in dispute, then looks for laws and regulations that are relevant to the subject matter in dispute as the legal basis for making a decision, and the judge's considerations must be based on strong motivation. clear to uphold the law and provide justice for the litigants (Rifai, 2010).

In decision Number: 1342 K/Pid/2022 it was decided regarding the sanctions given to the perpetrators of the murder. In this decision it was decided that the perpetrators of the murder were proven legally and guilty of committing the crime of murder in accordance with Article 338 juncto Article 55 paragraph (1) 1st of the Criminal Code which reads "Those who commit, order to do and those who take part in committing the act intentionally take the life of a person others, threatened with murder." The evidence obtained to prove this murder case was 1 pair of jeans shorts, 1 green T-shirt, 1 flash drive containing CCTV footage and 1 green-handled *badik* knife. It is also proven from the testimony of witnesses in the case. Then the results of the *Visum Et Repertum* also proved that there were 5 stab wounds to the chest, lower neck, back of the left hand, stomach and legs as the cause of the victim's death. So, from the evidence that has been collected, the judge gives a prison sentence of 10 years minus the period of arrest and detention that the perpetrator has served.

The importance of evidence as evidence in legal cases greatly influences the outcome of the decision determined by the judge. The completeness and validity of evidence is the most important factor in determining a case decision. So based on the problems above, researchers will analyze the application of evidence in Decision Number: 1342 K/Pid/2022. Researchers will conduct research with the title Ratio Decide in Determining Tools 8 Evidence of Instructions for Settlement of Criminal Cases in Murder Trials (Case Study of Decision Number: 1342 K/Pid/2022).

The purposes of this research are: 1) Knowing the application of the Ratio Decide theory of evidence used by judges in passing judgment on the trial of the crime of murder in Decision Number: 1342 K/Pid/2022, and 2) Knowing the constraints of applying the judge's evidence in making decisions trial of the crime of murder in Decision Number: 1342 K/Pid/20. This research can be a means for researchers to implement the theory obtained from lectures in analyzing the application of the Ratio Decidendi Theory to obtain evidence of judge's instructions in the decision to confiscate the crime of murder. This research can be a reference for future researchers who will conduct research on the

application of the Ratio Decidendi Theory to direct the judge's evidence in the decision to uncover the crime of murder.

2. LITERATURE REVIEW

2.1. Proof System in Criminal Cases

Proof is the stage of settling a criminal case after an investigation which is the stage of the action of "proving" an "event" that is considered or suspected of being a criminal act (Arwinsta, 2019). In article 183 of the Criminal Procedure Code, the evidentiary system states that "A judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains confidence that a crime has actually occurred and that the defendant is guilty of committing it". Then Article 183 of the Criminal Procedure Code will determine the fate of a defendant in the trial process. The determination of right and wrong is determined based on several conditions, namely: 1) The guilt is proven by at least two valid pieces of evidence, and 2) After the guilt is fulfilled with at least two valid pieces of evidence, the judge obtains confidence that a crime has actually occurred and the defendant is guilty of committing it.

2.2. Evidence

Evidence is everything that has to do with an act, in which the evidence can be used as evidence to create a judge's belief in the truth of a crime that has been committed by the defendant. Provisions regarding legal evidence to be used in court are determined in accordance with Law no. 1 of 1981 concerning Criminal Procedural Law Article 184 paragraph 1. This Law states that valid evidence is in the form of Witness Statements, Expert Statements, Letters, Instructions and Statements of the Defendant.

2.3. Murder Crime

Murder is an activity carried out by someone and several people which results in someone and several people dying (Ali, 2007). The criminal act of murder, in the Criminal Code (KUHP) is included in the crime of life. Crimes against lives (*misdrijven tegen het leven*) are attacks on other people's lives (Chazawi, 2007).

3. RESEARCH METHODS

This research adopts a normative legal research approach, which encompasses an exploration of positive law inventory, legal principles, doctrines, legal discovery in concrete cases, legal systematics, synchronization levels, comparative law, and legal history (Muhammad, 2004).

Two distinct research approaches are employed. Firstly, the statutory problem approach is utilized, wherein statutory regulations serve as the foundational basis and focal point of the research (Hasbullah, 2017). Secondly, the case-based problem approach aims to investigate the practical application of norms through the examination of cases that manifest within society (Hasbullah, 2017).

Primary legal sources, including the 1945 Constitution of the Republic of Indonesia, the Civil Code (KUHAP) Articles 183 to 189, and Articles 55 and 56 of the Criminal Code, are employed. Complementing these are secondary legal sources, such as journals,

books, and articles that pertain to the role of evidence in the adjudication of criminal cases, specifically those related to murder, within the judicial system.

The collection of legal materials follows a structured procedure through literature studies, encompassing theoretical studies and supplementary references that delve into the evolving values, culture, and norms prevalent within the social contexts under scrutiny (Sugiyono, 2017).

Finally, data analysis is carried out using descriptive qualitative analysis, which facilitates the exploration of the functions of evidence in the resolution of criminal murder cases within the judicial sphere.

4. RESULTS AND DISCUSSION

4.1. The application of the Decidendi ratio theory to determining the evidence used by judges in passing judgment on the crime of murder in Decision Number: 1342 K/Pid/2022

In determining the decision in the trial of the crime of murder, the judge will use various legal evidence tools that are able to prove that the crime was committed. The consideration or determination of the judge's decision can be designated as the ratio decision. This ratio decision is the reason used by the judge as a legal consideration which forms the basis before deciding a case.

The existence of a ratio decidendi from the use of evidence must follow the arrangement of evidence determined by law. Where in article 184 paragraph (1) of the Criminal Procedure Code states the composition of evidence, namely: Witness statements, expert statements, letters, instructions and statements of the accused. A judge must pay attention to the composition of the evidence in determining a trial decision.

In court decision Number: 1342 K/Pid/2022 concerning the Crime of Murder, the judge used several pieces of evidence to reconstruct the murder incident in accordance with Article 184 paragraph (1) of the Criminal Procedure Code, namely with Witness Statements, Instructions and Statements from the Defendant. The evidence from the Witness' statement is contained in the Witness's statement on behalf of Ambo Trang as the owner of the workshop where Defendant I's motorcycle was repaired and the owner of the dagger as the murder weapon used by Defendants I and II. Regarding the clue evidence, it can be proven from the existence of CCTV footage from Witness Afriko Hariyanto Bin Anhar, 1 (one) pair of jeans shorts and 1 (one) green T-shirt, 1 (one) Wooden Handled Badik Knife Sharp Weapon and the results of the Et Repertum Visum RSUD Dr. A. Dadi Tjokrodipo Lampung Province Number ll.05/005/VER/RSDADT/VII/2021 dated 29 June 2021. Meanwhile the evidence for the Defendant's statement was obtained from the interrogation results and trial questions submitted to the Defendant.

From the existence of clue evidence used by the judge, it shows that a crime has occurred and knows who the perpetrators are in accordance with Article 188 paragraph (1) of the Criminal Procedure Code. This evidence will provide legal facts that are legally relevant at trial. The following are the legal facts found in this case:

a. On Tuesday 29 June 2021 at around 15.30 WIB on Jalan Teluk Teratai Kelurahan Kota Karang Teluk Betung Timur, Bandar Lampung, when Defendant I returned from Witness Ambo Trang's house on a motorbike, then took a dagger belonging to Witness Ambo Trang to be repaired at the witness' workshop Cotang, on the way the

Defendant was reprimanded by the Victim Rinaldi Saputra by saying "monkey" and hitting Defendant I on the right temple 2 (two) times using his hand.

b. That at that time Defendant I immediately stabbed the victim in the stomach of the victim, so that the victim suffered a wound to his stomach and was bleeding then the victim staggered and immediately ran to the home of Witness Cotang towards Defendant II, but Defendant II also immediately stabbed the knife into the victim's stomach and back

c. That at the same time Defendant I came again to stab the victim 5 (five) times into the victim's body in the chest, under the neck, back of the left hand, stomach and legs, causing the victim to die according to the Visum Et Repertum RSUD Dr. A. Dadi Tjokrodipo Lampung Province Number ll.05/005/VER/RSDADT/VII/2021 dated 29 June 2021;

d. That Defendant II's material actions in such a way have fulfilled all the elements of the crime of Article 338 juncto Article 55 paragraph (1) 1st of the Criminal Code in the first alternative indictment

The legal facts and legal evidence revealed in this trial further prove the crimes committed by Defendant I on behalf of MARWAN alias BABEL bin M. SATIM and Defendant II on behalf of AHMAD alias SUBE bin ARIF (deceased). Where Defendant I and Defendant II have been proven legally and convincingly guilty of committing the crime of "participating in the murder". Based on this evidence, the judge sentenced Defendants I and II to imprisonment for 10 (ten) years respectively.

Based on the evidence used by the Judge in determining the court decision for the Crime of Murder, this was in accordance with the provisions of the applicable law. In the use of evidence "Witness Statements" have met the requirements as in Article 1 point 27 of the Criminal Procedure Code, stating that:

"Witness testimony is one of the tools of evidence in a criminal case in the form of testimony from a witness regarding a criminal event that he himself heard, saw for himself and experienced himself by stating the reasons for his knowledge"

In addition to that in Article 1 point 26 of the Criminal Procedure Code which describes witnesses as:

"Witness is a person who can provide information in the interest of investigation, prosecution and trial regarding a criminal case that he himself heard, saw and experienced himself."

From the testimony of the witness used in the trial in the court decision for the Crime of Murder Number 1342 K/Pid/2022, it complied with Article 1 points 26 and 27 of the Criminal Procedure Code. This was proven by the testimony of the witness on behalf of Ambo Trang who actually saw and experienced the legal facts that were proven from the trial. Apart from that, the witness' testimony is also in accordance with Article 168 of the Criminal Procedure Code, Article 170 of the Criminal Procedure Code and Article 171 of the Criminal Procedure Code which states that the witness is not a relative or relative of the defendant.

In the use of the evidence "Defendant's Statement" in the trial decision for the crime of murder, it can be analyzed that the information obtained from the defendant has met the requirements of Article 189 paragraph (1) of the Criminal Procedure Code, assisted

by other supporting evidence. The following reads from Article 189 Paragraph (1) of the Criminal Procedure Code, namely:

"The defendant's statement is what the defendant stated in court about the actions he committed or that he himself knew or experienced"

The defendant's statement is in principle what was stated or given by the defendant in the court of first instance. Even so, this provision is not absolute, because the defendant's confession outside the trial can be used as a basis for evidence in a trial. Regarding the strength of the evidence of the defendant's confession, the defendant's confession cannot be used to prove the guilt of another person unless accompanied by other evidence. This is because there is a possibility for the defendant to give testimony without or without taking an oath or promise. The evidentiary strength of leading evidence lies in its nature and strength against other evidence. The power of a judge to approve a guideline is not bound by the agreed truth contained in that guideline. Therefore, the judge is free to assess and use it as an effort to prove.

Likewise, clue evidence cannot stand alone to prove the defendant's guilt. Remain bound by the principle of the minimum limit of proof. The clues can later be said to have sufficient evidentiary value, must be supported by at least one other piece of evidence. In the context of the crime of murder, directive evidence as legal evidence is regulated in Article 188 of the Criminal Procedure Code. In article 188 paragraph (1), it is stated:

"Clues are actions, events or circumstances, which because of their correspondence, both between one another and with the crime itself, indicate that a crime has occurred and who is the perpetrator."

According to Article 184(1) of the Criminal Procedure Code (KUHAP), valid pieces of evidence are: witness statements, expert statements, letters, instructions and statements of the accused. In the criminal procedural law evidentiary system which adheres to a negative evidentiary system, only legally valid evidence can be used as evidence. This means that outside these provisions cannot be used as legal evidence. The strength of the evidence determines the legal decision made by the judge. As is well known, witnesses and other evidence deemed to support the smooth running of the trial process are always questioned in court before the judge makes a decision, especially in criminal cases. Where in Article 184 of the Criminal Procedure Code it has been stated that several pieces of evidence are recognized as valid in the eyes of the law, namely: Witness statements, expert statements, letters, instructions and statements of the accused. Apart from the evidence previously mentioned, the judge may not look for other evidence besides the evidence.

Apart from the existence of this evidence, the judge needs to consider the background, consequences of the actions of the defendant and the condition of the defendant himself. The background here is interpreted as a condition that causes a strong desire and encouragement for the defendant to commit a crime. The background of this crime can be proven from several supporting evidence found. Usually obtained from the results of the Defendant's statement during the interrogation and trial process. Meanwhile, the consequences of the actions here are interpreted as the effects of the criminal behavior committed which causes harm to the victim or other parties. In addition, the Defendant's Self Condition which is the physical and psychological condition of the defendant before committing the crime, including the social status attached to the defendant. If the

perpetrator of a crime has an abnormal physical or psychological condition, it will be considered by the judge in making a decision.

In court decision Number: 1342 K/Pid/2022 it can be seen that the background of the perpetrator to commit the murder of the victim was due to the feeling of being offended by the victim's bullying against Defendant I. Where the victim reprimanded Defendant I as "Monkey" accompanied by beating the temple Defendant I's right twice by using his hands. For the actions of Defendant II, the background was the feeling of not being accepted by the behavior of the victim towards Defendant I. Then for the consequences of the Defendant's actions, it can be seen from the results of the *Visum et Repertum* RSUD Dr. A. Dadi Tjokrodipo Lampung Province Number ll.05/005/VER/RSDADT/VII/2021 dated 29 June 2021 where the victim died with evidence of stab wounds to the victim's chest, lower neck, back of left hand, stomach and legs. Regarding the condition of the defendant, it can be ascertained that Defendants I and II are normal people and have no physical or psychological disabilities.

Therefore, based on the availability of such evidence, it can be proven that there have been actions, events or circumstances, which because of their conformity, both between one another and with the crime itself, indicate that a crime has occurred and who the perpetrator is. This evidence can clarify the judge's understanding of the crime case and strengthen the judge in making a sentencing decision against the perpetrator of the crime of murder by adjusting the order of the position of the evidence. From this, it can be concluded that the application of evidence in court decision Number: 1342 K/Pid/2022 concerning the Criminal Act of Murder complies with existing requirements and has the force of law in proving the murder case that occurred.

4.2. Obstacles to the application of the evidence of the judge's instructions in passing a decision on the trial of the crime of murder in Decision Number: 1342 K/Pid/2022

In the law enforcement process, it must be equipped with adequate legal evidence and have the power to prove the crime that has occurred. The role of the judge is very large in determining the validity of the evidence to determine the court decision that will be determined. The existence of such a vital role requires the judge to carefully consider the evidence used in the trial.

The evidentiary system in the Criminal Procedure Code adheres to a negative system (*negatief wet-telijk bewijsleer*) which means the judge seeks material truth. Based on this evidentiary system, evidence before the court so that a sentence can be imposed by a judge must fulfill two absolute requirements, namely: sufficient evidence and the judge's conviction. In determining the court decision for the crime of murder as in Decision Number: 1342 K/Pid/2022, there are several obstacles that prevent judges from using evidence in making a decision for the crime of murder, including:

1. Law Enforcement (Judge)

   The first obstacle comes from the law enforcers themselves. The attitude of a judge or law enforcer in making a decision can make law enforcement apply at any time and situation regardless of the evidence and other available evidence. That is, at one time the judge can make a decision by rationalizing other legal grounds that are burdensome to the defendant, for example because the defendant is an immature member of society and his understanding of the law is wrong, the judge can strengthen the judge's argument on the basis of other considerations that are

complicated according to law. -law. On the other hand, in dealing with other cases, such as state administrators, judges have made efforts to reduce sentences in decisions through various legal rationalizations.

Law enforcement will always involve humans in it, thus it will also involve human behavior. The law will not be able to stand by itself, which means it will not be able to realize promises and wishes. Law enforcement can be interpreted as the implementation of law by law enforcement officials and by everyone who has an interest in accordance with their respective authorities according to applicable legal rules (Wheny, 2017). Enforcement of criminal law is a unified process starting with investigation, arrest, detention, trial of the accused and ends with correctional of the convict (Soekanto, 2002)

In the law enforcement process, it must be equipped with adequate legal evidence and have the power to prove the crime that has occurred. The role of the judge is very large in determining the validity of the evidence to determine the court decision that will be determined. The existence of such a vital role requires the judge to carefully consider the evidence used in the trial.

In determining the legal sanction in decision Number: 1342 K/Pid/2022 it can be concluded that the Ratio Decidendi for the use of evidence for the crime of murder can be declared in accordance with existing regulations. This is evident from the presence of more than one piece of evidence in accordance with Article 188(2) of the Criminal Procedure Code. So it can be concluded that there are no obstacles from the side of the judge to determine the trial evidence.

2. The Victim's Party

Usually, the victim always gives information that is in accordance with the facts of the incident, but several times the victim also gives fabricated testimony to incriminate the defendant on one side. The victim's side can also make up a testimony in court because of the intervention of the perpetrator. . For example, from the lure of paying large sums of money to the families of victims who are poor people, eventually law enforcement efforts were sabotaged by the victim's false testimony. or due to death threats, in the end the witness from the victim's side gave false testimony against law enforcers and distorted the evidence that had been held and known to the victim's witness.

In decision number: 1342 K/Pid/2022, the judge cannot request a chronological explanation from the victim because the victim has died. The judge obtained testimony from the chronology of events based on witness statements related to the Defendant before committing the murder. The testimony of this witness was strengthened by evidence of CCTV footage owned by one of the witnesses. So it can be concluded that the testimony of the victim is an obstacle in the application of evidence in the murder case.

3. Witnesses not present at trial

The value of responsibility is one of the values of witness implementation and witness obligations and obligations. A witness will testify in court to provide information regarding the events of the crime that occurred. The responsibility conveyed by the witness is not based on the intervention of other parties, but based on the awareness of free will to correctly convey certain things in accordance with true human values. Witnesses get first-hand information about a crime or drama event

through sensory input (such as sight, hearing, smell, touch), and can help determine important considerations of the crime or event. A witness seeing an event is directly called a witness. Witnesses are often required to testify in court procedures. However, in the practice of murder in criminal court trials, witnesses often do not appear in court, so they only read witness testimony.

In decision Number: 1342 K/Pid/2022, the Judge presented witnesses related to the Defendant before committing the crime of murder. Where the witness Ambo Trang stated that Defendant I took his *badik* to be repaired at the witness Cotang's workshop. The existence of testimony from this witness shows the clarity of the ownership of the *badik* as a murder weapon and the use of the *badik* by the perpetrators. So, it can be concluded that there were no obstacles to the application of court evidence in decision Number: 1342 K/Pid/2022 regarding the presence of witnesses.

5. CONCLUSION

In light of the extensive discussions presented, several conclusive findings arise from this research: Firstly, the application of evidence in the court decision, numbered 1342 K/Pid/2022, regarding the Criminal Act of Murder, has demonstrated compliance with existing requisites and legal validity in substantiating cases involving murder. Secondly, the utilization of evidence posed no obstacles for the judge when issuing the aforementioned Court Decision, numbered 1342 K/Pid/2022, pertaining to the Crime of Murder. The evidence at hand, comprising the Defendant's Statement, Witness Statements, and Physical Evidence, collectively reinforced the veracity of the law's breach.

As for recommendations gleaned from these findings, are as follows: Firstly, judges are advised to maintain a critical stance in addressing and adjudicating cases. By doing so, they can effectively scrutinize and render accurate decisions concerning individuals implicated in the crime of murder, all while being armed with the requisite supporting evidence. Secondly, it is strongly recommended that both perpetrators of crimes and victims alike grasp the pivotal role of evidence. This comprehension is pivotal as it not only facilitates the judicial process but also bolsters the wider goals of law enforcement.

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CAREER DEVELOPMENT CHALLENGES IN STRENGTHENING THE PERFORMANCE OF THE POLRI BAINTELKAM

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Abstract

The role of Baintelkam Polri is critically important in maintaining national security stability, identifying and responding to complex and varied security threats. In carrying out its duties, Baintelkam Polri plays a crucial role in gathering information, conducting intelligence analysis, and providing strategic recommendations to support national security policies. However, in the execution of its responsibilities, the Police Baintelkam faces numerous challenges stemming from various aspects, including the rapid advancements in information and communication technology. This technological progress poses a significant challenge to the Police Baintelkam as it opens up new opportunities for cybercriminals and terrorist groups to operate online. Consequently, addressing this threat necessitates more intensive efforts in monitoring and gathering information. The theories employed in this study encompass human resource management, career management, job satisfaction, and SWOT analysis. The research method adopted a qualitative approach, utilizing data collection techniques such as interviews, observations, and data documentation. The findings of this study underscore the pivotal role of career development within the National Police's Security Intelligence Agency (Baintelkam) in enhancing the performance of its members and upholding professionalism in the execution of security intelligence tasks. In an ever-evolving intelligence landscape, career coaching assists members in remaining relevant and effective. Consequently, career development strategies hold significant importance in surmounting challenges and fortifying the performance of the National Police's Security Intelligence Agency (Baintelkam). The overarching objective of career development is to enhance the capabilities, qualifications, motivation, and performance of members, equipping them to address complex and evolving situations in the realm of security intelligence.

Keywords: *Baintelkam, Career Development, Strengthening Performance*

1. INTRODUCTION

The Intelligence and Security Agency for the Indonesian National Police or Baintelkam Polri is the agency responsible for carrying out intelligence and security activities within the Indonesian National Police (Polri). As an integral part of the National Police, the Police Baintelkam has an important role in maintaining national security and protecting the public from both domestic and foreign threats. In carrying out its duties, the Baintelkam Polri has the responsibility to collect information relating to national security, conduct in-depth intelligence analysis, and provide strategic recommendations to the authorities. These tasks aim to support national security policies and assist in making the right decisions in responding to developments in situations and existing threats.

The role of Baintelkam Polri is very important in maintaining national security stability, identifying and responding to complex and various security threats. Through

cooperation and coordination with other intelligence and security agencies, the Police Baintelkam contributes to efforts to prevent, prosecute and disclose various criminal and subversive activities that could threaten national order and security. In addition, the National Police's Baintelkam also has a role in building international cooperation in the intelligence and security sector. In an era of increasingly connected globalization, cooperation with other countries' intelligence agencies is crucial in exchanging information, tracking transnational crime networks, and preventing threats of terrorism and other transnational crimes.

In carrying out its duties, the Police Baintelkam has an important role in gathering information, intelligence analysis, and providing strategic recommendations to support national security policies. In carrying out the role of the Police Baintelkam, it is prone to various work challenges that arise from all aspects, such as the rapid development of information and communication technology, which is a big challenge for the Police Baintelkam, because technological advances open up new opportunities for cybercriminals and terrorist groups to operate online. , thus requiring more intensive efforts in monitoring, collecting information, and addressing this threat (Rouse, 2019). The Baintelkam Polri is also often faced with increasingly complex tasks in dealing with various security threats, including terrorism, narcotics, transnational crimes and hacking. high level and close cooperation with national and international security institutions (Hughes, 2021). Other challenges also come from limited budgets, personnel and equipment which can be a challenge for the Baintelkam Polri, where institutions really need adequate resources to carry out their duties effectively (Cook, 2017). In addition, in the field of intelligence and security, challenges also arise from the aspect of developing and maintaining personnel expertise, so that Polri Baintelkam personnel can continue to increase their knowledge, skills and understanding of current security issues (Haverkort and Kenis, 2018). The problems that arise in the aspect of data confidentiality and its sensitivity must be paid close attention to by the Baintelkam Polri so that it can manage information efficiently, so that the confidentiality and integrity of the information obtained can be prevented from leaks which can be detrimental to intelligence operations (Freeman, 2019). Further challenges also arise from the need for adaptation to environmental changes both internally and externally (Zommers and Gupta, 2020).

Seeing the many work challenges faced by the Baintelkam Polri, in strengthening the organizational performance of the Baintelkam Polri, a vital career development role is needed in developing the potential and capabilities of individuals involved in the intelligence and security sector, in order to ensure the professional development and progress of Baintelkam Polri personnel, so that they can make an optimal contribution in carrying out intelligence and state security tasks.

The importance of career development for members of Baintelkam Polri is to assist members of Baintelkam Polri in optimally developing their potential so that members can identify their strengths, interests and skills, and get the opportunity to develop this potential, thereby helping them to become more effective and productive (Arthur and Hall, 2017), in carrying out state intelligence and security tasks. Career coaching is also a systematic effort to increase the professionalism of members of the Police Baintelkam which can be implemented through training, skills development and provision of relevant knowledge, members can continue to improve their abilities in the field of intelligence and security, so that it can be useful for maintaining quality work and competitiveness

organizations in facing increasingly complex challenges (London and Beatty, 2019). Career coaching can also increase the motivation and involvement of Baintelkam Polri members, because with a clear career plan and opportunities to improve qualifications and positions, members will feel valued and motivated to contribute optimally, so this helps build a positive work culture and increase loyalty towards the organization (Raghuram, Arvey, and Bouchard, 2019). Career coaching can also help create a balance between individual and organizational needs, because in the process of career coaching, members can identify their personal goals and expectations, while the organization can also direct them to meet operational and strategic needs, so that with this balance, members will feel fulfilled and contribute positively to the achievement of organizational goals (Noe, et al., 2017). Good career development can also help in retaining qualified members and developing internal talent, whereby there are opportunities for career growth and advancement (Saks and Ashforth, 2017), members of the National Police Baintelkam will tend to stay in the organization and not look for opportunities elsewhere. , so that the continuity and stability of the organization can be maintained and prevent the loss of potential talent.

Based on the explanation on the importance of career development for Baintelkam Polri, it is known that so far Baintelkam Polri has carried out career development, one of which is implemented through talent scouting. However, from the findings in the field, it is known that the members of the Baintelkam Polri who are placed based on the results of talent scouting, are unable to maintain their commitment to remain in the function of the Baintelkam at the National Police Headquarters. From the results of a literature study it is explained that the inability of members to obtain adequate career development opportunities within the Baintelkam Polri environment can be a cause of dissatisfaction and an inability to maintain commitment (Riggio and Marques, 2019). In addition, Noe, et al., (2017) also explained that external factors such as job opportunities in other functions and attractive career offers from other functions can also affect the inability of members to maintain their commitment to the Baintelkam Polri. Meanwhile, according to Karen, et al., (2012), fatigue at work is caused by uncertain work schedules, high work pressure, high security risks, different working environment conditions, problems with lack of support, and sometimes experiencing a lack of attention from the public, this can make a member of the Police feel unappreciated, as well as worsen their mental condition, which in turn results in a person's inability to maintain his commitment to being in the Baintelkam Polri function.

According to Rouse (2019), the problems faced later in the function of the Police Baintelkam stem from the rapid development of information and communication technology which is a major challenge for the Police Baintelkam. Technological advances open up new opportunities for cybercriminals and terrorist groups to operate online. Therefore, the National Police's Baintelkam needs to make more intensive efforts in monitoring, gathering information, and overcoming this threat. Hughes (2021) also explains that the Police's Baintelkam is faced with an increasingly complex task in dealing with various security threats such as terrorism, narcotics, transnational crimes, and hacking. To face this challenge, high skills and expertise are needed as well as close cooperation with national and international security institutions. Cook (2017) in his research also highlights the limited budget, personnel and equipment as a challenge for the Police Baintelkam. This institution requires adequate resources to carry out its duties effectively. Haverkort and Kenis (2018), also stated that in the field of intelligence and

security, challenges arise from aspects of developing and maintaining personnel expertise. Therefore, proper career development is needed so that they can help Baintelkam Polri personnel improve their knowledge, skills and understanding of the latest security issues. Freeman (2019), also emphasizes the importance of managing information efficiently in the field of intelligence and security. The challenge arises from the aspect of data confidentiality and sensitivity. Baintelkam Polri must be careful so that the information obtained does not leak, which could harm intelligence operations. Zommers and Gupta (2020) also highlight the need for adaptation to changes in the environment, both internally and externally, so that the Baintelkam Polri is ready to face change and adapt to new circumstances that may arise.

2. LITERATURE REVIEW

2.1. Human Resource Management Theory

Organizations have various kinds of resources as 'inputs' to be converted into 'outputs' in the form of goods or services. These resources include capital or money, technology to support the production process, methods or strategies used to operate, people and so on. Among these various kinds of resources, human or human resources (HR) is the most important element. To plan, manage and control human resources requires a managerial tool called human resource management (HRM).

HRM can be understood as a process within an organization and can also be interpreted as a policy. As a process, Cushway (1994: 13) for example, defines HRM as 'Part of the process that helps the organization achieve its objectives'. This statement can be translated as 'part of the process that helps the organization achieve its goals'. The focus of HRM lies in efforts to manage HR in the dynamics of interaction between organizations that often have different interests. According to Stoner (1995: 4) HRM includes the productive use of human resources in achieving organizational goals and satisfying the needs of individual workers.

Stoner (1995: 5) adds that because it seeks to integrate the interests of the organization and its workers, HRM is more than just a set of activities related to the coordination of organizational HR. HRM is a major contributor to organizational success. Therefore, if HRM is not effective it can be a major obstacle to satisfying employees and organizational success. With reference to this understanding, a measure of the effectiveness of HRM policies made in various forms can be measured on how far the organization achieves unity of movement of all organizational units, how much commitment employees have towards their work and organization, to what extent the organization is tolerant of change so that it is able to make decisions quickly. as well as how high the quality level of `output' produced by the organization (Priyono, 2010: 3) .

2.2. Career Management Theory

In human resource management there is 1 (one) important aspect of management, namely career management. (Greenhaus, 1987:5 in Priyono Marnis, 2008: 179) explains the definition of a career is a pattern of individual movement in their work that is passed according to their work experience or can be termed as work related experiences. Meanwhile career management can also be defined in various forms. He also defines

career management as a process of developing, implementing, monitoring, evaluating and individual career strategies.

Measuring the effectiveness of career management can be determined based on the attitude of awareness possessed by managers in carrying out their important roles in the organization, especially in planning the careers of existing human resources in the organization and developing the careers of existing human resources in the organization as well as efforts to satisfy the needs of human resources in the organization related to his career. These goals will be realized if the manager has high awareness, so that he can achieve the long-term needs of the organization.

Career coaching is recognized as an important set of skills and processes for many clients. The more consultants are educated about these skills and strategies, the more they will be able to incorporate these services into their regular consulting. According to practitioners, career coaching is a collaborative process in which the coach "takes the side" of the client, asks the client to transcend perceived boundaries in specific and measurable ways, and provides support, resources, and accountability. Career coaching also helps clients to change their orientation to stand in a different place in terms of goals and obstacles, helps clients to clarify their short-term and long-term goals, and identify and overcome obstacles, empowering organizations, businesses, or people to use available resources. already exists and takes the client through the process of applying what he has learned and makes him responsible for transferring the learning experience into his business and life (Elaine L. Edgcomb and Erika Malm, 2002: 35).

Career coaching is also defined as the art of facilitating performance, learning and other development to unlock one's potential to maximize one's own performance and close the gap between thinking about work. This career development can be done by doing the best through individual and personal assistance from someone who will challenge, stimulate and guide HR to continue to grow in order to get results and help HR to understand how they solve problems, thus helping HR in determining what they want, removing obstacles, setting goals, and striving for balance and meeting needs and achieving goals (Tom Short, 2014: 42) .

2.3. Job Satisfaction Theory

Satisfaction is a subjective emotional or evaluative condition experienced by a person in response to the extent to which the desired needs, expectations or goals are fulfilled. This term can be applied in a variety of contexts, including overall life satisfaction, job satisfaction, satisfaction in interpersonal relationships, and so on (Bowling, Eschleman, and Wang, 2010).

Job satisfaction refers to the level of satisfaction or subjective satisfaction felt by individuals with the work they do. It reflects positive or negative feelings that arise as a result of individual perceptions of various aspects of their work, such as the work environment, compensation, recognition, development opportunities, and relationships with colleagues (Judge, and Church, 2000).

High job satisfaction can provide a number of benefits, both for individuals and organizations. Individuals who are satisfied with their jobs tend to be more motivated, more passionate, and more committed to their jobs. They also tend to have better performance and higher retention rates within the organization. On the other hand, organizations that have satisfied employees can experience increased productivity, quality of work, and customer satisfaction (Oshagbemi, 2000).

Job satisfaction is subjective and can vary between individuals. The factors that influence job satisfaction can be different for everyone, and perceptions of work can change over time. To increase job satisfaction, it is important for individuals and organizations to communicate with each other, encourage active participation, provide feedback, support career development, and create a positive and inclusive work environment (Saks, 2006).

The theory of job satisfaction explains that individual job satisfaction is related to their motivation, involvement, and performance. In the context of Baintelkam Polri, career development challenges can be related to member job satisfaction, such as lack of development opportunities, lack of recognition for performance, or lack of work-personal balance. Analysis based on this theory can help identify challenges and formulate career development strategies that can improve job satisfaction and member performance (Harter, Schmidt, and Hayes, 2002).

2.4. SWOT Analysis Theory

SWOT analysis is a framework used to evaluate strengths , weaknesses, opportunities, and threats that affect an individual, organization, or project. SWOT analysis provides an overall picture of the existing position and helps in strategic decision making (Thompson, et al., 2019).

According to Grant (2019), each element in the SWOT analysis can be explained as follows :

a) Strengths
   Strengths are positive aspects that set an individual, organization or project apart from others. This includes any resources, special skills, reputation or competitive advantages possessed. Identifying strengths helps understand strengths that can be leveraged.
b) Weaknesses
   Weaknesses are negative aspects or limitations that can affect the performance or success of an individual, organization, or project. This includes shortages in resources, limited skills, or structural weaknesses. Recognizing weaknesses helps identify areas that need improvement or strengthening.
c) Opportunities
   Opportunity is an external situation or condition that can be exploited to achieve goals or success. Opportunities can include emerging market trends, policy changes, new technological developments, or unmet needs in the market. Identifying opportunities helps in planning appropriate steps to take advantage of them.
d) Threats
   Threats are external factors that can hinder the performance or success of individuals, organizations or projects. Threats can be intense competition, regulatory changes, market risks, or changes in consumer trends. Identifying threats helps in planning mitigation measures to reduce their negative impacts.

SWOT analysis can be carried out by collecting relevant data and information, either through market research, internal analysis of the organization or direct observation. After identifying the strengths, weaknesses, opportunities and threats, the next step is to

formulate a strategy based on the findings of the SWOT analysis. This can involve exploiting strengths, reducing or overcoming weaknesses, taking advantage of existing opportunities, and dealing with threats with appropriate measures (Wheelen, et al., 2017).

3. RESEARCH METHODS

This study employed a qualitative research approach to investigate the role and impact of career development within the National Police's Security Intelligence Agency (Baintelkam). Qualitative research was chosen as it allows for a comprehensive exploration of the complex dynamics and experiences of Baintelkam members. Data collection methods included in-depth interviews with Baintelkam personnel, which facilitated the gathering of rich, firsthand insights into their career development experiences, challenges, and aspirations. Additionally, observations within the Baintelkam environment were conducted to gain a deeper understanding of the organizational context and dynamics. Furthermore, data documentation, comprising internal documents and reports related to career development initiatives and outcomes, supplemented the primary data sources. This multifaceted approach aimed to provide a holistic view of career development practices within Baintelkam and its impact on member performance and professionalism. The qualitative data collected were then subjected to rigorous analysis to identify recurring themes and patterns, offering valuable insights into the effectiveness and significance of career development strategies in the context of security intelligence.

4. RESULTS AND DISCUSSION

4.1. Challenges in Enhancing Police Security Intelligence Agency (Baintelkam) Career Development for Improved Member Performance

Career development within the Police Security Intelligence Agency (Baintelkam) is an important process for improving the performance of members and maintaining professionalism in carrying out security intelligence tasks. The career development process at Baintelkam Polri involves various components and strategies to ensure members can develop personally and professionally. Career development within the Police Security Intelligence Agency (Baintelkam) has a very important role in strengthening the performance of members. Career coaching helps members of the National Police's Baintelkam to continuously improve their competence and qualifications. In the ever-evolving world of security intelligence, analytical, technical and other skills must be continually updated and improved to allow members to cope with increasingly complex tasks.

The security intelligence environment often changes rapidly. Terrorists, cybercrimes and other threats are constantly evolving. Career coaching helps Baintelkam Polri members to stay up-to-date with the latest trends and developments in terms of relevant threats and technologies. This enables them to take appropriate and effective action. Career coaching also creates intrinsic motivation for members. Through training, development, and rewarding achievement, members feel recognized and valued for their contributions. This can increase job satisfaction and enthusiasm to perform better.

Career coaching enables the development of leadership potential within the organization. Through job rotations, leadership training, and special assignments,

members have the opportunity to hone leadership skills that they can apply in a variety of situations. Without career coaching, members tend to stagnate in their careers. Job rotation, training and development help to avoid burnout and ensure that members have opportunities to continue to develop and take on new challenges. By having members with higher qualifications and competencies, the Police Baintelkam can produce higher quality and more effective intelligence. Properly trained members can analyze information more accurately and provide smarter recommendations for action.

Career development helps Baintelkam Polri to remain at the forefront of professionalism standards in the field of security intelligence. This helps build a positive image of the organization and increases public confidence in the performance and integrity of members. In the task of security intelligence, the decisions taken have a big impact. Career coaching helps members to develop strong analytical skills, so that the risk of mistakes in making decisions can be minimized. By understanding the need for career development within the National Police Security and Intelligence Agency environment, organizations can allocate resources properly to develop their members, maintain national security, and carry out security intelligence tasks better.

Career development within the National Police's Security Intelligence Agency (Baintelkam) has certain challenges that need to be overcome so that it can be used effectively in strengthening the performance of its members. Some of the challenges faced include:

1. Confidentiality and Limited Information
   As an intelligence agency, Baintelkam Polri operates with confidential information which cannot always be shared openly with all members. This can hinder transparency in career coaching and leave members feeling less clear about the available career opportunities.
2. Difficulties in Performance Evaluation
   The performance of Baintelkam members is often related to their contribution to national security and other secret tasks. Therefore, evaluating performance objectively and equitably can be difficult. Inaccurate performance evaluations can influence decision making regarding promotions and career development.
3. An Understanding of Careers in the Intelligence Environment
   Some members may have limited understanding of the career options available in the intelligence environment. They may not fully understand the various roles and responsibilities they can take on in their career at the National Police Security Agency, which can reduce motivation for self-development.
4. High Stress Levels
   Intelligence environments tend to be associated with high pressure and stress because of the sensitive and risky nature of tasks. These challenges can impact the mental and physical well-being of members and impact their long-term performance.
5. Training Sustainability
   Intelligence is a constantly evolving field with ever-changing technologies and tactics. Therefore, continuous training for Baintelkam Polri members must be prioritized to ensure they remain competent in facing new challenges.
6. Work and Personal Life Balance

Intelligence work often requires high availability and engagement, which can upset the balance between members' work and personal lives. This can have a negative impact on their motivation and performance.

7. Transition to a Management Position
   For members who have successfully developed their careers, the transition from field assignments to management and leadership positions can be challenging. The managerial skills required may be different from the operational skills they previously possessed.

Career development within the Police Security Intelligence Agency (Baintelkam) is an important process for improving the performance of members and maintaining professionalism in carrying out security intelligence tasks. The career development process at Baintelkam Polri involves various components and strategies to ensure members can develop personally and professionally.

The career coaching process begins with an assessment of member performance. This evaluation includes achievement of assigned tasks, quality of work, initiative, teamwork, and others. The results of this assessment will be the basis for determining further coaching steps. After performance appraisal, career planning is carried out jointly between members and superiors. This involves discussing the short and long term goals of the member in his career at Baintelkam Polri. This plan considers member potential, organizational needs, and development opportunities.

Baintelkam Polri provides training and development that suits members' needs. This training can relate to technical skills, intelligence analysis, risk management, communication skills, and more. The training aims to increase the competency of members so they are able to face challenges in security intelligence duties. Position rotation is an important strategy in career development at the National Police Security Agency. Through rotations, members are given the opportunity to develop a broader understanding of various aspects of security intelligence duties. This also helps prevent stagnation in the career and expand the network of members.

Members are given access to mentors or fellow members who have more experience in security intelligence tasks. Mentors provide guidance, advice, and insight based on their experiences. Counseling is also provided to help members deal with personal or professional challenges that may affect their performance. Baintelkam Polri gives special tasks to members who have certain expertise. This can be in the form of assignments to handle certain cases that require special skills, such as data analysis, special operations, or information resource development.

Recognition of the achievements of members is important in building a career. Baintelkam Polri gives awards to members who have achieved extraordinary results in security intelligence tasks. This can increase the motivation of members to continue to perform well. The career development process is a continuous one. Therefore, periodic monitoring and evaluation of the development of members is carried out regularly. This helps ensure that the career plan remains relevant and can be adapted as circumstances change.

To overcome these challenges and strengthen the performance of Baintelkam Polri members through career development, several steps that can be taken are:

1. Creating a flexible and comprehensive career development program, taking into account the confidentiality of information.

2. Develop an accurate and transparent performance evaluation system, taking into account the real contribution to intelligence missions and objectives.
3. Organize workshops, seminars and communication sessions to increase member understanding of career opportunities in intelligence.
4. Provides psychological support and mental wellbeing for members working in high stress environments.
5. Integrate ongoing training covering the latest technological and tactical developments in intelligence tasks.
6. Prioritize work-life balance through work flexibility policies and stress management support.
7. Provide leadership training for members who are about to enter management positions.

By overcoming these challenges and developing appropriate career development strategies, the Police Baintelkam can strengthen the performance of its members and maintain their fighting power in carrying out important intelligence tasks.

4.2. Analysis of Career Development Strategies that Can Be Applied to Overcome Challenges in Strengthening the Performance of Police Baintelkam Members

Career development to overcome challenges in strengthening the performance of members of the National Police's Security Intelligence Agency (Baintelkam) is a process designed to assist members in facing various challenges that arise in carrying out security intelligence tasks. In this context, career coaching aims to improve the abilities, qualifications, motivation, and performance of members in dealing with complex situations.

The right career development strategy is very important to overcome challenges in strengthening the performance of members of the National Police's Security Intelligence Agency (Baintelkam). SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis can be used to formulate effective career development strategies to overcome challenges in strengthening the performance of members of the National Police's Security Intelligence Agency (Baintelkam). The following is an explanation of how SWOT analysis can be applied in formulating career development strategies:

1. Strengths:
   a) Position and Access: Baintelkam Polri has an important position in gathering intelligence information and has wider access to strategic information sources.
   b) Specific Skills: Baintelkam members have specific expertise in intelligence analysis and understanding of security threats.
   c) Resource Range: The organization has strong networks with other agencies, including international partners.
   d) Strategy: Maintain and strengthen member expertise in intelligence analysis and utilize partner networks to share information.
2. Weaknesses:
   a) Technological Limitations: Sometimes, members may have limitations in accessing and using the latest relevant technologies.
   b) Lack of Diversification: Members may have too narrow a focus on a particular skill set.

c) Strategy: Invest in technology training and developing member capabilities in various aspects of security intelligence.

3. Opportunities:
   a) Technological Developments: Technological advances in data analysis and communication provide opportunities to improve efficiency and effectiveness in gathering and analyzing information.
   b) International Cooperation: Cooperation with international security intelligence agencies can open up opportunities for exchange of information and experiences.
   c) Strategy: Updating technology systems and leveraging international cooperation to obtain broader information.
4. Threats:
   a) Information Security: In information gathering, the risk of leaks and cyber threats always exists.
   b) Changing Threat Trends: Security challenges change over time, and members need to stay abreast of those trends.
   c) Strategy: Strengthen cyber security and information protection and continue to monitor developing threat trends.

Security intelligence tasks often involve complex challenges and evolve over time. With a good career development strategy, members can be equipped with the knowledge, skills and abilities to face these challenges more effectively. Career coaching helps members to increase their competency in various aspects of intelligence tasks, such as data analysis, use of the latest technology, and better communication skills. This allows them to work more efficiently and accurately.

The security intelligence environment is always changing, and career coaching strategies help members adapt quickly to these changes. Through training and development, members can cope with changing threat trends and technologies that may affect the way they perform their tasks. By overcoming challenges and developing skills, members of the National Police's Baintelkam can work more efficiently and effectively. This can lead to better intelligence analysis, more timely action, and a greater impact on national security.

Challenges in intelligence work often require strong leadership. Career coaching helps develop members' leadership abilities, so they can better lead teams in complex situations. Without proper career coaching, members may experience stagnation in their careers. A career development strategy involving job rotation, skills development and new development opportunities helps overcome this risk of stagnation.

In the world of intelligence, information security and member integrity are very important. Career coaching strategies can also involve training in ethics, cybersecurity, and protection of sensitive information. Good career coaching provides intrinsic motivation for members. Training, reward for achievement, and recognition can increase job satisfaction and the enthusiasm of members in carrying out their tasks.

In this context, career coaching aims to improve the abilities, qualifications, motivation, and performance of members in dealing with complex and ever-evolving situations. The following is a detailed explanation regarding career development to overcome challenges in strengthening the performance of members of the National Police's Intelligence and Security Intelligence Unit:

1. Needs Analysis: The initial step is to analyze the needs of the members and the organization. This involves identifying specific challenges faced by members in carrying out security intelligence duties. These challenges can be related to technological changes, new threat trends, or other aspects that affect intelligence tasks.
2. Goal Setting and Development Plan: Based on the needs analysis, specific development goals and plans are set for each member. This goal can be in the form of increasing analytical skills, mastering new technologies, developing communication skills, or other relevant aspects.
3. Specific Training: Career coaching includes training specifically designed to address the challenges faced by members. For example, if there are new technological developments relevant to security intelligence, technical training will be provided so that members can master the new tools and techniques.
4. Development of Analytical Skills: The challenge in analyzing intelligence information is often complex. Career coaching involves developing members' analytical skills so they can identify patterns, trends, and relationships that others may find difficult to see.
5. Job Rotation: Job rotation is a method of overcoming stagnation and helping members gain a broader understanding of various aspects of intelligence work. Rotation also helps members develop flexibility in adapting to various situations and roles.
6. Mentoring and Counseling: Career coaching includes mentoring by experienced senior members or mentors. Mentors can provide insight on how to overcome certain challenges based on their experiences.
7. Stress and Pressure Management: The job of security intelligence is often full of pressure and stress. Career coaching can involve training in stress management, relaxation techniques, and skills for staying calm in difficult situations.
8. Periodic Monitoring and Evaluation: Security intelligence challenges and needs are constantly changing. Therefore, career coaching must be evaluated periodically to ensure that the approach taken remains relevant.
9. Use of the Latest Technologies: Career development also involves the introduction and use of the latest technologies relevant to security intelligence tasks. This allows members to work more efficiently and effectively.

Overall, career development to overcome challenges in strengthening the performance of Baintelkam Polri members is a holistic approach that involves various strategies and methods to help members face the ever-evolving challenges in the world of security intelligence.

5. CONCLUSION

In light of the preceding discussion, the conclusions drawn can be summarized as follows:

Firstly, career development within the Police Security Intelligence Agency (Baintelkam) is instrumental in enhancing the performance of its members and upholding professionalism in executing security intelligence responsibilities. Given the dynamic nature of the intelligence landscape, career coaching is vital for members to remain relevant and effective. Overcoming challenges in this field necessitates the establishment

of flexible coaching programs, improved performance evaluation systems, comprehensive training, mental well-being support, and work-life balance considerations. Additionally, career coaching contributes to nurturing leadership potential within the organization through job rotations, leadership training, and specialized assignments. Effective career development not only sustains professionalism but also fosters a positive image and increases public trust, aiding in informed decision-making.

Secondly, the formulation of career development strategies assumes paramount importance in surmounting challenges faced by the National Police's Security Intelligence Agency (Baintelkam) and bolstering the performance of its members. These strategies aim to enhance members' capabilities, qualifications, motivation, and adaptability in navigating the intricate landscape of security intelligence. Employing a SWOT analysis framework facilitates the crafting of effective career development strategies, considering both internal and external factors influencing member performance. Strategies encompass skill development, technology utilization, diversification of skills, ongoing training, international cooperation, and data protection. SWOT analysis guides the identification of specific steps to mitigate weaknesses and capitalize on existing opportunities. Moreover, career coaching entails honing analytical skills, job rotations, mentoring, stress management, and continuous monitoring and assessment, equipping members to confront challenges, elevate qualifications, and respond adeptly to evolving contexts.

To bolster career development within the Police Security Intelligence Agency (Baintelkam), several suggestions are proposed:

1. Conduct a comprehensive needs assessment to pinpoint specific challenges faced by members, tailoring coaching programs accordingly.
2. Institute a continuous training program that encompasses the latest technological advancements, intelligence analysis methodologies, risk management, communication skills, and relevant competencies.
3. Ensure members have access to essential intelligence-related technology, including data analysis tools and secure communication platforms.
4. Establish an effective mentoring and coaching program, facilitating experienced members' guidance to newer or less experienced counterparts for skill development.
5. Prioritize leadership skills development through training, enhancing members' capacity to manage teams, make informed decisions, and adapt to evolving situations.
6. Consider flexible work policies and work-life balance initiatives to reduce stress, boost job satisfaction, and enhance productivity.
7. Develop communication skills programs to enhance members' ability to effectively convey information and interact with external entities.
8. Implement routine program evaluations and adjustments to align with evolving intelligence environments and member needs.
9. Institute a promotion system based on achievement and competency to incentivize continuous performance improvement.
10. Regularly recognize and reward outstanding members for their contributions to intelligence work, boosting motivation.
11. Foster international cooperation with other security intelligence agencies to expand networks and gain exposure to diverse intelligence approaches.

12. Provide transparent information regarding career opportunities within the Baintelkam environment, helping members understand their career development prospects.
13. Engage members in their career planning by considering their aspirations, goals, and interests to design coaching programs that align with their expectations.

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THE INFLUENCE OF DIGITALIZATION ON BANKING FINANCIAL INSTITUTIONS IN INDONESIA

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Abstract

The development of digitalization systems has a direct impact on the banking industry, both positively and negatively. This research aims to examine the influence of digitalization on financial banking institutions in Indonesia and how efforts are made to prevent the negative effects of banking service digitalization in Indonesia. This study employs a normative legal research method, utilizing a legislative approach. One of the positive impacts of digitalization on financial banking institutions in Indonesia is the emergence of digital banking services. However, one of its negative consequences is the potential for cybercrimes. To prevent the negative effects of banking service digitalization in Indonesia, various preventive measures can be taken, such as not disclosing PINs to others and exercising caution when using internet applications. Additionally, the Financial Services Authority (OJK) has issued Regulation No. 13/POJK.03/2020 amending Regulation No. 38/POJK.03/2016 regarding the Implementation of Risk Management in the Use of Information Technology by Commercial Banks.

Keywords: *Banking, Digitalization, Financial Services Authority, Prevention*

1. INTRODUCTION

The industrial world is entering a new phase known as the Fourth Industrial Revolution, also referred to as Industry 4.0. The term Industry 4.0 was coined in Germany during the Hannover Fair in 2011, marking a phenomenon that combines cyber technology and automation. Industry 4.0 is often termed "cyber-physical systems," with its core principle revolving around automation facilitated by information technology. This can potentially reduce human involvement in processes, leading to increased efficiency and effectiveness in the workplace. As industries embrace digital transformation, various activities are adapting to keep pace with these advancements (Mutiasari, 2020).

Technological innovations that enhance daily life convenience are extending their influence into the financial sector. One area undergoing a significant shift into the industry 4.0 era is the banking sector. Banking is a growing service industry in Indonesia, with the potential to drive the country's economic growth. Banking plays a pivotal role in contributing to national income as it serves as an intermediary institution, gathering public funds and directing them toward productive economic endeavors.

The Financial Services Authority (OJK) is actively promoting banking digitization through the issuance of OJK Regulation No. 12/POJK.03/2018, which outlines the Provision of Digital Banking Services by Commercial Banks. According to this regulation, "digital banking services encompass electronic banking services designed to optimize customer data utilization, enabling faster, easier, and customer-centric services while ensuring security" (Safi'i, 2022). With the introduction of this OJK regulation, the banking sector aims to harness technology to better cater to customer needs.

The digital transformation within the banking industry extends beyond mere provision of online and mobile banking services. Financial institutions in banking need to innovate by seamlessly integrating digital technology with customer interactions,

making it more convenient for users to access banking services. Many banks have already initiated the development of their digital banking features, offering not just applications and websites for transactions but also implementing digitalization within their branch offices across Indonesia. For example, certain banks now provide applications for reserving queues, facilitating tasks such as printing savings transactions and replacing traditional savings books through self-service machines. Even opening new accounts can now be accomplished independently by customers, eliminating the need to visit a physical branch. The advent of digital banking represents a solution to time-consuming banking processes, with the banking industry making forward-looking investments through digitalization.

The progression of digitalization systems has a direct bearing on the banking sector, as the integration of digital technology in banking can be seen as both an advantageous opportunity and a formidable challenge. The evolution of digital banking is undergoing transformations that will affect the industry, including shifts in customer behavior away from traditional transactions, such as visiting physical banks for savings, towards digital alternatives. Furthermore, fintech's role is poised to closely parallel that of traditional banks, as banks wield authority over payment systems while fintech companies leverage cutting-edge technology for user data analysis. Concurrently with the development of digital services, digitalization systems bring forth myriad benefits and conveniences for the banking sector, encompassing improved data management and processing, heightened operational efficiency, and an enriched customer experience.

However, while digitalization bestows positive influences and advantages, it also carries adverse consequences for financial banking institutions, given the risks tied to the substantial role banks play in aggregating public funds. Thus, concerted efforts are imperative to counteract the unfavorable repercussions that may give rise to financial malfeasance within the banking sector. Leveraging the rapidly advancing technological landscape represents a potent strategy. In light of the brisk technological evolution, all organizations must adapt to these ongoing changes (Cahyolaksono et al., 2021). Moreover, the aim of this research is to comprehensively examine the impact of digitization on financial banking institutions in Indonesia, including both its positive and negative effects, as well as the preventive measures taken to mitigate potential adverse consequences resulting from the digitization of banking services in Indonesia.

2. RESEARCH METHODS

This study employs a normative legal research methodology, which is an approach to legal research that relies exclusively on the examination of secondary data, specifically literature and legal regulations, as the basis for the research (Diantha & Sh, 2016). The chosen approach is centered around legislative analysis. The technique used for collecting legal materials involves conducting a literature review, which entails scrutinizing various literary sources such as books, scholarly journals, research reports, and both physical and online documents that are pertinent to the research topic (Amiruddin, 2016). Within this research, the method of legal material analysis applied is the descriptive analysis method, aiming to provide a lucid and unbiased portrayal of legal events or conditions. This qualitative analysis delves into data that cannot be quantified.

3. RESULTS AND DISCUSSION

3.1. The Effect of Digitalization on Banking Financial Institutions in Indonesia

Over time, there has been rapid and extensive evolution in the field of information technology, and it has become an essential requirement for society today. The primary objective behind the development of information technology is to create a future for humanity that is improved, more convenient, cost-effective, faster, and secure. This progress in information technology has brought about significant and fundamental changes in various aspects of human life by simplifying tasks and providing valuable support. In the realm of finance, this progress has given rise to technology-driven products known as financial technology (fintech) (Benuf et al., 2020). According to Article 1, Clause 1 of Bank Indonesia Regulation No. 19/12/PBI/2017 concerning Financial Technology Implementation, financial technology refers to the utilization of technology within the financial system to generate new products, services, technologies, and business models, potentially impacting monetary stability, financial system stability, and the efficiency, security, and reliability of payment systems.

Digital innovations within the financial and banking sectors have introduced novel products that pose a challenge to the traditional banking model. Banks are required to adapt to technological advancements to stay competitive. Currently, there is a new trend emerging within the banking industry, primarily driven by the rapid evolution of digital technology. The swift progress in digital technology has prompted banks to gradually shift their focus towards developing banking services with a digital touch. Over time, these banking services are transitioning into what we refer to as digital banking (Mutiasari, 2020).

The effects of digitalization on financial banking institutions in Indonesia can be categorized into both positive and negative impacts, as outlined below:

3.1.1. The Positive Impact of Digitalization on Financial Banking Institutions in Indonesia

To begin, digital banking services are supplanting conventional approaches to banking activities. Clients no longer necessitate visiting physical branches solely for tasks like account opening or financial transactions; these tasks can now be completed with a simple tap on their smartphone screens. This shift from traditional to digital banking enhances operational efficiency, effectiveness, and overall service quality for customers. This shift is especially significant in light of the rapid advancements in information technology and evolving customer behaviors and demands, which drive banks to cater to these needs. Presently, banks are augmenting their services to empower customers to independently access a range of banking services (self-service) without requiring physical branch visits, thereby making transactions more convenient and efficient. These self-service banking options encompass registration, various transactions (cash, transfers, payments), and other services, including account closure, commonly referred to as digital banking (Maulidya & Afifah, 2021). Many of these digital financial transaction features are closely associated with state-owned banks, given that the majority of their customers engage in digital financial transactions (Moridu, 2020).

As an example of digital banking services in Indonesia, two products stand out: Bank BRI's BRIAPI (BRI Application Programming Interface) and BNI's virtual assistant chatbot, SABRINA (Smart BRI New Assistant). PT Bank Negara Indonesia Tbk (BNI) has also introduced Digital Savings Account Opening and BNI New Mobile Banking.

Digitalized banks provide convenience and ease to their customers, attracting interest from a younger, productive demographic. Technological advancements have not only impacted the banking industry but have also led to the emergence of numerous financial technology companies (M Allo, 2020).

Secondly, fintech introduces convenience into financial transactions, covering payment methods, fund collection, loans, and asset management, all of which can be expedited and streamlined through technology. The convenience offered by fintech serves as a focal point for banks to continually innovate and enhance service quality, ensuring customer desires and satisfaction are met while preserving customer trust and fostering loyalty. In this era of digitalization, banks are incorporating fintech 4.0 to expand their businesses through technology.

Thirdly, banking digitization unquestionably brings positive effects to both banks and their customers. Transactions liberated from geographical and temporal constraints offer significant advantages to customers, while banks benefit from increased fee-based income and reduced labor costs, among other positive impacts (Salmah & Murti, 2020).

Fourthly, the widespread availability of digital banking enhances the competitiveness of Indonesia's banking sector. Digital banking can make banking services more accessible to the public and improve banking efficiency, thereby stimulating economic activity (OJK I).

Fifthly, with the advantages realized by banking customers, the exodus of services to non-banking entities can be minimized. At the very least, customers no longer encounter hindrances related to physical paperwork or manual authorizations. Physical visits to branch offices and manual document submissions or signatures are no longer prerequisites.

3.1.2. The Negative Effects of Digitalization on Banking Financial Institutions in Indonesia

Firstly, the presence of digital transactions carries the potential for cybercrimes and technological fraud. This is because digital transaction activities involve storing customer data in online systems, which can be exploited by unauthorized individuals seeking to steal customer information. The threat of data theft can result in the misuse of personal data, causing harm to customers. Ensuring the security and confidentiality of data in digital transactions is crucial for building and maintaining customer trust.

Secondly, security risks associated with the use of information technology (IT) can manifest in various ways, such as the creation of counterfeit products and the unauthorized acquisition of user data. If non-cash payment data is illicitly accessed and subsequently employed for transactions by irresponsible parties or transferred as money or other assets, it can lead to losses for both the issuer and users of non-cash payment methods. Heightened risks related to defaults and IT can result in failures within the payment system, ultimately contributing to instability in the financial system.

Thirdly, the widespread adoption of non-cash payment methods may have implications for monetary policy. In terms of monetary policy, innovations in non-cash payment instruments can introduce complexity when relying on quantity-based targets for monetary control. However, these complexities should not affect the effectiveness of monetary policy when interest rates serve as the primary tool. As long as monetary policy accounts for the growth of non-cash payment instruments, particularly e-money, the effectiveness of implementing monetary policy can be maintained.

Fourthly, the issuance of e-money by both banks and non-bank entities has the potential to reduce the currency component of base money, leading to a decrease in the liability side of the central bank's balance sheet. When banks issue e-money, there remains the possibility of shifting from physical currency to deposits or reserves at the central bank. Nevertheless, in cases where non-bank entities issue e-money, an increase in e-money issuance can impact a reduction in the central bank's balance sheet component in the form of physical currency without a corresponding increase in deposits, unless the funds obtained from e-money issuance are redeposited within the banking system.

Lastly, the development of non-cash payment instruments is closely connected to the velocity of money, signifying an increased role for non-cash payment methods in replacing physical cash within economic activities. This development can pose challenges for monetary policy when relying on monetary aggregates as a target. For monetary policy employing interest rates as the primary tool, it can result in higher costs associated with monetary control.

3.2. The Efforts to Prevent the Negative Effects of Digitalization of Banking Services in Indonesia

The digitization of banking services in Indonesia comes with potential future risks that, if realized, could have adverse consequences on various entities. It's important to note that not all these risks can be predicted or fully comprehended in terms of their potential impact. Therefore, it is essential to implement more effective risk management practices. As defined by Bank Indonesia Regulation No. 11/25/PBI/2010, which deals with amendments to PBI No. 5/8/PBI/2003 concerning Risk Management Implementation, risk is characterized as the potential for loss arising from specific events. Risk management, in turn, encompasses a well-structured set of methodologies and procedures aimed at identifying, quantifying, monitoring, and mitigating the various risks that can emerge from all aspects of a bank's operations (Basyirah & Wardi, 2020).

Under the guidance of the PBI Risk Management Implementation, Bank Indonesia has categorized financial risks for commercial banks into the following groups, effective from July 1, 2010 (Cahyolaksono et al., 2021):

a. Credit risk;
b. Market risk;
c. Liquidity risk;
d. Operational risk;
e. Legal risk;
f. Strategic risk;
g. Reputation risk; and
h. Compliance risk.

Several factors contribute to the emergence of these risks. A primary factor is the absence of comprehensive regulations regarding internal control mechanisms within banks. OJK, the regulatory body responsible for overseeing financial institutions, has yet to establish appropriate regulations for monitoring internal employees of these institutions. Furthermore, OJK initiates action against violations only in response to reports or complaints from affected parties. Notably, OJK takes independent action based on secondary data sources, such as financial reports. Reputation risk, conversely, arises as a consequence of operational risks. The reputation of a bank is built upon its

performance during its operational activities. Instances of violations during these operations can erode customer trust in the bank, creating a situation where a place that should be secure for depositing money becomes insecure.

To address these challenges, OJK can implement policies mandating that all bank employees, without exceptions, submit reports regarding their activities. These reports can be generated using advanced technologies, including the creation of an integrated database designed to store these reports. Additionally, OJK can closely monitor the personal accounts of employees to detect any unusual transactions and promptly seek clarification from the individuals involved. This proactive approach is intended to empower OJK to take appropriate measures if any violations are detected in these transactions.

Certainly, besides the favorable impacts, the digitization of banking services also ushers in unfavorable consequences, compelling banks to enact precautionary measures. Various endeavors can be taken to bolster the utilization of comprehensive electronic systems, thereby augmenting operational efficiency and providing superior banking services to clients. These initiatives encompass:

a. Pertaining to the threat of cybercrimes and technological fraud compromising customers' personal data, these issues underscore vulnerabilities within systems and the absence of effective oversight. Indonesia has enacted legislation such as Law Number 27 of 2022 on Personal Data Protection and Law Number 19 of 2016 on Electronic Information and Transactions (ITE Law) to safeguard customers. Individuals can also exercise vigilance, refraining from sharing access codes/PINs with others and exercising caution when encountering internet applications that might be spam or malware, capable of pilfering personal data (OJK II).
b. Strengthening security systems through the reinforcement of IT security infrastructure by embracing cutting-edge technologies and conducting periodic updates to security systems; implementing multi-factor authentication for online banking transactions; and deploying data encryption techniques to shield customer data from cybersecurity threats.
c. Bank Indonesia shoulders the responsibility of upholding monetary stability, a task that involves utilizing interest rate mechanisms within open market operations. Consequently, it must be proficient in crafting precise and balanced monetary policies since disruptions to monetary stability exert direct repercussions on various economic facets. An overly stringent monetary policy, characterized by high-interest rates, can stifle economic activity. Conversely, a more lenient policy can breed financial instability. In the pursuit of monetary stability, Bank Indonesia has adopted an inflation targeting framework (OJK III).
d. The velocity of money wields a substantial and constructive impact on inflation within Indonesia. By wielding monetary policies like the BI Rate, Bank Indonesia can regulate inflation rates in alignment with predetermined targets. Elevated interest rates tend to incite reduced consumer spending, culminating in lower inflation levels (Zunaitin, 2017).

In conjunction with these endeavors, OJK has introduced Regulation No. 13/POJK.03/2020, an amendment to Regulation No. 38/POJK.03/2016, which pertains to the Implementation of Risk Management in the Use of Information Technology by

Commercial Banks. This regulation introduces five core refinements in its provisions (OJK IV):

a. Criteria for electronic systems suitable for placement outside Indonesia:
   This clause eliminates restrictions pertaining to the utilization of electronic data situated beyond Indonesian borders, fostering enhanced effectiveness in electronic system implementation. Additionally, it introduces criteria for electronic systems eligible for placement overseas, thus enabling banks to offer integrated services to a global clientele boasting accounts in various countries.
b. Oversight concerning the placement of electronic systems outside Indonesia:
   OJK is empowered to request banks to retain electronic systems within Indonesia should their foreign placement fail to align with the plans presented to OJK, potentially diminishing OJK's supervisory efficacy, adversely affecting bank performance, or non-conforming to regulatory requisites.
c. Implementation of action plans:
   Banks are mandated to execute action plans submitted to OJK, with administrative penalties being enforced in cases of non-compliance.
d. Utilization of data within electronic systems placed outside Indonesia:
   Banks must ensure that data deployed within electronic systems situated in external data centers and/or disaster recovery centers beyond Indonesia's borders is not repurposed for objectives other than those stipulated in regulatory frameworks. This provision aims to preclude the misuse of customer data by foreign banks.
e. Repeal of Bank Indonesia Circular on the Implementation of Risk Management in the Use of Information Technology by Commercial Banks (SEBI MRTI):
   This rescission has been enacted as the SEOJK MRTI currently supersedes the SEBI MRTI.

4. CONCLUSION

In Indonesia's banking industry, digitalization has positive and negative effects. The advent of digital banking services, which give practical transaction alternatives through fintech, increase efficiency for consumers and financial institutions, widen accessibility, boost competitiveness, and offer numerous benefits to clients, are among the positive characteristics. The potential for cybercrime and technological fraud, the emergence of security risks related to information technology usage, potential implications for monetary policies, the potential reduction of currency in base money due to e-money issuance, and the relationship between the expansion of non-cash payment methods and the velocity of money are, on the other hand, negative effects of digitalization on Indonesian financial institutions.

There are numerous preventive steps that may be taken in order to lessen the negative consequences of digitalization on Indonesian financial services. These include avoiding the sharing of PINs with others and being cautious while using online programs that can be spam or virus and threaten personal information. In addition, Bank Indonesia has implemented the inflation targeting framework and the BI Rate to control inflation rates and maintain monetary stability. Data encryption is also used to protect client information from cyber attacks. Additionally, Regulation No. 13/POJK.03/2020, which modifies Regulation No. 38/POJK.03/2016 on Risk Management in the Use of

Information Technology by Commercial Banks, was released by the Financial Services Authority (OJK).

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CRIMINAL ACCOUNTABILITY FOR CIVIL SERVANT (CPNS) ADMISSION FRAUD

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Abstract

Several instances of misconduct have occurred, wherein certain individuals have taken advantage of public interest surrounding the CPNS registration process. In 2018, Defendants AD and SH profited IDR 200 million. In 2019, Defendant HB gained a profit of up to 5.7 billion Rupiah through the CPNS Recruitment mode, and in 2021, (ON) amassed a profit of 9.7 billion Rupiah. This research aims to analyze the application of the law to cases of fraud perpetrated against Candidates for Civil Servants (CPNS), and propose preventive measures to curb instances of fraud under the guise of a special pathway. The study is conducted through both normative and sociological legal research, utilizing a sociological interpretive approach. The Statute Approach and Case Approach are employed in this study. Legal material is gathered using library techniques, and the analysis of legal materials is performed using qualitative methods. The study's findings reveal that: (1) CPNS registration is strictly free of charge, and any claims suggesting the availability of internal routes for assistance are baseless. Perpetrators of such acts are subject to charges under Article 378 of the Criminal Code, which involves deceiving and causing harm to others. (2) Candidates applying for CPNS positions need not seek any special means to pass the selection process, as the principle of Bureaucratic Reform within the state civil apparatus prohibits any form of illicit practice.

Keywords: *Civil Servant, Fraud, Recruitment*

1. INTRODUCTION

Indonesia, as stated in Article 1, Paragraph 3 of the 1945 Constitution, is a state founded on the principles of law. Hence, it is imperative that the rule of law, not politics or economics, be the governing force in the life of the nation. The principle of the rule of law, known as "*The Rule of Law, Not of Man,*" underscores the importance of basing state power and policies on established legal frameworks, rather than the desires of specific individuals or groups, including those in positions of authority or leadership.

The ineffectiveness within the justice system is apparent in the prevalence of criminal cases, particularly those involving fraud. Instances of fraud in Indonesia have instilled a sense of unease within society, leading to a lack of trust among individuals, whether they are new acquaintances or long-standing associates (Kusomo et al., 2020). Presently, fraud knows no boundaries of gender, status, or age, and can occur at any place and time. According to Putra (2021), fraud is defined as an act that inflicts harm on another individual, often falling within the ambit of criminal law. It encompasses the manipulation, falsification, or concealment of information with the intention of benefiting oneself or another party, resulting in loss to the aggrieved party. This form of fraudulent behavior is not confined to the business realm but has also infiltrated the process of selecting Candidates for Civil Servants (CPNS).

The majority of Indonesian people who dream of working as Civil Servants (PNS) think that being a PNS can provide security and guarantees in old age. In addition, the assumption that in retirement, the future of the family can also be protected. Civil

Servants (PNS) are state apparatuses who have a strategic position, authority and responsibility in administering the government and development system in obedience and full loyalty to Pancasila, the 1945 Constitution, the State and the government. However, the hope of becoming civil servants is often taken advantage of by irresponsible elements by making promises of convenience to Candidates for Civil Servants (CPNS) both in urban and remote areas (Ekawati et al., 2020)

Several cases were carried out by irresponsible individuals in taking advantage of public interest regarding the opening of CPNS registration including in 2018 (Defendant AD and SH) reaped a profit of 200 million Rupiah where the victim was lured into an official job in a government area, but after 3 years the work was not realized and the victim had not received a call to work as a civil servant in the area. Furthermore, in 2019 (Defendant HB) made a profit of up to 5.7 billion Rupiah with the CPNS Recruitment mode where the defendant claimed to have access to the State Civil Service Agency (BKN). Actions carried out by HB killed up to 99 people. Then in 2021 (ON) made a profit of 9.7 billion Rupiah where ON, who is the son of singer ND, at first only provided tutoring facilities to the victim, but in fact there were victims who complained about getting a fake SK from the defendant ON.

The law that regulates the crime of fraud in the registration of CPNS selection is Article 378 of the Criminal Code which reads "Anyone with the intention to unlawfully benefit himself or others, by using a false name or fake dignity, with deception, or a series of lies, incites another person to hand over something to him, or to make another person pay a debt or write off the debt, shall be punished by a maximum imprisonment of four years (Kitab Hukum Acara Pidana - Buku Kesatu: Aturan Umum, 1981).

One of the studies that has raised a similar topic is Livia Kusumo's research which in her research explains that the causal factor for fraud is the lack of appropriate punishment which can make perpetrators deterrent and afraid of the law; maximum prison sentence of 4 years and often given leniency in court. If examined from the point of view of society, the factors found are poverty and environmental factors, such as Thomas More's explanation that severe punishments imposed on criminals at times when due to poverty, will not have much impact on eliminating the crimes that have occurred. So prevention and prevention of crime is needed in dealing with crime. The profits from the criminal act of CPNS fraud are very large, but the sanctions and accountability that can be said to be very minimal, so perpetrators of this type of fraud rarely and almost never get a deterrent effect from this act, so the government should provide new policies by imposing penalties which is bigger, and also considering that this CPNS fraud can damage the character and morals of the nation.

Therefore, based on this research, research will be continued with similar topics but with a different point of view through the research title "Criminal Responsibility for Fraud in Accepting Candidates for Civil Servants (CPNS)". Furthermore, the objectives to be achieved through this research are as follows: (1) To analyze in depth the application of law to criminal acts of fraud for Prospective Civil Servants (CPNS). (2) To find a solution to prevent the occurrence of criminal cases of fraud for Candidates for Civil Servants (CPNS) under the guise of a special line so that they do not become more widespread in Indonesia.

2. LITERATURE REVIEW

2.1. Faud Crime

In the legal system, punishment or restraint is used to prevent behavior that can damage or harm society, in addition to protecting the community from violations of the law and rehabilitating perpetrators in the hope that criminal offenders will be deterrent and learn from their current mistakes and will not commit similar violations in the future (Wahyuni, 2017). The difference between punishment and punishment lies in formal provisions, where punishment is based on the provisions of the law while punishment is broader and not always based on the law, such as a child who is punished by his parents or a student who is punished by his teacher for making a mistake. Therefore, the punishment given to perpetrators who break the law is of course to cause suffering and has been adapted to the Criminal Code (KUHP) (Soekanto, 1984).

Criminal cases that are currently rife are criminal fraud. Fraud that occurs in Indonesia causes unrest in society because they feel insecure and do not trust the people they meet, both new people and people they have known before. Even today, fraud does not look at gender, status, or age, which can happen anywhere and anytime (Ekawati et al., 2020). The definition of fraud is an act of harming another person that may be subject to criminal law, involving manipulation, falsification or concealment of information with the aim of benefiting oneself or another party, resulting in loss to the other party.

2.2. The Concept of Rule of Law

Indonesia is a constitutional state in accordance with the 1945 Constitution article 1 Paragraph 3 so that it is idealized that law should be the commander in chief in the life of the state, not politics or economics. Therefore, in mentioning the principles of the rule of law are: The Rule of Law, Not of Man" means that in the context of the rule of law it emphasizes that in a country, power and policies must be based on established laws, not based on the wishes of certain individuals or groups, including rulers or leaders. Everyone, including the government and its leaders, is subject to and obeys applicable laws, no one is above the law and all are treated equally before the law. This is an important principle in maintaining justice and avoiding abuse of power (Ashiddiqie, 2011).

2.3. Criminal Justice System Theory

The criminal justice system was formed as a system that has the goal of controlling crime in society, because according to a legal expert, namely Benedict S. Alper found the fact that the oldest social problems in society are related to crime problems and have been recorded at more than 80 international conferences since years 1825 – 1970 (Abdullah, 2003). The whole process of the justice system worked sequentially and could not skip one stage to another, so that each institution in the subsystem was interrelated and influenced one another. A legal figure, Alan Coffey, explained that: "Criminal justice can function systematically only to the extent that each segment of a system takes into account all other segments. In other words, the system is not more systematic than the relationship between the Police and the Prosecutor's Office, the Police and the Prosecution and Correctional Courts, Corrections and the Law, and so on. In the absence of functional relationships between segments, the criminal justice system is very susceptible to fragmentation and ineffectiveness", meaning that in the criminal justice system, different segments such as law enforcement (such as the police), prosecution (such as prosecutors),

justice (such as judges and courts),and victim services must be interconnected and work together effectively to achieve common goals, namely law enforcement and justice. If there is no functional relationship between these segments, then the criminal justice system can be vulnerable to fragmentation and ineffectiveness. Fragmentation refers to a condition in which each segment operates independently and isolated from the others, which can result in communication and coordination failures, causing delays or imbalances in handling cases, and then impacting public trust in the criminal justice system. Meanwhile, ineffectiveness is the inability of the criminal justice system to achieve its goals, such as crime prevention, community protection, or victim recovery. If there is no coordination and cooperation between segments, then each segment is not able to perform its function properly, which can result in the overall system being ineffective (Nursyamsudin & Samud, 2022).

2.4. Criminal Justice System Theory

Legal certainty is also needed to realize the principles of equality before the law without discrimination. From the word certainty, it has a meaning that is closely related to the principle of truth. That is, the word certainty in legal certainty is something that can be strictly syllogized in a formal legal way. The theory of legal certainty is one of the objectives of law and it can be said that legal certainty is part of the effort to realize justice. Legal certainty itself has a real form, namely the implementation and law enforcement of an action that does not look at who the individual is doing. Through legal certainty, everyone is able to predict what he will experience if he takes a certain legal action. With legal certainty, it will guarantee that someone can carry out a behavior that is in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual cannot have a standard provision to carry out a behavior. In line with these objectives, Gustav Radbruch also explained that legal certainty is one of the objectives of the law itself (Bobonis & Morrow, 2014).

3. RESEARCH METHODS

The study's design focuses on elucidating the pervasiveness of fraud within the realm of Candidates for Civil Servants (CPNS) and subsequently scrutinizes this phenomenon through the lens of criminal law, drawing on insights from various legal experts. Legal research encompasses two main branches, namely normative legal research and sociological legal research. This particular study adopts a sociological legal research approach, emphasizing the dynamic interplay between law and society, delving into how legal structures impact society and conversely, how societal dynamics influence legal frameworks (Putra, 2021). Employing a sociological interpretive approach, the research aims to comprehend how individuals and groups perceive and ascribe significance to legal norms and practices. Methodologies such as ethnographic observations, interviews, and text analyses are anticipated in order to capture individual viewpoints and subjective experiences (Putra, 2021).

The study relies on a comprehensive array of legal sources, including primary legal materials encompassing a collection of fraud cases related to Prospective Civil Servants (CPNS) within Indonesia over recent years, and secondary legal materials such as pertinent journals, books, and laws pertinent to CPNS fraud cases. The collection of legal materials follows a meticulous library-based approach, encompassing the systematic

acquisition, evaluation, and analysis of written sources pertinent to the research topic, drawing upon laws and regulations, academic journals, and other relevant publications. Analysis of these legal materials adopts qualitative techniques, involving the collation and interpretation of non-numeric data to discern underlying concepts, opinions, and experiences, employing methodologies such as case study procedures, observations, and document analyses (Putra, 2021).

4. RESULTS AND DISCUSSION

4.1. State Officials and Civil Servants

Law Number 5 of 2014 Concerning State Civil Apparatus legislation governing the Civil Service in Indonesia, Civil Servants basically occupy state positions, while state positions are occupied by State Officials. The terms between the country and the state indicate a difference in the scope of duties and the scope of the area of authority and the nature of the position.

According to Jimly Asshidiqie, State Officials are "political appointees" while State Officials are "administrative appointees". This means that the State Officials are appointed or elected because of political considerations, while the state officials are chosen purely for administrative considerations or reasons. In addition to this, it is also related to the periodization of office, for State Officials the form of accountability is directly to the public with an election mechanism, so that their term of office will be evaluated by an election mechanism which is temporary in nature, while for civil servants the responsibility is to the leadership, even in terms of employment it is tiered in nature by using a rank and career system, the periodization is quite long, namely from recruitment to retirement which can take up to 40 (forty) years.

The conclusion is that State Officials and Civil Servants are two different aspects of governance, namely governance in a broad sense and governance in a narrow sense. The state with all its complementary functions (Executive, Legislative and Judiciary) is the notion of government in a broad sense. Meanwhile, the definition of government in a narrow sense only refers to one function, namely the executive function. In this context, state officials are in fact distinguished from officials or civil servants (state civil servants), who incidentally are government officials in a narrow sense. At the beginning, it was mentioned regarding state officials as political appointees as expressed by Jimly Asshidiqie. In the context of a democratic country, placement and position of office are based on people's sovereignty (politics) and community service (public).

The identification of state officials in the context of state politics is functionally related to their electability system through general elections (by the people) as well as through a political mechanism (fit and proper test by the DPR). The term political official was indeed only known in the reform era because many positions were born through political mechanisms. Unlike the case with the New Order which only recognized the term State Official. Apart from being synonymous with political officials, state officials are also identified as public officials in the context of the public service system or public interest.

4.2. Appointment of Civil Servants

Public services (public services) and administration of government is a function of various factors. One of them is the human resource factor, namely Civil Servants (PNS). It can be said that the good or bad of a state bureaucracy is greatly influenced by the quality of civil servants. One of the state civil service reform agenda that is urgent to be carried out immediately is reform in the procurement (recruitment) of Candidates for Civil Servants (CPNS). This is because the CPNS procurement process is the most critical and risky process in the entire PNS management process in Indonesia. It is referred to as the most critical process considering that this process is very decisive in forming a profile of civil servants who are reliable, qualified and relevant to the needs of the organization or vice versa, namely civil servants who are counter-productive to the organization.

In addition, through the CPNS procurement process, an initial (general) description of the CPNS that will be obtained (raw material) is known, in order to anticipate the expression that says garbage in garbage out (GIGO). In other words, the CPNS procurement process is a starting point that can describe what and how the desired CPNS profile is in accordance with organizational needs. Furthermore, the CPNS procurement process is called risky, meaning that it contains long-term consequences for asset investment in the future, considering that CPNS who will later be appointed as PNS are not only important organizational assets, but are also organizational partners who need and must be managed properly, because it determines organizational effectiveness. . In addition, the CPNS procurement process is full of risks from KKN (collusion, corruption and nepotism) practices carried out by certain parties and the community. In other words, the CPNS procurement process often causes many problems because there is a lot of public dissatisfaction with the CPNS procurement process that is being carried out. One of the dominant factors why most civil servants in Indonesia are ineffective and have not made an optimal contribution, especially in providing services to the community, even giving the impression of being underemployed (disguised unemployment), because the policy of procuring CPNS in government agencies in the past was not based on planning. workforce, but based more on factors of political interests and power.

For decades, the bureaucracy (PNS) has often been used as a tool for power and politics, thus ignoring the quality and requirements for job analysis or job analysis. As a result, the human resources of the apparatus in the organizational unit become redundant and not in accordance with the real needs or existing workload, giving rise to pressure to immediately rationalize civil servants. The problematic situation in the procurement of Civil Servant Candidates, as outlined above, both originating from internal and external forces, however, cannot be allowed to continue like this on an ongoing basis, given the long-term risks and impacts. Therefore, in the future it is necessary to pursue various breakthrough efforts, including through the formulation of alternative CPNS procurement strategies that can produce CPNS who will later be appointed as qualified civil servants.

Registration is free of charge, if there is someone on behalf of being able to help with the internal route, then you can be sure that this is not true. Because everything is direct connectivity through the website and the original address of the ministry office that opens employee appointments.

4.3. Concept of Criminal Liability

Criminal liability, can be interpreted as responsibility or liability. This concept originates from the concept of criminal law which consists of 3 (three) things, namely:

(1) Formulation of criminal law which contains criminal acts (criminal acts); (2) Criminal liability (criminal liability or criminal responsibility), both of which are forms of substantive criminal law; (3) The procedure before the trial for people who have committed criminal acts as alleged, which is called formal criminal law (criminal procedure).

If these three elements have been fulfilled then the perpetrator concerned can be declared to have committed a crime so that the ability to be responsible arises. On the basis of the three things mentioned above, the meaning of criminal responsibility is attached to the perpetrators of the crime itself unless there are reasons that abort the ability to be responsible for the perpetrators of the crime itself. That is, a criminal act based on error (both intentional and negligent) will always be attached to criminal responsibility.

The system of criminal responsibility in law adheres to the principle of error as one of the principles in addition to the principle of legality. Criminal liability is a form of action by the perpetrator of a crime against the mistakes he has made. Thus, criminal liability occurs because there is a mistake which is a crime committed by someone, and there are already rules governing the crime. Criminal responsibility, cannot be separated from one or two aspects that must be seen with philosophical views. One of them is justice, so that the discussion on criminal responsibility will provide clearer contours. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy (Sirajuddin, 2013).

Someone who commits an action that is prohibited by law, then someone will be held accountable for these actions if the action is against the law (and there is no elimination of unlawful nature or *rechtsvaardigingsgrond* or justification reasons) for that person from the point of view of being responsible, then Only someone who is capable of being responsible can be held criminally accountable, right? Criminal liability is an act that is disgraceful to the public that must be held accountable to the perpetrator for the actions committed. By being responsible for the despicable act of the creator, is the creator also blamed or is the creator not blamed? In the first case, the creator is certainly punished, while in the second case, the maker is certainly not punished[24]. Mistakes in the broadest sense can be equated with the notion of responsibility in criminal law. It contains the meaning that the maker can be blamed for his actions. So that if someone is declared to have committed a crime, then that person must be held accountable.

The definition of a criminal act does not include accountability. Criminal action only refers to the prohibition of action. Whether the person who has committed the act is subsequently also punished depends on the question of whether he actually made a mistake in committing the act or not. If the person who committed the crime did have a mistake, then of course he will be punished. Criminal liability leads to the punishment of the offender, if he has committed a crime and fulfills the elements specified in the law. Seen from the point of view of a criminal act occurring by someone, then someone will be responsible for these actions if the action is against the law for that. From the point of view of the ability to be responsible, only someone who is capable of being responsible can be subject to criminal responsibility.

Criminal liability, can be interpreted as responsibility or liability. This concept originates from the concept of criminal law which consists of 3 (three) things, namely: (1) Formulation of criminal law which contains criminal acts (criminal acts); (2) Criminal liability (criminal liability or criminal responsibility), both of which are forms of

substantive criminal law; (3) The procedure before the trial for people who have committed criminal acts as alleged, which is called formal criminal law (criminal procedure).

Criminal liability that can be imposed on perpetrators of criminal acts cannot be separated from the principle of *geen straf zonder schuld* (no punishment without fault). So that for a mistake to occur, the following conditions must be fulfilled, namely (1) There is the ability to be responsible for the perpetrator of the crime with a normal mental condition; (2) The mental relationship between the perpetrators of the crime and the crime is intentional or negligent as a form of error; (3) There is no excuse that erases the mistake or there is no excuse for forgiveness (Efrida et al., 2017)

Criminal liability will determine whether or not a perpetrator of a crime can be held accountable for the actions he has committed. Being able to take responsibility is a condition of error, so it is not part of the error itself. Therefore to the subject of human law, being able to take responsibility is an element of criminal responsibility, as well as a condition for mistakes. Unaccountability results in not being subject to criminal prosecution. Means, when there is a sign that a person is unable to be held accountable and is therefore seen as irresponsible in criminal law, the accountability process stops here. The person can only be subject to action, but cannot be subject to punishment.

4.4. CPNS Test Fraud Crime

Fraud committed jointly" as stipulated and subject to criminal penalties in Article 378 of the Criminal Code Jo. Article 55 Paragraph (1) 1st Criminal Code. Provisions regarding the offense of fraud (the main crime) are contained in Article 378 of the Criminal Code which reads as follows: "Whoever with the intent to benefit himself or others by violating the law, by using a false name or false prestige, by deception or by a series of lies moves another person to hand over something to him, or to give a debt or write off a debt, is threatened because fraud with a maximum imprisonment of 4 (four) years".

In 2018 (Defendant AD and SH) made a profit of 200 million Rupiah where the victim was lured into a service job in a government area, but after 3 years the work was not realized and the victim had not received a call to work as a civil servant in that area. In 2019 (Defendant HB) made a profit of up to 5.7 billion Rupiah with the CPNS Recruitment mode where the defendant claimed to have access to the State Civil Service Agency (BKN). Actions carried out by HB killed up to 99 people. In 2021 (ON) made a profit of 9.7 billion Rupiah where ON, who is the son of singer ND, at first only provided tutoring facilities to victims, but in fact there were victims who complained about getting a fake SK from the defendant ON.

Article 55 paragraph (1) of the Criminal Code, those who commit, order to do or who participate in doing and those who with gifts, promises, by abusing power or appearance, with violence, threats or by causing misunderstandings or by providing opportunities, means -means or information, intentionally inciting other people to commit the crime in question. The perpetrator was subject to a fraud article in accordance with Article 378 of the Criminal Code which moves someone to do something by deception and harm others.

5. CONCLUSION

The conclusion of the research is 1) Registration for CPNS is free of charge, if there is someone on behalf of being able to help with the internal route, then you can be sure that this is not true. Because everything is direct connectivity through the website and the original address of the ministry office that opens employee appointments. The perpetrator was subject to a fraud article in accordance with Article 378 of the Criminal Code which moves someone to do something by deception and harm others. Article 55 paragraph (1) of the Criminal Code, those who commit, order to do or who participate in doing and those who with gifts, promises, by abusing power or appearance, with violence, threats or by causing misunderstandings or by providing opportunities, means -means or information, intentionally inciting other people to commit the crime in question. 2) Candidates for CPNS applicants do not need to look for links in order to pass the selection, the spirit of Bureaucratic Reform in the state civil apparatus is not carried out in dirty ways. All tests are carried out based on ability, because the tests are carried out using a computerized method that scores immediately appear and can be accessed by everyone. If there are people acting on behalf of insiders or special channels to pass the selection, then it is not true because the current recruitment system is very open and accountable.

While the advice obtained is 1) The rules that are made must be strict and sanctions are not only regulated in the Criminal Code related to the fraud article, but there must also be special regulations related to the inner lane game mode or special lanes to pass CPNS. 2) Each ministry must openly and clearly inform on the official website so that the information is clear that the CPNS selection is free of charge. The government must firmly eradicate brokers or mobsters who promise to receive special pathways, especially individuals in the government who play a role in the selection of CPNS.

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JURIDICAL REVIEW OF LEGAL PROTECTION OF HEALTH PERSONNEL ACCORDING TO INTERNATIONAL AND NATIONAL LAW

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Abstract

Health represents a fundamental ideal of the Indonesian nation and serves as an embodiment of human rights. To ensure a high standard of health, the role of Health Workers is pivotal. However, several incidents have highlighted the prosecution or attacks on these workers during the provision of services, revealing a deficiency in both national and international legal protections. This research aims to analyze the legal protection arrangements for health workers in accordance with National and International Law, as well as identify the factors contributing to the non-compliance with legal protection regulations for health workers. The research is of a normative legal nature, employing a statutory and case-based approach. Data was collected through a comprehensive literature review using qualitative descriptive analysis. The findings of the study indicate that the legal protection for health workers has been outlined in National Law under Law no. 36 of 2014, while International Humanitarian Law serves as the framework for granting legal protection to Health Workers on an international scale. Factors contributing to the non-compliance with national legal protection regulations for Health Workers include Educational, Trust, and Environmental Factors. On the other hand, the non-compliance with legal protection regulations for Health Workers in the context of international law is primarily due to a lack of understanding and awareness of International Humanitarian Law, compounded by the challenges faced during times of conflict between nations.

Keywords: *Health Workers, Humanitarian Law, Legal Protection*

1. INTRODUCTION

Health represents the embodiment of human rights and the ideals of the Indonesian nation as outlined in the 5th Pancasila. The pursuit of social justice in health stands as a key objective for the Indonesian nation, aiming to elevate the overall public health standards in line with the principles of non-discrimination, protection, and sustainability (Koswara, 2018). Furthermore, the Preamble to the 1945 Constitution echoes this sentiment, emphasizing the promotion of general welfare, with a specific focus on the welfare of public health. Health serves as a crucial aspect and a significant benchmark for evaluating whether the societal welfare in Indonesia has been adequately and optimally fulfilled (Sugiharto, 2012; Hanif, 2022).

To achieve Indonesia's goals, the role of health workers is vital. According to Law No. 36 of 2004, Health workers are individuals who serve in the health sector with knowledge and skills that require authority to provide services. Health workers have a great social responsibility in carrying out care for patientsIn service, health workers must try their best in the interests of patients without promising results (Arif & Utomo, 2022).

The important role of health workers in determining the safety of patients means that health workers are required to minimize mishandling or malpractice. This regulation of malpractice problems is not only anticipatory so doctors and other medical

professionals must be careful in providing services and also protect the rights of patients as legal subjects in a country with democratic laws (Diab, 2019). However, medical services do not always succeed according to plan, this is the basis for establishing legal protection for health workers if the health services according to standards

Legal protection for health workers has become a concern in national law and international law. Legal protection is the protection of honor and recognition of human rights by legal subjects in accordance with legal provisions to protect something (Alydrus et al., 2020). Legal protection for national health workers is contained in Article 27 (1) of Law No. 36/2014 states that health workers have the right to receive compensation and legal protection when carrying out their duties. Apart from that, it is also strengthened in Article 57 letter a of Law No. 36/2014 states that health workers who provide services have the right to obtain legal protection as long as they carry out their duties in accordance with Professional Standards. Meanwhile, according to international law, the protection of international health workers is regulated in the Geneva Conventions and additional protocols. In article 24 of Geneva Convention I 1949, Article 12 (1), Article 8, and Article 21 of Additional Protocol II as well as Articles 9 and 11 (1) state that health units must be protected at all times and must not be targets of attack. Including someone who is assigned, either permanently or temporarily, solely for medical work (Prastika, 2020).

The protection of Health Workers aims to instill a sense of security for those providing health assistance to injured or ill individuals. This is manifested in the prohibition of any attacks on Health Workers. However, in practice, the implementation of this regulation remains challenging, as evidenced by various cases of attacks on health workers worldwide. Instances include attacks on health workers in Palestine and assaults by the Armed Criminal Group (KKB).

The existence of legal protection for health workers based on international law and national law cannot fully protect health workers on duty. In reality, legal protection for health workers is difficult to implement ideally and consistently according to existing legislation. This is proven by the many cases of lawsuits against doctors and deaths of doctors in international conflict areas. So it is necessary to optimize national and international legal protection policies for health workers.

Based on the problems above, it can be concluded that legal protection for health workers is still not optimal. Health workers who help patients actually endanger their lives through dangerous demands and physical attacks. So it is necessary to conduct a study regarding "Judicial Review of Legal Protection of Health Workers According to International and National Law". The aim of this research is to analyze legal protection arrangements for health workers in accordance with National Law and International Law and analyze the factors causing non-compliance with legal protection regulations for health workers.

2. LITERATURE REVIEW

2.1. Health

Health is a condition of physical, spiritual, mental and social health that makes a person socially and economically productive (Law No. 36/2014). Health is a state where not only is there no disease or weakness, but there is also a balance between physical function, mental, and social (Jacob & Sandjaya, 2018).

2.2. Health Workers

Health workers are individuals who serve health services with the knowledge and skills to carry out service authority (Law No. 36/2014). The authority legally possessed by a health workers to serve is within their authority, so that the health worker has full power in carrying out work according to his field of knowledge (Lambok & Asyiafa, 2019). According to Government Regulation no. 32 of 1996, Health Workers include medical personnel; nurse; pharmacy; public health workers; nutrition staff; physical therapy personnel as well as medical technicians.

2.3. Legal Protection of Health Workers

Legal protection is related to law enforcement, which is a separate process in society which aims to maintain law and order (Rahardjo, 2006). Legal protection for health workers has become a concern in national law and international law. Legal protection is the protection of honor and recognition of human rights by legal subjects in accordance with statutory provisions to protect them (Alydrus et al., 2020). Legal protection for Health Workers is regulated nationally in Law no. 36 of 2014 and internationally in the Geneva Conversion.

3. RESEARCH METHODS

3.1. Type of Research

This research is of the type of normative legal research. Normative legal research is legal research according to the analysis of applicable and relevant legislation on legal issues (Benuf, Mahmudah, dan Priyono 2019). In the normative juridical writing method, the author examines positive legal provisions in order to find legal rules, principles and doctrines in answering legal problems (Michael & Boerhan, 2020).

3.2. Research Approach

This research uses a statutory and case-based approach. The legal problem approach is an approach through studying legislation related to the problem (Marzuki, 2014). Meanwhile, the case study problem approach (Case Approach) is research that conducts studies of cases related to issues that become court decisions (Marzuki, 2014).

3.3. Legal Source

The research uses legal material sources which include primary and secondary legal material sources. Primary legal materials are the main legal materials, as authoritative legal materials, namely legal materials that have authority (Suardita, 2017). The primary legal material for the research is Law no. 36 of 2014, Civil Code, and Geneva Conversion. Meanwhile, Secondary legal materials are legal documents that explain problems, such as books, journals and literature related to research (Suardita, 2017). Secondary legal material for research was obtained from journals and literature regarding national or international legal protection of health workers.

3.4. Collecting of Legal Materials

Collecting legal materials through literature study as an activity of collecting data, reading, taking notes and processing (Supriyadi, 2017). The literature study was carried

out through reviewing reference books and similar research results to obtain a theoretical basis for the research (Sarwono, 2006).

3.5. Data Analysis Method

The data analysis technique is through qualitative descriptive analysis. The basis for using this legal analysis is normative, because legal materials towards theoretical studies including principles, concepts and legal rules.

4. RESULTS AND DISCUSSION

4.1. Legal Protection Arrangements for Health Workers in accordance with National Law and International Law

Legal protection for Health Workers is important in providing safe health services. This legal protection means protection for providers and recipients of health services (Asyhadie, 2017). If a health worker is harmed by another party intentionally or due to negligence, then the health worker has the right to seek civil, criminal or state administrative legal responsibility, as well as compensation (Ridwan, 2006).

In national law, legal protection for Health Workers is regulated in Article 57 of Law No. 36/2014. where health workers have the right to a) Obtain legal protection as long as they carry out their duties according to the Standards; b) Obtain complete and correct information from service recipients; c) Receive service compensation; and d) Get safety protection in accordance with human dignity. This Health Law is preventive protection provided to health workers through the contents of regulations and articles that regulate legal protection. This can prevent violations and provide limits on carrying out obligations. Meanwhile, repressively, the legal protection provided consists of imposing sanctions on health workers who are negligent in providing health services as well as sanctions against someone who harms health workers.

Meanwhile, in international law, legal protection for Health Workers are organized in International Humanitarian Law, which is a law that regulates the protection of people who do not participate in conflict or war (Sujatmiko, 2016). Humanitarian law protects medical personnel as parties who do not participate in disputes or can be said to be non-combatants where medical personnel must be protected at all times and must not be the target of attack (Prastika, 2020). The following are several regulations containing legal protection for health workers, namely:

1) Article 24 of the 1949 Geneva Convention I, protection for medical personnel has been regulated in the 1949 Geneva Convention I Chapter IV Article 24 which states that Health services employed in searching for, transporting and caring for injured persons must be protected in all circumstances.
2) Article 12 (I) of the 1977 Additional Protocol I states that protection for medical personnel has been regulated in Article 12 Protection of health units.
3) Article 9 (1) Additional Protocol II 1977 states that protection for medical personnel has been regulated in Article 9 (1) Protection for members of health services and religious services Health workers must be protected and provided with assistance. They should not be forced to serve on other missions.
4) Article 8 of the 1977 Additional Protocol I states what health facilities must be protected, namely as followssuch as hospitals and treatment centers, storage places

for health equipment and medicines and these units. These health units can be immovable or movable objects, permanent or temporary

To differentiate between health workers, civilians and soldiers in conflict countries, distinctive emblems have been regulated. Identification symbols are used by medical personnel to differentiate themselves from other parties to an armed conflict. Identification symbols also function to protect medical personnel from the armed forces from becoming targets of attack (Prastika, 2020). According to the 1977 Additional Protocol II Article 12, the identification symbol must be displayed correctly, and only those authorized to use it legally and must not be used as an object of attack. Apart from providing protection for individual medical personnel, Humanitarian Law also provides protection for health facilities where medical personnel work.

Protection of health workers is regulated in Article 26 of the 1949 Geneva Convention which states that voluntary health workers, recognized voluntary organization and authorized by their governments, who carry out the same duties as the health services mentioned in Article 24, of equal status, and must obey military law. The protection of health workers in the 1949 Geneva Convention I and Additional Protocol I 1977 is based on personal respect and the inviolability of the basic rights of both men and women. Someone who is not directly involved in combat, such as health workers, has the right to be respected and protected under all circumstances and treated with humanity. Direct attacks on health workers and health facilities constitute a violation of the rights obtained in the 1949 Geneva Conventions and the 1977 Additional Protocol (Prastika, 2020).

The implementation of the Geneva Conventions is a guarantee of human rights during war as stated in international humanitarian law, which is expected to be the management and control of the destructive effects of armed conflict (minimizing the number of human and property casualties) which indirectly reveals that international humanitarian law is not intended to prohibit war or to conduct war. legal regulations regarding war games, but for humanitarian reasons (Guevarrato et al., 2014). This law has the objectives of: a) Providing protection for combatants and non-combatants from unnecessary suffering, b) Guaranteeing very fundamental human rights for those who fall into the hands of the enemy and c) Preventing cruel wars without borders.

In addition, the International Red Cross provides legal protection to members of the health board and volunteers who are members of the International Committee of the Red Cross (ICRC) as regulated in the 1949 Geneva Convention Article 24 which states that: Health workers are employed to search for, transport or treat injured victims and must be protected in all circumstances (Rahmatullah et al., 2022).

Article 26 of the 1949 Geneva Convention states: Members of the National Red Cross and recognized Voluntary Aid Societies can serve as health workers in accordance with article 24 in compliance with military law. Each Participant must notify the other Party regarding peacetime at the beginning or throughout the course of a hostile conflict. Attacks on health workers are a violation of International Humanitarian Law. Article 9 of Additional Protocol II of 1977 states that members of health services must be protected and provided with assistance for the implementation of health services and must not be asked to give priority to anyone except for medical reasons.

All attacks aimed at all equipment and units of medical personnel as well as members of the health service only aim to prevent medical officers and medical units

from being able to help and treat war victims who need medical assistance. This is also explained in the 1949 Geneva Convention I Article Additional Protocol I 1977 Article 12 Paragraph 1 for international armed disputes and Additional Protocol II 1977 Article 11 Paragraph (1) for non-international armed disputes which states that health units and transport must be protected at all times and must not be objects attack.

4.2. Factors causing non-compliance with legal protection regulations for Health Workers

The national health law aims to provide legal protection to society of health services and health workers as providers of health services so that they can get maximum service. Meanwhile, international health law or international humanitarian law aims to regulate the tools and procedures for war, protect war victims, and guarantee respect for a person's personal dignity (Sihite, 2018). The role of these two health laws is very vital in providing optimal and safe services for patients and health workers.

However, based on the reality, there are still many cases of legal inability to provide legal protection to health workers. This can be proven by the existence of a young doctor in the name of Dewa Ayu Sasiarsy who was once sentenced to prison by the Supreme Court (MA) for failing to save the fate of his patient from a sudden operation, but was ultimately released because the doctor was not proven to have committed malpractice. In international health law, there are also many cases of non-compliance with the law, such as attacks on Health Workers and Health Facilities by conflicting parties in Syria and Israel.

Based on national health law, there are several factors that cause non-compliance with legal protection regulations for Health Workers, including:

1) Education Factors

In a simple sense, education related to efforts to develop personality according to community and cultural values (Baragi et al., 2021). A person who does not have education regarding the legal regulations governing the legal protection of health will have a high potential for violating the established regulations. If people do not have knowledge of health regulations, it is possible for people to make baseless demands for health services that they feel are unsatisfactory.

2) Trust Factors

Trust is a belief system or something that a human group believes exists or is true (Baragi et al., 2021). Regarding the trust factor, it can be seen from the public's willingness to receive health services at certain units. For dangerous health service actions, health workers also provide Informed Consent as approval for the health services being carried out. So if patients believe in the health actions carried out by health workers, non-compliance with the law will be minimized. An individual will more easily comply with social norms that are indoctrinated by the beliefs they hold (Baragi et al., 2021).

3) Environment Factors

Compliance that is formed in a conducive environment will make individuals feel great benefits and use it for a longer period of time (Baragi et al., 2021). An environment that adheres to a rule will encourage other people to understand the rule. This process underlies behavior in a new environment, the adaptation process will be easier.

Meanwhile, the implementation of international health law has several factors inhibiting compliance with legal protection regulations for Health Workers, namely: (Tandris, 2019)

1) International Humanitarian Law must be applied at a very difficult time, namely the stability and national security of a country is being threatened
2) International Humanitarian Law is very complex. The Geneva Conventions and Additional Protocols were drafted by legal experts and diplomats where the terms and sentence structures used are difficult for the general public to understand.
3) Various provisions of International Humanitarian Law are not operational in nature or cannot be applied directly to provide punishment

Then, there are also factors related to the challenges in implementing International Humanitarian Law. These obstacles become apparent when International Humanitarian Law is applied in the context of war, and they include:

1) Insufficient awareness about the required implementation actions at the national level. Civil and military officials in various government agencies often lack the necessary awareness of their obligations to take specific actions.
2) Limited expertise within agencies. The legal complexities involved in the implementation of International Humanitarian Law are quite intricate, and there are few legal experts who possess a comprehensive understanding of these issues.
3) The implementation of International Humanitarian Law involves the collaboration of various government bodies, such as the Ministry of Defense, Law and Legislation, Home Affairs, and the Ministry of Foreign Affairs. Effective execution of International Humanitarian Law necessitates seamless cooperation among these agencies, which is often difficult to achieve and time-consuming.
4) The most significant challenge arises from the conflict of diverse interests. Certain provisions of the Geneva Conventions, especially their Additional Protocols, might be perceived as limiting state sovereignty or jeopardizing military security.

Lack of knowledge regarding International Humanitarian Law makes it difficult to implement International Humanitarian Law. Insufficient basic knowledge of International Humanitarian Law triggers a lack of awareness regarding the understanding that medical personnel should always be protected, and should not be used as targets for attacks in war. Not only is knowledge about International Humanitarian Law lacking, but the unwillingness of the conflicting parties to comply with International Humanitarian Law can also be the cause of the many violations that still occur.

5. CONCLUSION

The research concludes that: a) National legal protection arrangements for health workers are outlined in Law no. 36 of 2014 concerning Health Workers, which stipulates that health workers have the right to legal protection while carrying out their duties in accordance with the established standards. In international law, Health Workers are granted protection under International Humanitarian Law, which prohibits attacks on health workers and facilities. b) Factors contributing to the non-compliance with legal protection regulations for Health Workers, according to national law, stem from

Educational Factors, Trust Factors, and Environmental Factors. Conversely, the non-compliance with legal protection regulations for Health Workers under international law is primarily attributed to a lack of knowledge and awareness of International Humanitarian Law, as well as challenges in implementing the law, especially during times of conflict between countries.

The research suggests that the Indonesian Government should clarify the legal protection for Indonesian health workers both domestically and abroad to provide enhanced legal certainty.

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IMPLEMENTATION OF PROFESSIONAL ZAKAT FOR STATE CIVIL SERVANTS FROM THE PERSPECTIVE OF MAQASID AL-SHARIA

(Case Study of BAZNAS in Sinjai Regency)

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Abstract

The primary focus of this qualitative research is to examine the implementation of professional zakat for Civil Servants (ASN) in Sinjai Regency from the perspective of Maqāṣid Al-Syarī'ah, with BAZNAS as a case study. The research breaks down this central inquiry into specific sub-problems, aiming to analyze the alignment of Maqāṣid Al-Syarī'ah principles with the execution of professional zakat for ASN in Sinjai Regency. Data for the study is primarily sourced from key individuals, including the Chairperson and Vice Chairpersons of BAZNAS in Sinjai Regency, zakat payers, the Head of Zakat and Waqf Implementation at the Ministry of Religious Affairs in Sinjai Regency, the Head of the Regional Finance and Asset Agency, and the Head of the Regional Personnel and Human Resource Development Agency in Sinjai Regency. Data is collected through observation, interviews, and documentation, and the analysis is structured into stages of data collection, reduction, presentation, and conclusion drawing. The research reveals that professional zakat management for ASN by BAZNAS in Sinjai Regency is conducted even without clear local regulations, in coordination with various government entities. The distribution and utilization of zakat adhere to five programs, yet its alignment with Maqāṣid Al-Syarī'ah is hindered by various obstacles in its application for civil servants in Sinjai Regency.

Keywords: *BAZNAS, Maqāṣid Al-Syarī'ah, Professional Zakat*

1. INTRODUCTION

Humanity has known poverty since ancient times, and the commitment to eradicate poverty has been advocated throughout history. When examining early *Samawiyah* religions, calls to do good to the less fortunate, referred to as the "*Papa*" people, are evident. For instance, Allah further explains in the Quran the covenant of the Children of Israel regarding the call to do good to the Papa people, as found in QS. al-Baqarah/2:83 (Yūsuf al-Qarḍāwī, 1973 M/1393H).

These verses briefly depict the concern of early religions, before the advent of Islam, in addressing poverty-related issues. The Quran itself contains many stories of earlier prophets calling for acts of kindness to the Papa people, now more commonly known as philanthropy (Purwanto, 2018).

Etymologically, the term "*philanthropy*" originates from the Greek language, with "*philein*" meaning love and "*anthropos*" meaning human. Terminologically, philanthropy refers to an individual's act of caring for fellow humans and their humanity, leading them to extend their hand to others by giving their time, money, and effort. This term is often attributed to individuals who engage in acts of charity with substantial financial contributions (Purwanto, 2018).

However, before delving into the world of philanthropy, it is essential to assess the social and economic conditions of our beloved nation, Indonesia. Poverty is a menacing obstacle that hinders the growth and development of the country's economy. The poverty rate, unemployment, and social disparities among the population are always related to the macroeconomic conditions of the country. Preventive measures are required to avoid a repeat of the national monetary crisis that once afflicted this nation. The exchange rate of the rupiah is not the sole support for the Indonesian economy; the nation's economy also relies on social pillars. Among these pillars is philanthropy, and in Indonesia, various philanthropic activities influenced by Islam can be categorized (Fauzia, 2016). These include zakat, and the ongoing economic crises and recurring disasters have propelled the zakat system in Indonesia. The proliferation of charitable organizations has been observed, with donations in the form of both money and goods amounting to trillions of rupiah. Fulfilling zakat is one way to infuse money into economic activities, as Islam actively opposes those who neglect their obligations (Nurlina et al., 2022).

Historically, philanthropy practices began in the seventh century through hadith, archives, monuments, and other records in the Arabian Peninsula. In the early period of Islam's introduction to the Nusantara, there is minimal historical evidence related to Islamic philanthropy (Fauzia, 2016). The 7th century marks the beginning of the practice of Islamic philanthropy in the Nusantara (Fauzia, 2016).

Philanthropy is itself a form of *maliyah* worship. The practice of Islamic philanthropy has been established since the early Islamic period and has developed into a prominent practice as Islam has evolved (Fauzia, 2016). Islam should set an example in the world of philanthropy. Its success in addressing poverty can be considered a new and effective solution for alleviating poverty, which has been widely adopted in philanthropic applications. Most research on philanthropy worldwide demonstrates a strong relationship between philanthropic progress and societal welfare. The majority of middle-class Muslims benefit from voluntary donation activities in Egypt, Jordan, and Yemen. This is indicated by the correlation between the development of philanthropy and the use of social theories, as highlighted in Jannie Clark's research. Just as the realization of social justice and democracy is supported by philanthropic practices, the idea of Islamic teachings and Islamic philanthropic practices, as generally understood through Islamic philanthropic studies, has a strong connection (Fauzia, 2016). According to Islam, one of the forms of virtue is philanthropy. Zakat, *sadaqah*, *infak*, *waqf*, *hibah*, and other forms of charity are the manifestations of Islamic philanthropy (Yūsuf al-Qarḍāwī, 1973 M/1393H).

Islam sets a minimum of five essential aspects in the realization of oneself as a Muslim, which are part of routine obligations, including the payment of zakat. However, pre-Islamic religions did not have a concept of zakat; instead, they had recommendations to do good to the Papa people, solely based on personal awareness. These religions lacked specific guidelines for zakat, such as the types of assets subject to zakat. There was no specific understanding of zakat's place in pre-Islamic religions when it came to addressing poverty comprehensively. What could be inferred from pre-Islamic texts regarding the recommendation to do good to the Papa people was to alleviate their suffering and reduce their hardship (Yūsuf al-Qarḍāwī, 1973 M/1393H).

In contrast, Islam demonstrates a deep concern for poverty alleviation and the well-being of those in need. Islam targets the needs of the Papa people and aims to free them from the shackles of poverty, providing education and guidance on overcoming

poverty. Well-managed zakat can create a wide range of job opportunities and businesses for the Muslim community (Didin, 2002). According to Yūsuf al-Qarḍāwī, zakat is a *maliyah ijtimaiyah* (social financial) worship, a worship in the field of assets with strategic, vital, and determining functions in building societal welfare (Yūsuf al-Qarḍāwī, 1995 M/1416 H)..

Zakat holds a prominent place in this context. It is one of the three most commonly mentioned forms of philanthropy in the Quran and hadith. The Islamic obligation to pay zakat serves as the foundation for the religious aspect of philanthropy. In the Quran, the discussion of the obligation to pay zakat follows the obligation of prayer and is found in approximately eighty-two verses (Fauzia, 2016).

Zakat is one of the Islamic teachings to do kindness (Philanthropy) to fellow community members in the form of the best assets owned for the public interest. Zakat involves giving away a portion of one's wealth according to the rules of Sharia once it reaches the *nisab* threshold to specific beneficiaries (the poor, the needy, collectors of zakat, those whose hearts are to be reconciled, debtors, for the cause of Allah, and travelers) as mentioned in the Quran (Muḥammad Rawwas & Ḥaṣir Ṣadiq, 1985).

Zakat, from time to time, serves as evidence of Islam's success in addressing the issue of poverty alleviation. This achievement dates back to the early days of Islam in the city of Makkah and extends through the zenith of Islamic philanthropy during what can be referred to as the golden era. This era was epitomized by the reign of Caliph Umar bin 'Abdul 'Aziz when the number of individuals eligible to receive zakat became increasingly rare. (Abdullah bin Muḥammad al-Ṭayyār, al-Zakāh, Terj. Abu Zakariya, 1432H/2001M)

Nevertheless, when comparing the social and economic conditions during the time of the Prophet and the period following his era, the disparities are significant. One key to the successful welfare of the people, among others, is zakat.

Zakat is considered the most significant philanthropic potential in Indonesia, given that the majority of its population is Muslim (Umiyani, 2020). Indonesia is one of the most populous Muslim countries globally. In 2019, the potential zakat throughout Indonesia was estimated at 233.6 trillion rupiahs (Baznas Jawa Barat, 2019).

As mentioned earlier, the solution to the economic and social problems in Indonesia is poverty. The solution to this problem is to rely on philanthropy as a social pillar and zakat is the largest philanthropic potential in Indonesia.

Poverty does not only impact the economic and social sectors but extends its reach to affect various other areas, including the health sector. This was vividly demonstrated during the Covid-19 Pandemic era. The period witnessed a surge in prices for Personal Protective Equipment (PPE) and a shortage of essential health supplies, causing a significant impact on middle to lower-class individuals who bore the brunt of the Covid-19 Pandemic. In essence, economic, social, and health conditions were all affected by the issue of poverty amidst the Covid-19 Pandemic. This monetary crisis was not limited to just the lower-middle class; the entire country was affected, as evidenced by the Ministry of Finance's initiative to open a donation account to address the challenges posed by the Covid-19 Pandemic (Yolandha, 2020).

The decline in people's income is the most devastating impact being experienced today. The economy of the middle and lower classes is the segment that bears the brunt of this painful blow. The most harrowing consequence is not solely the loss of life due

to the virus itself but also the tragic consequences of poverty and hunger, as many individuals are no longer able to earn an income (Nurdin, 2020).

In recent months, the world has grappled with the ongoing pandemic. The impact has been unpredictable, with masks and hand sanitizers becoming scarce, and even vitamin C being hard to find in the market. When available, these essential items often come with soaring prices. Additionally, the shortage of Personal Protective Equipment (PPE) for medical personnel working on the frontlines has been a significant concern. In some countries, panic buying has created a negative impact on people's lives, particularly in nations under lockdown (Nurdin, 2020). Therefore, one of the alternative solutions to restore the country's economic conditions is to maximize the management of zakat. Not long ago, President Jokowi endorsed the *'Love Zakat Movement*.' The potential of zakat in Indonesia is substantial. According to Irfan Syauqi Beik, an IPB Sharia Economics Observer, the potential of zakat based on the 2019 Baznas study center was IDR 233 trillion. However, in the latest study, this figure has risen to Rp 327 trillion (Laucereno, 2021).

The Director of Distribution and Empowerment at Baznas, Irfan Syauqi Beik, stated that the potential of zakat in Indonesia has reached Rp 233.8 trillion, with the largest contributor being professional zakat. However, corporate zakat control potential remains relatively low (Suryowati, 2019). The potential for zakat in Indonesia is remarkably substantial, estimated at Rp R 234 trillion per year (Yovanda, 2021).

Perhaps this is because zakat represents the most significant philanthropic potential in Indonesia and is crucial in addressing the country's monetary crisis, as Indonesia continues to grapple with financial challenges (Umiyani, 2020). Philanthropy or generosity, as a form of socio-economic solidarity, serves as a solution for meeting the needs of affected communities (Abdullah, Muh Ruslan, 2020). One of the reasons for the high poverty rate in Indonesia is the underutilization of the zakat movement, even though zakat is one of the most effective instruments for alleviating poverty (Salmah, et. al., 2022).

One example of the application of professional zakat is within the Sinjai Regency Government. According to Ahmad Mudzakkir, 'For Sinjai Regency Government agencies, there are approximately 8 Office of Regional Apparatus (OPD) departments that routinely issue their zakat, involving more than 100 people, as well as several vertical agencies that also consistently contribute zakat.' In total, Baznas Sinjai successfully collects zakat, alms, and infaq, averaging around Rp 60 million per month, which is then distributed to those in need (*mustahik*). Ahmad Mudzakkir further explained that within the Sinjai Regency Government, there are approximately 5.000 civil servants. If all civil servants consciously and regularly contribute zakat from their income, Baznas Sinjai could collect approximately Rp500 million per month. He emphasized that realizing this potential would greatly benefit the Sinjai Regency Government, particularly in terms of supporting the development process and improving the local community's economy (Pemerintan Daerah Kabupaten Sinjai, 2020).

Despite the challenges posed by the Covid-19 pandemic, the economy in Sinjai Regency continued to grow, albeit at a slower pace, with a growth rate of 1.55%. In 2020, Sinjai ranked third in South Sulawesi in terms of the highest GDP growth rate (BPS Kabupaten Sinjai, 2021).

Additionally, there is an increase in the Local Own-Source Revenue (PAD) of Sinjai District in 2020. The economy of Sinjai Regency in 2020 experienced growth

compared to the previous year, with a GRDP growth rate of 1.55 percent (BPS Kabupaten Sinjai, 2021). The PAD of Sinjai Regency amounted to IDR 98,602 million rupiah in 2020. According to data from the Regional Financial and Asset Management Agency of Sinjai Regency, the total revenue realized by the Sinjai Regency Regional Government in 2019 was 1,136.257 billion rupiah. Out of this amount, the regional own-source revenue (PAD) alone reached 102,318.759 billion rupiah. However, the unemployment rate increased from 2019 to 2020 (BPS Kabupaten Sinjai, 2021).

The poor population in Sinjai Regency experienced fluctuations from the 2014-2019 period. The government certainly continues to strive to reduce the poverty rate. However, in reality, during this period, the number and percentage of poor people fluctuated. In 2019, the number of poor people in Sinjai Regency was 22.27 thousand people, which accounted for 9.14 percent of the total population of Sinjai Regency. The number of Sinjai residents vulnerable to poverty is characterized by fluctuations in the number of poor people in Sinjai throughout 2015-2020. Additionally, the number of Muslim residents in Sinjai is as follows: 17,522 in Bulupoddo sub-district out of a total of 17,522; 7,568 in Pulau Sembilan sub-district out of a total of 7,568; 25,862 in West Sinjai sub-district out of a total of 25,873; 17,718 in Sinjai Borong sub-district out of a total of 17,718; 40,473 in South Sinjai sub-district out of a total of 40,473; 28,337 in Central Sinjai sub-district out of a total of 28,337; 33,765 in East Sinjai sub-district out of a total of 33,765; 50,368 in North Sinjai sub-district out of a total of 50,498; and 37,724 in Tellulimpoe sub-district out of a total of 37,724. Based on the description of the number of Muslims in the 9 sub-districts in Sinjai Regency, it can be understood that the Muslim population is the majority, encompassing almost all residents in Sinjai Regency (BPS Kabupaten Sinjai, 2021)

Hence, with the implementation of professional zakat within the Sinjai Regency Government, it is essential to consider the strategic elements present in Sinjai Regency. These elements include a significant local revenue (PAD), a predominantly Muslim population, and the ongoing challenge of a high poverty rate within the district. Professional zakat, with its substantial potential and a considerable number of muzakki in the scope of the Sinjai Regency Government, could provide a solution to addressing the issue of poverty. However, the key question is whether the management of professional zakat adheres to the relevant rules and regulations, with proper allocation following Islamic and positive legal guidelines. A closer examination of the data reveals that the achievement of professional zakat falls short of the intended target throughout 2020-2021. The number of muzakki who contribute remains significantly below the set target. This could be attributed to low awareness among muzakki regarding zakat literacy, especially concerning professional zakat for State Civil Apparatus, including the concepts of haul and nisab within professional zakat. Furthermore, some individuals may mistakenly believe that Ramadan is the only appropriate time to pay zakat or intentionally delay their professional zakat payment until Ramadan, seeking the increased rewards associated with giving during that holy month. Another issue is the digitalization of zakat management and collection, specifically professional zakat. For instance, electronic zakat payments are not yet available through BAZNAS Sinjai Regency, and this should be a matter addressed by the local government, potentially through the issuance of local regulations. An example of successful innovation in this regard can be seen in BAZNAS Barru, which serves as a model in South Sulawesi. They have introduced regulatory innovations, including Regional Regulation No. 09 of

2017 on Zakat Management in the Regency, allowing for online zakat payments. In Barru District, South Sulawesi, Muslims can make zakat payments in person at the Office of the Amil Zakat Agency (Baznaz) or through online channels. In fact, Barru Regency achieved recognition as the largest collector of zakat, infaq, and sadaqah nationally in 2018, and the largest collector in South Sulawesi in 2019 (Said, 2020). BAZNAS Barru has also become a center for zakat management studies, setting an example for others in this field (Sappewali, 2019).

Through professional zakat, which has many muzakki within the Sinjai Regency Government, it can provide a potential solution to address the issue of poverty within the population. However, the actual achievement is falling far short of the intended target. The number of muzakki contributing to zakat, especially the ASN professional zakat, significantly impacts the fluctuations in the number of individuals classified as mustahik zakat recipients. A high poverty rate is an indicator of an increase in the number of mustahik. Poverty highlights the need for zakat, which represents an obligation that muzakki have not fulfilled and the rights that mustahik have not yet fully received. Furthermore, it is worth noting that the population of Sinjai is almost entirely Muslim. The distribution of zakat, including professional zakat, to mustahik, particularly the poor, relies on the contributions from muzakki. The implementation of professional zakat serves the dual purpose of fulfilling religious obligations, specifically upholding one's faith and assisting the less fortunate to sustain their livelihoods.

Nonetheless, in Sinjai Regency, the achievement of professional zakat still falls far short of the target. The fundamental issue at hand is how to effectively implement professional zakat for ASN within Baznas Sinjai Regency, and this assessment should be considered from the perspective of Maqāṣid Al-Sharī'ah. Maqasid al-Syariah plays a crucial role in adapting Islamic law to contemporary challenges, particularly in cases where there is no explicit scriptural guidance (*nash*) or analogy (*qiyas*). It also helps in applying Islamic law to the appropriate legal context (Amin, 2022).

Departing from this issue, the researcher considers it necessary to conduct further studies in the research entitled "Implementation of Professional Zakat for State Civil Servants from the perspective of Maqasid Al-Sharia (Case Study of Baznas in Sinjai Regency)." By addressing the challenges and shortcomings in the current professional zakat system, this research may contribute to a more targeted approach in alleviating poverty among ASN and mustahik recipients in the region.

2. RESEARCH METHODS

This research is a qualitative field study. Based on the research problem, it is classified as a qualitative descriptive study. The National Amil Zakat Agency (Badan Amil Zakat Nasional or Baznas) of Sinjai Regency was chosen as the research location due to the lack of prior studies on the implementation of professional zakat for civil servants (ASN) conducted by Baznas Sinjai, resulting in a research gap. Baznas Sinjai is located at Jalan Persatuan Raya No. 11, North Sinjai Sub-district, Sinjai Regency. The researcher will also conduct direct fieldwork at various other locations to collect data from the recipients (*amil*) and contributors (*muzakki*) of professional zakat at Baznas Sinjai.

This study falls under the category of field research, which examines events in the field as they naturally occur. Based on the research problem, it is categorized as a qualitative descriptive study using a Sociological Approach and *Maqasid al-Syariah*

Approach. The data sources for this research consist of primary and secondary data. Primary data includes all data obtained directly from the parties involved in the implementation of professional zakat for civil servants at Baznas Sinjai, as well as documentation. The participants in this study include the Chairman of Baznas Sinjai, Vice-Chairmen I, II, III of Baznas Sinjai, and five contributors of professional zakat. Informants include the head of the Zakat and Waqf division of the Ministry of Religious Affairs in Sinjai, the head of the Sinjai Regional Financial and Asset Management Agency, and the head of the Sinjai Regional Personnel and Development of Human Resources Agency. Secondary data is supplementary data related to primary sources, such as Law No. 23 of 2011, the four schools of Islamic jurisprudence, the book "*al-Muwafaqat*," Zakat jurisprudence by Yusuf Qardawi, MUI (Indonesian Ulema Council) fatwas, opinions of contemporary scholars, books, and academic research related to the implementation of professional zakat for civil servants and *Maqasid al-Syariah*.

Data collection methods or techniques are the most strategic steps in research since the primary goal of research is to obtain data. The data collection methods used are Observation, Interviews, and Documentation. The data analysis technique for this research includes the following steps: 1. Data Collection, 2. Data Reduction, 3. Data Display, 4. Conclusions.

The validation of data is achieved through triangulation. Triangulation enriches the data and can be achieved in various ways, including Source Triangulation and Technique Triangulation (Fajarini, 2016).

3. DISCUSSION

3.1. Analysis of *Maqāṣid Al-Syarī'ah* on the Implementation of Professional Zakat by BAZNAS Sinjai Regency

The concepts of *haul*, *nisab*, and zakat rates in the general context of zakat and, more specifically, professional zakat, from the pre-pandemic period to the ongoing pandemic, are based on the Quran and Sunnah. The concept of professional zakat has been established and remains consistent. The National Amil Zakat Agency (Badan Amil Zakat Nasional or BAZNAS) of Sinjai Regency adheres to the concepts outlined in the Quran and Sunnah. The determination of haul is adjusted based on the gold standard, using the price of gold, with a zakat rate of 2.5% for professional zakat or income. If an individual's salary or income does not meet the criteria for zakat payment, BAZNAS Sinjai Regency recommends making voluntary donations. From the perspective of the *Maqāṣid al-Syari'ah* concept regarding the establishment of professional zakat concepts by BAZNAS Sinjai Regency in the implementation of professional zakat for civil servants (ASN), it aligns with the essence of *maqasid al-Syariah*, particularly the preservation of religion or *hifz al-din*. This helps to prevent any misconceptions within religion, especially regarding the rules for professional zakat, and anticipates any misunderstandings in interpreting the regulations for professional zakat. Thus, the establishment of the professional zakat concept serves as a means of safeguarding and preserving the religion against misconceptions and misunderstandings within the community. Furthermore, there is a secondary benefit, namely, the establishment of professional zakat concepts facilitates the auditing process, which, in turn, safeguards the community's assets.

Professional zakat from an Islamic legal perspective has been determined and evaluated by the central government and has been studied by the Indonesian Ulema Council (MUI). Several scholars within the MUI are considered knowledgeable and capable of making accurate determinations regarding the obligation of professional zakat for civil servants. Therefore, the administrative body of BAZNAS Sinjai Regency emphasizes mutual respect in cases of differing opinions. This respect extends to both internal and external stakeholders and requires that the opinions being held have a solid foundation or basis. Indonesian law, particularly Law No. 23 of 2011, and several other specific zakat-related laws, including the Islamic law compilation, govern the regulation of zakat in Indonesia. These laws have established the application of zakat as well as a team of experts designated by the government to manage zakat-related matters. Therefore, the task of BAZNAS Sinjai Regency as an implementing body in the field is to apply the regulations that have been legally established, including the zakat law itself. It is important to note that there may be differing opinions in Islamic law concerning professional zakat; however, BAZNAS Sinjai Regency adheres to legal regulations because it is a government institution and believes that the regulations have been deeply studied. Consequently, if there are differing opinions, BAZNAS Sinjai Regency respects these differences and does not dismiss them.

From the perspective of the *Maqāṣid al-Syari'ah* concept, the differing attitudes of some external parties regarding the implementation of professional zakat for civil servants by BAZNAS Sinjai Regency should ideally be met with mutual understanding. This is because the professional zakat program for civil servants is based on regulations legitimized by the state through Law No. 23 of 2011 and the Indonesian Ulema Council's fatwa No. 3 of 2003 on income. To avoid or anticipate resistance to the implementation of professional zakat for civil servants, both persuasive and repressive preventive measures should be taken. One of these preventive measures is to strengthen the regulation governing the implementation of professional zakat for civil servants by enacting strict regional regulations. These regional regulations also serve to mitigate tensions between supporters and opponents of professional zakat implementation, as observed in other regions.

In terms of asset preservation (*hifz al-mal*), this approach minimizes financial waste among civil servants, especially among structural officials, through the cultivation of a culture of giving zakat and charitable donations. It is recommended that the application of professional zakat become an obligation for civil servants. For those who believe that professional zakat is not a religious obligation, they are encouraged to make mandatory charitable donations equivalent to the value that would be required for professional zakat. In general, the implementation of professional zakat for civil servants by BAZNAS Sinjai Regency adheres to the regulations outlined in Law No. 23 of 2011, Government Regulation of the Republic of Indonesia No. 60 of 2010, as well as the religious authorities, such as the Ministry of Religious Affairs of the Republic of Indonesia, through Ministerial Regulation No. 31 of 2019 on income zakat, and the Indonesian Ulema Council, through fatwa No. 3 of 2003 on income.

From the *Maqāṣid al-Syari'ah* concept perspective, this professional zakat program aligns with the essence of *maqasid al-Syariah*, specifically, the preservation of religion (*hifz al-din*), the preservation of life (*hifz al-nafs*), and the preservation of wealth (*hifz al-mal*). It assists through the distribution of professional zakat funds from civil servants to *asnaf mustahik* zakat, including allocating zakat funds to *asnaf fisabillah* as a means of preserving religion (*hifz al-din*). Furthermore, it helps distribute

professional zakat to zakat recipients, specifically the poor and needy, contributing to the preservation of life (*hifz al-nafs*). Additionally, it educates civil servant contributors, particularly structural officials, to abstain from wasteful spending through the culture of giving professional zakat and charitable donations. Moreover, it aims to enhance social awareness and concern among civil servant contributors for zakat recipients, particularly the underprivileged, namely, the poor and needy, who are relatively numerous in Sinjai Regency. Furthermore, it provides education and empowerment to zakat recipients, encouraging their transformation into future contributors through productive zakat distributed by BAZNAS Sinjai Regency.

Professional zakat is considered a well-established practice, and the concepts of *haul*, *nisab*, and zakat rates have remained unchanged from the pre-pandemic period to the ongoing pandemic. Although there has been less intensive socialization during the pandemic due to activity restrictions and lockdowns, the concepts of *haul*, *nisab*, and zakat rates have remained consistent. Haul for zakat is calculated on an annual basis, with a *nisab* of 85 grams of gold and a zakat rate of 2.5%. According to the decision of the National Amil Zakat Agency (*Badan Amil Zakat Nasional*) at the central level, it is analogous to three different opinions. The first opinion aligns haul for professional zakat with the concept of agricultural zakat, the second opinion aligns it with the concept of gold or trade zakat, but the zakat rate remains at 2.5%. The third opinion connects the *nisab* for professional zakat to agricultural zakat and the zakat rate to gold zakat. Haul is calculated over a one-year period.

To ease the burden on civil servants, as they receive their salaries monthly, zakat deductions are made on a monthly basis. The prevailing positive law regulating professional zakat is Law No. 23 of 2011. From the *Maqāṣid al-Syari'ah* concept perspective, the option of monthly salary deductions aligns with the essence of *maqasid al-Syariah*, specifically the preservation of religion (*hifz al-din*) and the preservation of wealth (*hifz al-mal*). The option of monthly salary deductions is a mechanism that simplifies professional zakat payment for civil servants. The principle of ease is an integral part of Islamic law and is upheld through the ease provided in the collection of professional zakat, serving as a means of preserving the religion. Furthermore, in terms of asset preservation (*hifz al-mal*), this approach minimizes financial waste among civil servants, especially structural officials, through the implementation of a culture of professional zakat and charitable donations with the option of monthly salary deductions.

According to the Chairman of the National Amil Zakat Agency for Sinjai Regency, the concept of professional zakat is well-established. Everything undertaken by the National Amil Zakat Agency for Sinjai Regency is considered to be *'marbutun'* (established). Therefore, regarding the concept of professional zakat, it should be noted that the National Amil Zakat Agency for Sinjai Regency is not a fatwa institution but an organization that implements the fatwas of scholars regarding zakat or related matters. An argument against those who debate that the National Amil Zakat Agency for Sinjai Regency lacks the authority to provide answers regarding the legality, basis, and evidence for professional zakat. Even though the administrators of the National Amil Zakat Agency for Sinjai Regency have some basic knowledge of the concept of professional zakat, they sometimes provide responses. Thus, in case of a debate, it should be redirected to the experts (those authorized to answer such questions).

Therefore, the concept of professional zakat remains unchanged, and its development is the same.

As for the *nisab* (minimum threshold) of professional zakat, it is well-established. Furthermore, it should be noted that the concept of professional zakat is divided into three schools of thought. The first opinion suggests that the *nisab* and rate of professional zakat are derived from the concept of zakat for gold or trade. The second opinion is that the *nisab* and rate of professional zakat are derived from the concept of zakat for agriculture. The third opinion, known as 'qiyas *syibh*,' suggests that the *nisab* for professional zakat is drawn from the *nisab* for zakat on agriculture, and the rate is drawn from the rate for zakat on gold or trade. The concept applied by the National Amil Zakat Agency for Sinjai Regency is based on the *nisab* and rate of zakat for trade.

From the perspective of the *Maqāṣid al-Syari'ah* concept regarding the determination of the concept of professional zakat by the National Amil Zakat Agency for Sinjai Regency, the application of professional zakat for civil servants is in line with the primary objective, specifically the preservation and protection of religion or *'hifz al-din*.' It prevents misunderstandings and errors in religious matters, especially regarding the rules of professional zakat, and anticipates misconceptions in understanding the regulations of professional zakat. Thus, establishing the concept of professional zakat based on sound foundations and evidence, such as one of the opinions about professional zakat, serves as a means to safeguard and protect religion from misinterpretation and misconceptions.

Additionally, from the perspective of secondary interests (*'maslahat Ḥājiyāt'*), the establishment of the concept of professional zakat with fixed calculations for civil servants facilitates the audit process and helps safeguard the wealth of the community. The *nisab* for professional zakat is based on the *nisab* for gold or trade, and it is calculated based on the average price, which reduces debates and disagreements in the community. The concept and practice of professional zakat in the field are briefly explained by the Deputy Chairman II of the National Amil Zakat Agency for Sinjai Regency. Professional zakat has been a subject of controversy in its implementation, with some opposing the program for civil servants in Sinjai Regency run by the National Amil Zakat Agency for Sinjai Regency. Some argue that professional zakat is not part of Islamic law, but when referring to the evidence, the obligation to pay zakat from income or earnings is found.

The concept of professional zakat is that it should be paid at the time of harvest. During the pandemic, there were cases of reduced income when people had different needs. For instance, civil servants in debt or those with only a small balance in their accounts would sometimes refuse to pay professional zakat. As a result, the National Amil Zakat Agency for Sinjai Regency continued its socialization efforts. The challenge for the agency in implementing professional zakat for civil servants is to persuade those who are reluctant to pay, emphasizing that what they need, such as car loans or home mortgages, is considered part of the zakat that must be paid. In response to civil servants who claim they cannot pay professional zakat, the agency, as a form of satire, would pay zakat on their behalf, considering them *'mustahik'* (recipients of zakat). Complaints from civil servants about the implementation of professional zakat, particularly regarding their insufficient income, led to exemptions if the *nisab* was not met.

The agency educated civil servants in straightforward language and helped clarify the concept. The challenges in implementing professional zakat for civil servants in Sinjai Regency are real. Those civil servants who qualify as *muzakki* (contributors of

zakat) should be responsible for worldly needs, rather than just food. The mechanism for determining professional zakat recipients follows the eight categories of *mustahik* zakat according to their order. There have been no changes in the concept, *nisab*, and rate of professional zakat from before the pandemic until now. The concept of 'haul' (one year) remains the same. The regulation for professional zakat is the same for civil servants. Debts are paid first, followed by zakat at a rate of 2.5%. Regarding the positive law and Islamic law regulations on professional zakat, especially for civil servants, they are supported by the existence of Law No. 23 of 2011, which provides legal legitimacy. The religious legitimacy is also confirmed. This has led to the steps taken to socialize the implementation of professional zakat for civil servants in Sinjai Regency, using arguments from both Islamic and positive law. In general, the concept of zakat, and specifically professional zakat for civil servants in Sinjai Regency, has remained unchanged.

Summarizing the concept of professional zakat, Deputy Chairman IV of the National Amil Zakat Agency for Sinjai Regency notes that there have been no changes in the concept, particularly regarding the collection of professional zakat for civil servants through the payroll system. The deductions are made directly through the SULSELBAR BANK and are transferred to the account of the National Amil Zakat Agency for Sinjai Regency. Even so, the agency has separate account numbers for zakat and *infak* (donations). From the perspective *of Maqāṣid al-Syari'ah*, during the pandemic, the income of civil servants did not decrease. In fact, it remained stable or even increased. This income can be a supportive option for reviving the economy by channeling professional zakat to eligible recipients, especially considering the diverse needs of the community during the COVID-19 pandemic. This aligns with the primary objective of *Maqāṣid al-Syari'ah*, which is to revive the economy of the less prosperous population during or after the pandemic, minimizing the hardships in meeting their needs and reducing poverty rates. The steps taken by the National Amil Zakat Agency for Sinjai Regency are also in line with the concept of *'maslahat Taḥsīniyāt*/Tersier,' focusing on ethical conduct in fulfilling the role of administering zakat.

Zakat management involves the planning, execution, and coordination of collection, distribution, and utilization of zakat. This is an important aspect of zakat as it ensures that it reaches those entitled to it under Islamic law (Law No. 23 of 2011). With proper zakat management in place, the implementation of professional zakat for civil servants in Sinjai Regency, carried out by the National Amil Zakat Agency for Sinjai Regency, becomes more streamlined and aligns with the concept of *'maslahat Taḥsīniyāt*/Tersier,' which facilitates the fulfillment of zakat as an act of worship.

3.1.1. The Planning of Zakat Collection, Distribution, and Utilization

According to the Chairman of the National Zakat Amil Agency of Sinjai Regency, planning is a process that defines an organization's objectives, formulates strategies to achieve these objectives, and develops a plan for the organizational work activities. The function of planning in management is undertaken as an initial step. Planning for professional zakat serves to establish objectives and achievement targets, both in collection, distribution, and utilization of professional zakat. In general, the National Zakat Amil Agency of Sinjai Regency has created a plan in the form of a work plan and program design, including collection, distribution, and utilization programs of professional zakat, as well as accounting and reporting to be carried out over a specific

period. In this context, the National Zakat Amil Agency of Sinjai Regency has set targets for professional zakat achievement and professional zakat utilization programs within one year. The National Zakat Amil Agency of Sinjai Regency is organized by each field within the organizational structure of the National Zakat Amil Agency of Sinjai Regency, both in the implementation field and the secretariat of the National Zakat Amil Agency of Sinjai Regency, in accordance with their respective functions and main tasks.

The initial collection plan involves directly observing the *muzakki* database, achievements, and professional zakat targets to determine the potential of professional zakat in the coming year in Sinjai Regency to achieve the professional zakat platform target. Subsequently, in the distribution of professional zakat, the National Zakat Amil Agency of Sinjai Regency records the number and determines the criteria for *mustahik* who are genuinely eligible to receive professional zakat through a selective process to ensure an even and accurate distribution of professional zakat.

The planning process begins with the preparation of the Annual Zakat Collection and Distribution Plan (RKAT), followed by communication with the Sinjai Regency Government. Initially, religious regulations submitted were not completed and were hindered by the rule that religious regulations should not be applied except for social regulations. Therefore, for the time being, BAZNAS Sinjai initiated cooperation in the form of a Memorandum of Understanding (MoU) with government agencies within the scope of Sinjai Regency for the implementation of professional zakat for civil servants who have reached the *nisab*. However, the MoU had a maximum duration of 4 years, and some civil servants resigned due to the expiration or termination of the MoU. Additionally, BAZNAS Sinjai submitted a proposal for the regulation of professional zakat for civil servants in the form of a district regulation based on a comparative study in Bulukumba. Because the application of professional zakat for civil servants in Bulukumba had previously been in effect using the payroll system model, BAZNAS Bulukumba collaborated with the Bulukumba Regency government in implementing professional zakat for civil servants through the enactment of regional regulations in the form of Bulukumba Regency Regulation No. 07 of 2015 and Regent's Decree No. 47 of 2016 on zakat management in Bulukumba Regency.

The National Zakat Amil Agency of Sinjai Regency proposed and awaited the process of the district head's instructions in the form of an MoU/cooperation between the National Zakat Amil Agency of Sinjai Regency and the Sinjai Regency government. The salary deductions will be carried out by the Regional Finance and Asset Agency, and subsequently, the Zakat Collection Unit (UPZ) will be a single-entry point. Regarding the preparation of a draft district regulation that includes the implementation of professional zakat for civil servants in Sinjai Regency in the form of the district head's instructions, the Vice Chairman IV of the National Zakat Amil Agency mentioned that in preparation for the program's implementation for civil servants in Sinjai Regency, he had conducted consolidations and visits to the regional government, especially to the heads of the Legal, Government, and Social Departments, concerning the MoU materials, which would serve as the basis for the implementation of the professional zakat program for civil servants in Sinjai Regency

From the perspective of the *Maqāṣid al-Syari'ah* concept, the policy adopted by the National Zakat Amil Agency of Sinjai Regency, which is establishing cooperation in the form of an MoU with government agencies within the scope of Sinjai Regency for the implementation of professional zakat for civil servants who have reached the *nisab*,

aligns with the concept of *Taḥsīniyāt*/Tertiary benefits, making it easier to fulfill the obligation of professional zakat. However, on the other hand, the MoU in place, limited to a 4-year duration, has led to the resignation of some *muzakki* among civil servants for the reasons stated. Therefore, this limitation on the MoU does not align with the concept of *Ḥājiyā*t/Secondary benefits, resulting in difficulties in implementing professional zakat for civil servants, which is one of the expressions of safeguarding and preserving the faith (*hifz al-din*). Furthermore, the consolidations and visits to the regional government concerning the MoU materials, which serve as the basis for the implementation of the professional zakat program for civil servants and the proposal of a district regulation governing the professional zakat program for civil servants in Sinjai Regency to the Sinjai Regency government, align with the concept of *Ḥājiyāt*/Secondary benefits, reducing the intensity of debates in society.

In addition, the comparative study in Bulukumba conducted by the National Zakat Amil Agency of Sinjai Regency aligns with the concept of *Taḥsīniyāt*/Tertiary benefits, facilitating the fulfillment of the obligation of professional zakat by *muzakki* among civil servants. Furthermore, the discourse on unifying the Professional Zakat Collection Units into a single-entry point is consistent with *the Maqāṣid al-Syari'ah* concept, specifically the preservation of wealth (*hifz al-mal*), which aids in the audit process and the preservation of the community's wealth. This also aligns with the concept of *Taḥsīniyāt*/Tertiary benefits, making it easier for *muzakki* among civil servants to fulfill the obligation of professional zakat.

Based on the decision of the National Zakat Amil Agency at the national level, professional zakat can be analogized in three ways. The first opinion draws a parallel with the concept of agricultural zakat, the second opinion with the concept of gold or trade zakat, with a fixed rate of 2.5%. This is generally applicable, while the third opinion links the *nisab* of professional zakat to agricultural zakat and its rate to gold zakat. The calculation period is one year. To alleviate the burden on civil servants, who receive their salaries on a monthly basis, deductions from their income can be made monthly. The prevailing positive legal regulations are Law No. 23 of 2011. Meanwhile, the management of the National Zakat Amil Agency of Sinjai Regency has drafted a regional regulation on zakat for implementation in Sinjai Regency. Previously, it was discussed at the provincial government level in South Sulawesi and had not reached a definitive conclusion. The legislation is not binding in nature. Hence, the National Zakat Amil Agency of Sinjai Regency is cautious about making direct determinations for civil servants.

Therefore, for the time being, the National Zakat Amil Agency of Sinjai Regency is actively engaging in communication with the Sinjai Regency government. The National Zakat Amil Agency of Sinjai Regency strives to establish an MoU/cooperation with the Sinjai Regency government to maximize the collection of professional zakat for civil servants in Sinjai Regency, and this process is ongoing. The progress has reached a 50% completion rate. The draft regional regulation has been submitted to the Sinjai Regency government. Given the challenges of collecting professional zakat due to the lack of a strong legal foundation, the legal status of professional zakat for civil servants remains a subject of controversy. Although Law No. 23 of 2011, Government Regulation No. 60 of 2010, the Minister of Religious Affairs Regulation No. 49 of 2019, and the Fatwa of the Indonesian Ulama Council No. 03 of 2003 provide legal support for the implementation of professional zakat for civil servants, the realization of

professional zakat for civil servants has not been maximized. The ongoing controversy over the legality of professional zakat from a Sharia perspective highlights the potential role of the Fatwa of the Indonesian Ulama Council No. 3 of 2003 in mediating disputes arising from differing opinions.

The legislation governing the implementation of professional zakat for civil servants in Sinjai Regency is seen as in need of reinforcement through regional regulations, as is the case in other regencies. The existence of regional regulations regarding professional zakat for civil servants is in line with the substance of *Maqāṣid al-Syari'ah*, specifically the concept of *Ḥājiyāt*/Secondary benefits, which supports the implementation of professional zakat for civil servants in Sinjai Regency and helps control the debate over professional zakat among civil servants. Therefore, the yet-to-be-passed and enforced regional regulations do not align with the concept of *Ḥājiyāt*/Secondary benefits. Hence, the planning for zakat collection, distribution, and utilization, including the preparation of the Annual Zakat Collection and Distribution Plan, cooperation with the regional government, and the proposal of regional regulations to the regional government, is a step taken by the National Zakat Amil Agency that is in line with the substance of *Maqāṣid al-Syari'ah*, specifically the concept of *Ḥājiyāt*/Secondary benefits, which supports the implementation of professional zakat for civil servants in Sinjai Regency and helps control the debate over professional zakat among civil servants.

3.1.2. The Implementation of the Collection, Distribution and Utilization of Zakat

The context of the application of professional zakat for Civil Servants (PNS) in Sinjai Regency involves several key steps. Firstly, the collection of professional zakat is executed through socialization within government offices and institutions in Sinjai Regency. Once these institutions express interest in participating, a memorandum of understanding (MoU) or cooperation contract is established between them and the National Zakat Management Body (*Badan Amil Zakat Nasional*) of Sinjai Regency. PNS individuals who agree to this MoU or cooperation contract with the National Zakat Management Body must complete a declaration of willingness provided by the body, which is then submitted to Bank Sulselbar through the National Zakat Management Body as an intermediary.

According to the Vice Chairman I of the National Zakat Management Body in Sinjai Regency, the initial step for institutions is to send a letter of proposal to government offices in Sinjai Regency to conduct socialization. Once scheduled, representatives from the National Zakat Management Body visit these government offices to conduct socialization regarding the application of professional zakat for PNS in Sinjai Regency. During these sessions, a declaration of willingness to allocate a portion of their income (2.5% of their earnings) as zakat is presented by the National Zakat Management Body to the PNS. If the PNS agrees, they are directed to complete this declaration, and the National Zakat Management Body then forwards this willingness declaration to Bank Sulselbar. The establishment of Unit Collecting Zakat (*Unit Pengumpul Zakat* or UPZ) within more than 20 institutions with formal approval is an important part of this process.

From the perspective of *Maqasid al-Sharia*, the policies taken by the National Zakat Management Body of Sinjai Regency align with the secondary objectives of *maslahat Taḥsīniyāt*. They aim to facilitate the implementation of zakat rituals and emphasize the educational aspect of informing and raising awareness among the PNS.

The declaration of willingness to allocate a portion of income for zakat serves as legal evidence of the individual's commitment, ensuring transparency and legality. Furthermore, the selection of an official bank account and the establishment of UPZ units in various institutions are strategic measures for zakat collection. These steps also align with the secondary objectives of *maslahat Taḥsīniyāt*, making it easier for both the National Zakat Management Body and PNS to manage zakat payments effectively. Vice Chairman I of the National Zakat Management Body in Sinjai Regency expresses the initiative to create UPZ units in cooperating institutions by requesting the names of potential UPZ administrators.

UPZ units have not been established in all government offices in Sinjai Regency; only a few have signed MoUs for the application of professional zakat for PNS. Each UPZ in participating institutions is asked to provide a specific bank account. These UPZ units act as extensions of the National Zakat Management Body for zakat collection and distribution. While not all UPZ units perform distribution comprehensively, the authority for distribution lies with the National Zakat Management Body, which suggests recipients through Vice Chairman II of the National Zakat Management Body and UPZ unit personnel. Many UPZ administrators in various government institutions formed by the National Zakat Management Body in Sinjai Regency may not have the time or capacity for the selection of zakat recipients, so they delegate this responsibility to the National Zakat Management Body in its entirety.

The distribution of zakat, whether for consumptive or productive purposes, is based on a feasibility study of potential recipients, taking into account data from UPZ units. The priority for recipients is determined by the eight *asnaf*. If both recipients are equally poor, the neediest one is prioritized. This data is then validated by local UPZ units. The feasibility study is also conducted by these units. After this process, the data is consolidated and handed over to the National Zakat Management Body of Sinjai Regency. Subsequently, Vice Chairman II of the National Zakat Management Body, along with UPZ unit personnel, conducts field surveys. If the recipients meet the feasibility criteria, zakat is distributed directly, simplifying the process for recipients.

From the perspective of *Maqasid al-Sharia*, the policy of delegating the selection or nomination of recipients to UPZ units in each government institution aligns with the secondary objectives of *maslahat Taḥsīniyāt*. It is considered a form of recognition or appreciation for PNS in these institutions. Furthermore, the feasibility study conducted by local UPZ units aligns with the secondary objectives of *maslahat Ḥājiyāt*. This study serves to validate the proposed recipients from the public, ensuring zakat is distributed correctly. Field surveys conducted by the personnel of the National Zakat Management Body in Sinjai Regency, based on feasibility standards, are necessary to ensure the validity of the data provided by UPZ units and to ensure precise zakat distribution. These steps are in line with the primary objectives of *maslahat*, specifically *hifz al-mal*, as they serve to safeguard zakat funds from misuse.

Additionally, the priority scale for recipients, based on the eight *asnaf*, aligns with the primary objectives of *maslahat*, specifically *hifz al-din*, as it reflects the fulfillment of zakat obligations according to Islamic law. Distributing zakat directly after a feasibility study and field survey is conducted without convoluted rules is considered in line with the secondary objectives of *maslahat Ḥājiyāt*. This approach simplifies the process for recipients, ensuring they receive their entitlements efficiently and in accordance with Islamic principles.

Another step taken by Vice Chairman II and UPZ unit personnel is to request additional documentation from recipients, such as identity cards and family registration documents (KTP and KK). This is done to strengthen the recipient database. This action aligns with the secondary objectives of *maslahat Ḥājiyāt*, which focus on data accuracy and serve to safeguard zakat funds from misuse. It also simplifies the auditing process. In summary, the approach to the collection, distribution, and utilization of professional zakat for PNS in Sinjai Regency demonstrates a comprehensive system guided by the principles of *Maqasid al-Sharia*, with a focus on achieving both primary and secondary objectives to ensure efficient and fair zakat management.

Among the various forms of implementing the distribution and utilization of zakat, two prominent programs are microfinance and the provision of booth-box assistance. However, most booth-box assistance is funded through voluntary contributions (*infak*). The distribution of productive zakat is also a desire expressed by one of the zakat contributors, who happens to be a civil servant (PNS) within the Ministry of Religious Affairs in Sinjai, and who also holds the position of Section Head for Zakat and Endowments in Sinjai. It is their belief that providing zakat, specifically in a productive form, should not be in the form of direct cash assistance, as this could potentially foster a culture of dependency among the recipients. To empower the beneficiaries and help them become self-sufficient, it is suggested that zakat be provided in the form of capital for starting businesses or stalls, with the aim of transforming them into givers (*muzakki*) within a minimum of two years. This approach aligns with the concept of *Maqāṣid al-Syari'ah*, as it serves the secondary interests (*maslahat Ḥājiyāt*) by catering to the beneficiaries' needs and promoting their self-reliance.

Furthermore, one of the recommendations from a PNS within the Ministry of Religious Affairs in Sinjai is that the Sinjai District National Amil Zakat Agency should motivate PNS who meet the criteria for zakat on their professional income to fulfill their obligations. This aligns with the same concept of secondary interests (*maslahat Ḥājiyāt*) by facilitating the collection of zakat. Additionally, it is hoped that the Sinjai District National Amil Zakat Agency can serve as a role model in zakat management, which falls under the category of tertiary interests (*maslahat Taḥsīniyāt*). Being a role model in zakat management is not an urgent or secondary need, but it is an aspiration that aligns with the principles of *Maqāṣid al-Syari'ah* and will lead to improved zakat management, including professional zakat.

3.1.3. Coordination in the Collection, Distribution, and Utilization of Zakat

Coordination in the collection, distribution, and utilization of zakat concerning the implementation of professional zakat for civil servants (PNS) in Sinjai District involves several key stakeholders. Firstly, the National Amil Zakat Agency of Sinjai District coordinates with the local government, the Sinjai District Regional Representative Council (DPRD), the Ministry of Religious Affairs in Sinjai, Bank Sulselbar, and various government agencies in Sinjai to collect professional zakat from PNS. This coordination includes visits by the National Amil Zakat Agency of Sinjai District to the local government to discuss the implementation of professional zakat through regional regulations, which were initially rejected and are now proposed as a regent's instruction.

This process is similar to the professional zakat implementation for PNS in Bulukumba District, which is based on a pay-roll system. Furthermore, the National Amil Zakat Agency of Sinjai District coordinates with government agencies in Sinjai,

which are projected to be recipients of professional zakat from PNS in Sinjai. For instance, they conduct early notification letters and socialization campaigns to government agencies that are the target beneficiaries. Socialization efforts have included visits to the District Public Prosecutor's Office in Sinjai, Sinjai District Court, Sinjai Religious Court, Sinjai District Police, Military District Command 1424 in Sinjai, the Ministry of Religious Affairs in Sinjai, and the Sinjai Regional Personnel and Human Resources Development Agency as part of their collaboration through Memoranda of Understanding (MoU) with these government agencies. In terms of *Maqāṣid al-Syari'ah*, this coordination approach aligns with the concept of secondary interests (*maslahat Ḥājiyāt*) as it is a step taken to facilitate the implementation of professional zakat for civil servants in Sinjai.

Furthermore, the National Amil Zakat Agency of Sinjai District coordinates with the Sinjai District Personnel and Human Resources Development Agency in collecting the database of civil servants (PNS) in Sinjai District to establish a database of zakat contributors from the ranks of PNS. However, the updating of this database is not regularly carried out by the National Amil Zakat Agency of Sinjai District through the Sinjai District Personnel and Human Resources Development Agency. Consequently, the validity of the database of zakat contributors from among PNS cannot be guaranteed, and this has implications for the database of zakat contributors registered with Bank Sulselbar.

Moreover, Bank Sulselbar does not coordinate with the National Amil Zakat Agency of Sinjai District when there are changes in the number of contributors. The steps taken by the National Amil Zakat Agency of Sinjai District align with the principles of *Maqāṣid al-Syari'ah*, specifically the secondary interests (*maslahat Ḥājiyāt*), as strengthening the database of zakat contributors facilitates the evaluation of professional zakat achievements from year to year, supports the mentoring of contributors, ensures transparent communication of distribution information to contributors, and aids in determining the number of beneficiaries. Thus, strengthening the database of zakat contributors is vital for the effective implementation of professional zakat for PNS.

However, the lack of automatic or integrated updates to the database of PNS contributors by the National Amil Zakat Agency of Sinjai District poses challenges and can lead to inaccuracies in the zakat contributor database. The periodic renewal of the database of beneficiaries every 3 to 6 months through the Local Amil Zakat Agencies (UPZ) in 80 villages/urban areas in Sinjai District is seen as aligned with the secondary interests (*maslahat Ḥājiyāt*). This approach is essential for the efficient distribution of zakat, including professional zakat.

Additionally, the National Amil Zakat Agency of Sinjai District conducts socialization through meetings with several heads of Regional Apparatus Organizations (SKPD). However, there have been complaints from some SKPD heads that there has been no follow-up by the National Amil Zakat Agency of Sinjai District after these meetings. From a *Maqāṣid al-Syari'ah* perspective, this lack of follow-up is considered not in line with the secondary interests (*maslahat Ḥājiyāt*) as follow-up coordination is essential for facilitating the implementation of professional zakat for PNS in Sinjai District. Without proper follow-up, the progress of implementing professional zakat for PNS in Sinjai District may be slow and may not meet the intended targets, especially

given the absence of local regulations regarding professional zakat for PNS in Sinjai District.

The coordination in distribution and utilization of zakat is carried out by the National Amil Zakat Agency of Sinjai District, involving Local Amil Zakat Agencies (UPZ) in sub-districts and government institutions established by the National Amil Zakat Agency of Sinjai District. This coordination includes feasibility studies conducted by UPZ officials and the officials of the National Amil Zakat Agency of Sinjai District together with UPZ officials at the local level in surveying the prospective zakat beneficiaries. This cooperative approach is in line with the concept of secondary interests (*maslahat Ḥājiyāt*), as it is essential to facilitate the distribution of zakat, both consumptive and productive, including professional zakat, to beneficiaries dispersed across the 9 sub-districts of Sinjai. Furthermore, the feasibility studies and on-site surveys that form the mechanism for distributing zakat, both consumptive and productive, are seen as aligned with the secondary interests (*maslahat Ḥājiyāt*) because these mechanisms are necessary to anticipate any misallocation or misuse of zakat funds by irresponsible parties.

Complaints and shortcomings in the coordination process, including collection, distribution, and utilization of zakat, pertain to the transparency of information provided to PNS contributors. Some contributors have expressed concerns, such as the lack of clarity in the deduction of zakat contributions from their salary lists by Bank Sulselbar. This has led to doubts among PNS contributors regarding the status of professional zakat collection. Additionally, there have been issues related to the transparency of information regarding the collection and distribution of professional zakat to PNS contributors in Sinjai District. These concerns have arisen from the feedback of some PNS contributors. Some have even chosen to channel their professional zakat contributions through the respective UPZ in their institutions or outside the National Amil Zakat Agency of Sinjai District due to doubts about the status of zakat distribution by the agency. These issues indicate that the public information system of the National Amil Zakat Agency of Sinjai District is not aligned with the secondary interests (*maslahat Ḥājiyāt*), and it could potentially lead to neglect of religious and financial obligations.

On the other hand, separate reporting of zakat and *infak* is in line with the secondary interests (*maslahat Ḥājiyāt*), as without the separation or classification of *infak* and zakat reports, it would be challenging for the management of the National Amil Zakat Agency of Sinjai District to prepare accountability reports for financial audits. Furthermore, the routine monthly reporting of zakat management by the National Amil Zakat Agency of Sinjai District to the Secretary of Sinjai District is consistent with the secondary interests (*maslahat Ḥājiyāt*).

To strengthen these reports, the documentation of zakat distribution or allocation by the National Amil Zakat Agency of Sinjai District is shared within the respective UPZ institutions and with the Social Services Office of Sinjai District in each distribution activity. This approach is seen as aligned with the secondary interests (*maslahat Ḥājiyāt*), as it facilitates accountability, provides transparency in the distribution and utilization of zakat, including professional zakat, to build trust among the local government, PNS contributors, and the general public. However, it could have severe implications if some or all UPZ institutions are inactive or become non-functional. In such cases, the zakat distribution/publication system must be equipped *with an integrated information system between the National Amil Zakat Agency of*

*Sinjai District, the local government of Sinjai District, and PNS contributors to prevent d*isruptions in information dissemination when UPZ institutions become inactive or dormant.

The distribution of professional zakat is combined with other types of zakat. It is distributed through five official programs by BAZNAS (National Amil Zakat Agency) in Sinjai District, which are specifically designated for the eight recipients classified under the asnaf of zakat. These programs are:

a. *Sinjai Peduli*: This program falls under the humanitarian domain. It involves providing assistance to fire victims in Bungae Village, Biji Nangka Sub-District, Sinjai Borong, on behalf of Ms. Marna, on October 10, 2021. The aid is sourced from Zakat, *Infak*, and *Sedekah* (ZIS) funds. The Sinjai Cares program is considered in alignment with the substantive goals of Sharia (*Maqāṣid al-Syari'ah*), specifically secondary interests (*maslahat Ḥājiyāt*) and even primary interests (*maslahat Ḥājiyāt*), namely the preservation of life (*hifz al-nafs*), as it is intended for individuals affected by natural and non-natural disasters, such as fire victims (Badan Amil Zakat Nasional Kabupaten Sinjai, 2021a). This program is seen as essential in aiding those in distress and fulfilling humanitarian needs.
b. *Sinjai Cerdas*: Falling under the domain of education, this program involves providing educational assistance to four outstanding students in the tahfiz program conducted by Darul Istiqamah Puce'e in collaboration with the local government of Sinjai Regency. The assistance was provided on July 11, 2021, using Zakat, *Infak*, and *Sedekah* (ZIS) funds. The Sinjai Smart program is deemed to be in line with the substantive goals of Sharia, specifically secondary interests (*maslahat Ḥājiyāt*) and even primary interests (*maslahat Ḥājiyāt*), particularly the preservation of intellect (*hifz al-'Aql*) (Badan Amil Zakat Nasional Kabupaten Sinjai, 2021d). This program supports the field of education, which is crucial for preserving and nurturing intellect, preventing school dropouts, and building an educated generation. Education is vital for human well-being, and life without education becomes challenging.
c. *Sinjai Religi*: This program focuses on religious outreach and advocacy. It includes providing assistance for the capacity development training of Quran teachers and Imams in Sinjai Borong Sub-District. The training was conducted in Batu Belerang Village on July 27, 2021. The assistance was handed over by Ishak Amin, S.Ag, Vice Chairman IV of the National Amil Zakat Agency of Sinjai District, to the activity's coordinator, Mr. Amiruddin, S.Pd, M.Pd, at the BAZNAS office on June 15, 2021. The Sinjai Religious program is considered to be aligned with the substantive goals of Sharia, specifically secondary interests (*maslahat Ḥājiyāt*) and even primary interests (*maslahat Ḥājiyāt*), particularly the preservation of faith (*hifz al-din*) (Badan Amil Zakat Nasional Kabupaten Sinjai, 2021b). This program supports religious outreach and advocacy, which is essential for preserving faith and supporting religious activities. In conclusion, this program meets the needs in the field of religion, an aspect that should be prioritized.
d. *Sinjai Berdaya*: This program focuses on economic development and aims to transform recipients into contributors (economic empowerment). It includes renovating a retail space and providing financial assistance to Ms. Dawiyah,

allowing her to establish a supervised canteen located in Pattongko Village, Sinjai Tengah Sub-District in 2021 (Badan Amil Zakat Nasional Kabupaten Sinjai, 2021c). The Sinjai Empowered program is considered in line with the substantive goals of Sharia, particularly secondary interests (*maslahat Ḥājiyāt*), as it is crucial for supporting the economy of those in need, saving people from loan sharks, and transforming recipients into contributors or contributors (*mutasaddiq or muzakki*).

e. *Sinjai Sehat*: This program focuses on health. It includes providing assistance to Mr. Rabiul Awaluddin, who has suffered an accident and is economically disadvantaged, in Lappa Village, Saotanre Sub-District, Sinjai Tengah. The aid is sourced from the Zakat, *Infak*, and *Sedekah* (ZIS) funds collected by BAZNAS in Sinjai Regency (Badan Amil Zakat Nasional Kabupaten Sinjai, 2021e). The Sinjai Healthy program is considered to be in alignment with the substantive goals of Sharia, particularly secondary interests (*maslahat Ḥājiyāt*) and even primary interests (*maslahat Ḥājiyāt*), particularly the preservation of life (*hifz al-nafs*). This program is essential for providing services to those in need and preserving or protecting life.

All of these programs represent a holistic approach to addressing various societal needs, and they are carried out in accordance with the principles and goals of Sharia. They encompass humanitarian, educational, religious, economic, and health-related aspects, aiming to improve the well-being and overall quality of life for the beneficiaries. The provision of assistance and support in these domains is considered vital and essential in fulfilling the broader objectives of zakat and upholding the principles of *Maqāṣid al-Syari'ah*.

4. CONCLUSION

After providing a detailed discussion of the Application of Professional Zakat for State Civil Apparatus (Case Study of BAZNAS Sinjai Regency), several conclusions can be drawn. The practice of managing professional zakat for State Civil Apparatus (ASN) by the National Zakat Agency (BAZNAS) of Sinjai Regency, under the jurisdiction of the Sinjai Regency Regional Government, is being carried out even without clear regional regulations. It continues to involve coordination with various local entities, including the Local Government of Sinjai Regency, the Regional Representative Council of Sinjai Regency, the Ministry of Religious Affairs of Sinjai, Bank Sulselbar, and government agencies within Sinjai Regency.

The distribution and utilization of zakat are still guided by 5 programs, namely *Sinjai Peduli, Sinjai Cerdas, Sinjai Religi, Sinjai Berdaya,* and *Sinjai Sehat*. However, the implementation of professional zakat for civil servants by BAZNAS Sinjai Regency is not fully aligned with Maqāṣid Al-Sharī'ah due to certain obstacles and barriers in the implementation of professional zakat for civil servants in Sinjai Regency.

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Copyrights

PROTECTION OF FICTIONAL CHARACTERS AGAINST FANFICTION ACTIONS AND ITS RELATION TO FAIR USE IN THE PERSPECTIVE OF COPYRIGHT LAW

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Abstract

This research aims to investigate the protection of fictional characters within the framework of intellectual property, including copyright, and explore the challenges arising from fanfiction cases in the era of the internet. Through legal analysis, the study delves into the legal regulations governing fictional characters and identifies the potential application of fair use principles to support fanfiction activities that utilize pre-existing fictional characters. The findings provide insights into the legal framework surrounding fictional characters within intellectual property law and its relevance in addressing the evolving landscape of internet culture. Moreover, this research contributes to a deeper understanding of how to safeguard fictional characters while considering freedom of expression and fostering innovation in the realm of creativity. By examining these issues, this study not only sheds light on the legal aspects of protecting fictional characters but also addresses the dynamic interplay between traditional intellectual property concepts and the transformative nature of fan-driven creativity on the internet, ultimately contributing to the ongoing discourse on the regulation of fictional characters in the digital age.

Keywords: *Fanfiction, Fictional Characters, Intellectual Property*

1. INTRODUCTION

Fanfiction is a recognized term denoting creative works produced by enthusiasts derived from an original literary source. Fanfiction typically engages with fictional characters originating from the original work, although fan creators craft distinct narrative settings and plotlines. The authors of fanfiction are seldom vested with formal authorization by the original work's copyright holder. In this context, such works predominantly take the form of written narratives, often bypassing professional publication.

Fanfiction constitutes a form of fictional narrative generated by fans, predicated on preexisting storylines, characters, or settings. Its scope extends to various media forms, encompassing films, comics, novels, celebrities, and other prominent figures. Some fanfiction compositions may incorporate the writer's identity or feature other individuals as characters (commonly referred to as Original Characters or OCs), while others may abstain from such inclusions. Additionally, certain fanfiction genres employ reader-insertion techniques, inserting the reader into the narrative as a character. Fanfiction creations have witnessed an exponential surge in popularity, as reflected in the extensive fan base and the proliferation of hosting platforms, such as Fanfiction Mobile and Wattpad. Presently, fanfiction stands as a distinct literary genre.

Notwithstanding its burgeoning worldwide and Indonesian popularity, the practice raises queries pertaining to the copyright protection framework applicable to fanfiction involving fictional characters drawn from original copyrighted works. When scrutinizing the nature of fanfiction activities, the stories originating from fanfiction compositions are original works produced by fan fiction writers. On the surface, fanfiction compositions

qualify as intellectual property creations, rendering them eligible for copyright protection. However, upon closer examination, it becomes evident that the characters or figures featured in fanfiction narratives often hail from renowned copyrighted works and constitute integral components of the original stories. Notable fictional characters, such as Sherlock Holmes from the novels of Sir Arthur Conan Doyle or Harry Potter from the writings of J.K. Rowling, are commonly employed as protagonists in fanfiction creations.

Fanfiction writing has evoked controversy within society, predominantly premised on allegations of distorting the fictional characters initially fashioned within the original works. These contentions also relate to the economic advantages reaped by fanfiction enthusiasts, invariably entailing potential copyright infringement issues. Yet, in the context of safeguarding fictional characters, Article 40, Paragraph 1 of the Indonesian Copyright Law No. 28 of 2014 (henceforth referred to as UUHC) provides a comprehensive exposition of protected forms of creative works. Article 40, Paragraph 1 of the UUHC enumerates a diverse array of copyright-protected creations, encompassing, but not confined to, books, pantomimes, the public presentation of published written works, and all conceivable written forms. It further extends to lectures, speeches, and analogous works, educational and scientific aids, musical compositions with or without accompanying lyrics, theatrical productions, choreography, *wayang* (puppetry), and pantomime. The list includes various visual arts, encompassing paintings, drawings, carvings, calligraphy, sculptures, or collages, as well as applied arts, architecture, cartography, batik works, and other motif arts. Furthermore, the protected categories encompass photography, portraiture, cinematography, translations, interpretations, adaptations, arrangements, modifications, and derivative creations. This section also addresses transformations, adaptations, arrangements, and modifications of expressions of traditional cultural heritage, as well as compilations of creations or data in formats suitable for computer programs and other media. Moreover, it incorporates compilations of expressions from traditional culture, contingent upon the compilation being an original work, along with video games and computer programs.

The aforementioned article implies that fictional characters do not explicitly fall within the scope of copyright protection under the UUHC, engendering an element of normative ambiguity. Nevertheless, scrutinizing a literary creation, such as a novel, underscores the integral role of developed characters alongside the storyline. Fictional characters ought to represent an indivisible aspect of the written work, constituting a defining facet of its identity. The practice of fanfiction could thus potentially erode the distinctive identity of the original work, thereby giving rise to losses.

Copyright, as an integral component of Intellectual Property Rights, receives explicit regulation under the 2014 Indonesian Copyright Law. This legislation mandates the protection of fictional characters within various media forms, including cinematography, literary compositions, dramatic works, books, novels, comics, and video games. The significance attributed to fictional characters as the foundation for these creative works raises a consequential legal quandary, as the 2014 Copyright Law does not explicitly delineate the scope of protection vis-a-vis fictional characters. The scope of protection is ambiguous, encompassing aspects extending beyond character portrayal to encompassing the broader application of these characters.

The ensuing debate also correlates with the doctrine of fair use. The concept of fair use is a legal doctrine that provides a constraint on copyright, permitting the utilization

of copyrighted works for specific purposes without constituting copyright infringement, provided that requisite conditions, such as non-commercial usage and permission from the creator, are satisfied. Fair use, as outlined within the prevailing legal framework in Indonesia, specifically in Articles 43 through 49 of the UUHC, posits that actions do not constitute copyright infringement if they involve the use, replication, duplication, or alteration of a copyrighted creation, in whole or in substantial part, as long as the source is duly acknowledged or completely cited and does not unduly impair the reasonable interests of the creator or copyright holder. This exception is permissible when the actions serve educational purposes.

The emergence of the doctrine of fair use in this context stems from contentions that certain fanfiction activities do not significantly impact the original creator or copyright holder's economic interests. Fanfiction, born from fan creativity, predominantly entails non-commercial writing and is often disseminated freely across numerous digital platforms. The objective of this research is to scrutinize the extent to which fanfiction may be construed as an act of fair use within the contours of copyright law. In addition, this study seeks to explore the possibility of expanding or tailoring the copyright framework to better accommodate the burgeoning fanfiction phenomenon. Consequently, this research will offer a substantial contribution to comprehending and addressing the legal issues arising from fanfiction and the portrayal of fictional characters in the evolving digital age.

2. RESEARCH METHODS

This research employs a juridical-normative approach, utilizing three key research methodologies: the statute approach, the conceptual approach, and the comparative approach. The statute approach allows for the collection and analysis of data from legal statutes and regulations applicable in Indonesia, with a particular focus on Copyright Law No. 28 of 2014 (UUHC). Data gathered under this approach encompasses legal provisions relevant to copyright, the protection of fictional characters, and the fair use doctrine within the context of copyright.

The conceptual approach in this study involves collecting data from an extensive range of legal literature, academic papers, and theories pertaining to various aspects of copyright, fictional characters, fanfiction, and fair use. This diverse dataset forms a rich tapestry of theoretical knowledge that underpins the research. It serves as the theoretical backbone, providing an in-depth understanding of the core concepts central to the research, including copyright law, the nature of fictional characters, the dynamics of fanfiction, and the legal nuances of the fair use doctrine. This conceptual data not only informs the theoretical framework of the study but also helps in crafting rigorous theoretical arguments and a nuanced comprehension of the multifaceted research issues.

The comparative approach involves comparing the copyright regulations in Indonesia with the laws in other jurisdictions relevant to the research. Comparative data aids in identifying differences, similarities, and best practices related to fanfiction and fictional characters. This data will be employed to formulate relevant legal recommendations and implications. By utilizing these three approaches, this research will analyze the legal aspects pertinent to fanfiction, fictional characters, and copyright. The study will conclude with recommendations and conclusions drawn from the analysis of data obtained from diverse sources.

3. DISCUSSION

3.1. Fanfiction and Fictional Characters

Fanfiction is a work of fiction created by a fan who names the characters in their story using the names of famous characters that already exist. Usually, these fanfictions are shared by the authors on a website commonly used for sharing fanfiction. As time has progressed, it has become easier to access these fanfictions, and they are typically distributed for free and publicly. Fanfiction is a written work created by fans based on original works such as books, films, TV series, manga/anime, or video games. In fanfiction, fans develop new stories using the characters, world, or concepts from the original work. Fanfiction can take various forms, including short stories, novels, scripts, or comics.

Fanfiction is often published online on specialized platforms like Archive of Our Own (AO3), Fanfiction.net, or Wattpad. There, fans can upload their fanfiction for others with similar interests to read. There are also fan communities that interact and provide feedback to each other. The sources of fanfiction can vary, depending on the original work that serves as inspiration. Some fans write fanfiction based on popular books or films like Harry Potter, Star Wars, or the Marvel Cinematic Universe. Others develop alternative stories for TV series like Game of Thrones or Sherlock Holmes. Additionally, anime and manga like Naruto, One Piece, or Attack on Titan are also popular sources for fanfiction. Even video games like Overwatch or The Legend of Zelda serve as inspiration for fanfiction.

Fanfiction sources are not limited to widely popular media. Some fans write fanfiction for more niche or less-known works. For example, fanfiction can be based on classic books, indie films, or even original artwork uploaded to platforms like DeviantArt. Fanfiction often differs significantly from the original work, with the introduction of new characters, locations, and sometimes even mixing with other works. Fanfiction takes various forms, such as short stories, dramas, or interactive events. Based on the definition of fanfiction above, it is a creation produced by fans using their imagination based on pre-existing characters and brought to life in written form in the field of literature.

However, in the present day, widely spread fanfiction tends to present some issues, including:

a. Copyright Infringement: The most significant issue in fanfiction is copyright infringement. Fanfiction uses characters, stories, and worlds created by others without their permission. This can lead to legal problems for fanfiction writers and may result in the restriction or removal of their stories.
b. Inappropriate or Sensitive Content: Some fanfiction contains inappropriate content, including violent scenes, explicit sexual content, or strong language. This can make readers uncomfortable if they do not expect or are not comfortable with such content.
c. Incorrect or Inconsistent Interpretation of Original Characters: Fanfiction writers sometimes provide incorrect or inconsistent interpretations of original characters. This can disrupt the reading experience and leave loyal fans of the characters unsatisfied with how they are portrayed in the story.
d. Bullying and Trolling: The fanfiction world is not immune to bad behavior such as bullying and trolling. Some fanfiction writers or fans may unfairly criticize or

attack other fanfiction writers or their works. This can create an unhealthy and detrimental environment for the fanfiction community.

e. Overreliance on Conventions and Stereotypes: Some fanfiction tends to rely on conventions or stereotypes within a specific genre or fandom. This can result in less original and challenging works and hinder innovation in exploring existing characters and worlds.
f. Disparagement of Original Authors: In some cases, fanfiction writers may disparage or mock the original authors or their works. This can create conflicts between fanfiction fans and fans of the original works and damage the relationship between these communities.
g. Overdependence on Specific Powers: In some fandoms, fanfiction may become overly dependent on the powers or abilities of specific characters in the original work. This can reduce the complexity and interest of the story and lead to an excessive reliance on existing story elements.

There have also been legal cases related to fanfiction. For example, the "Anne Rice vs. Internet" case in 1996, where author Anne Rice filed a lawsuit against fans who had written fanfiction based on her work, "The Vampire Chronicles." Rice argued that the fanfiction violated her copyright. However, she later withdrew the lawsuit after facing resistance from the fanfiction community. Another case, "Cassandra Claire vs. Fanfiction Plagiarism," in 2001, involved fanfiction writer Cassandra Claire (real name Cassandra Clare) being accused of plagiarism for incorporating parts of other writers' works into her fanfiction. Although this created tension in the fanfiction community, other cases have arisen, such as "Paramount Pictures vs. Axanar Productions" in 2015, where Paramount Pictures sued Axanar Productions for producing a fan film based on the "Star Trek" franchise, alleging copyright and trademark infringement. Eventually, both parties reached an out-of-court settlement. There was also a long-standing case in 2008, "J.K. Rowling vs. Steven Vander Ark," where fanfiction writer Steven Vander Ark and his publisher, RDR Books, faced a legal lawsuit from author J.K. Rowling and her publisher, Warner Bros. Vander Ark had created "The Harry Potter Lexicon," an encyclopedia based on the "Harry Potter" series. Rowling argued that the encyclopedia violated her copyright.

Given the numerous issues, fanfiction often intersects with fictional characters. Fictional characters often gain popularity among fans and have dedicated fan communities. These fan communities typically produce fanfiction, fan art, cosplay, and various other forms of creativity related to these characters.

Characters are individuals or other entities within a narrative story. They are essential elements used by a creator or author to support the themes and conflicts in various forms of media such as film, video games, novels, or comics. According to Kurtz, (2012), characters "can be used outside their original contexts. They can take on lives of their own, moving from one story to another, from one medium to another, from stories to merchandise and back again." Matthew Freeman adds that, "It was character, then, that worked to build narrative references between the films and the books, connecting both media texts as components of a larger story world."

Characters can originate from real-life figures (realistic or reality-based characters) or be purely fictional (fictional characters). DiBattista (2011) notes, "The character may be entirely fictional or based on a real-life person, in which case the distinction of a 'fictional' versus 'real' character may be made." Creations in the form of cinema, literature,

drama, books, novels, comics, and video games often result in the development of fictional characters (referred to as "characters" in this dissertation), serving as foundational elements used by creators or authors to support themes and conflicts. As Roser et al. (2007) assert, "In literature, characters guide readers through their stories, helping them to understand plots and ponder themes." Characters also play a crucial role in developing themes, ensuring that the author's messages are effectively conveyed in various media, including cinema, literature, drama, books, novels, comics, and video games.

Fictional characters are characters created within works of fiction, such as novels, films, television series, video games, or other narratives. They do not exist in real life and are purely products of imagination within these works. Fictional characters can possess a wide range of attributes, including physical appearance, personality, background, goals, skills, and relationships with other characters. Key facets to comprehend regarding fictional characters include (Swain, 2012):

a. Characterization: Characterization is the process of character development, involving elements such as physical descriptions, backgrounds, emotions, motivations, beliefs, and character actions. Effective characterization enables readers or viewers to understand and connect with the character.
b. Role in the Plot: Fictional characters often assume significant roles within the storyline. They may serve as central figures or supporting characters, contributing to the narrative's development. Each character may have distinct conflicts, goals, or journeys they undertake within the narrative.
c. Character Development: Throughout the narrative, fictional characters frequently undergo development. They may face challenges, alter their viewpoints, or experience emotional transformations. Character development enhances the complexity and authenticity of the character, engaging readers or viewers.
d. Representation and Identification: Fictional characters can also function as representations or symbols of specific groups or issues. For instance, certain characters may symbolize heroism, cultural representation, or specific values. Readers or viewers may identify with fictional characters and empathize with their experiences and emotions.
e. Fictional characters play a vital role in literary and artistic works. Creators endeavor to fashion characters that are engaging, multifaceted, and relatable to their audience. Strong fictional characters bring narratives to life, enhance narrative appeal, and contribute to more fulfilling reading or viewing experiences. In contemporary times, fictional characters often outshine the works from which they originate, becoming the icons of entire literary or cinematic creations.

Intellectual property law, as defined by Copyright Law, safeguards creative works when they are tangibly expressed, but it does not explicitly address the copyright protection of fictional characters. The distinction between visual and textual representation, such as in films or comic books, makes characters eligible for copyright protection. However, purely literary works like novels pose challenges in protecting fictional characters through copyright. Therefore, a comprehensive approach to copyright protection for fictional characters is crucial, particularly in light of challenges posed by fanfiction and related activities.

3.2. Fictional Character Protection in Copyright Perspective

John Locke, an influential figure in the common law tradition, expounded on the labor theory. According to Locke, property rights are one of three inseparable things from humans, along with life and liberty, as they are a natural or divine law, and these three things originate from God (Roisah, 2015). Locke (2015) explained that every individual has a right to themselves, including the products of their labor, as obtaining something requires sacrifice, such as discovering, processing, and adding a "personality" to their work. As expressed in the following passage: "...yet every man has a 'property' in his own 'person.' This nobody has any right to but himself. The 'labor' of his body and the 'work' of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his property.

The addition of "personality," as explained by Locke, was developed by Georg Wilhelm Friedrich Hegel, or commonly referred to as Hegel. Hegel explained that "the individual's will be the core of the individual's existence...constantly seeking actuality...and effectiveness in the world." This theory is considered a manifestation of the concept of freedom, which, according to Hegel, must be realized in the form of a creative work to be clearly visible. Hegel also argued that the compensation given to someone for purchasing the work of the creator is a recognition of the creator. Therefore, the presence of Intellectual Property Rights (IPR) can create an environment that supports economic and social aspects for the creation of intellectual works, which are ultimately essential for human development (Hughes, 1988). Hegel's theory complements Locke's with two reasons. First, IPR is property related to works that demonstrate intellectual capacity and creativity beyond mere consumption, as stated by Locke. Second, Hegel's interpretation of Locke's theory laid the foundation for the idea that IPR is an abstract right that underpins human existence (Nasution, 2013).

The Copyright Law (UUHC) regulates that copyright is an exclusive right of the creator that arises automatically based on the declaratory principle if a creation has been manifested in tangible form. The exclusive right is a right granted specifically by the creator, so a person's creation belongs entirely to the creator, and the creator can allow or prohibit someone from exploiting the creation. The UUHC recognizes two types of rights: economic rights and moral rights. Economic rights involve the right to obtain economic value, such as money, while moral rights concern the protection of the creator's personal interests and reputation.

In essence, a fictional character is the creation of an artist, and they use their imagination to provide specific and unique attributes to the idea of a character, thereby giving the idea an expression or fixation. Furthermore, the creator of a fictional character uses their thinking and effort to shape the character. Fictional characters are also the result of the creator's creativity. Therefore, it can be concluded that the process of creating a fictional character fulfills the criteria for creating a work that can be protected by copyright, and the creator of a fictional character should be able to exploit their work by providing protection (Biswas, 2004).

In line with this opinion, Brehm & May (2012) argued, "Just because a work is copyrighted, however, does not mean that every element of the work is protected against copying. Copyright protects characters whose talents and traits qualify as unique elements of expression, not simply basic ideas." Metsola (2016) argued, "Only characters that are

described sufficiently distinctively and have consistent identifiable traits qualify for copyright protection separate from the works in which they appear."

Regarding tangible expression, this provision is based on the fundamental doctrine of copyright law, which states that copyright protects the "expression" of a work and does not protect an "idea" that has not been expressed in tangible form. This doctrine is found in TRIPS Article 9(2). In the UUHC, it is mentioned in the general provisions on creations in Article 1(1) and also in Article 41(a), which states that "creations that have not been manifested in tangible form" do not receive copyright protection. Furthermore, the UUHC provides protection for works of art that serve as the medium for the birth of fictional characters, such as cinematographic works, literature, books, comics, novels, dramas, and video games. However, fictional characters themselves are not explicitly protected; the UUHC provides general protection. This creates ambiguity and confusion about whether copyright protection also extends to fictional characters, not just their visual representation.

In the United States, protection for fictional characters is established through jurisprudence, with Judge Learned Hand introducing the concept of "the level of abstraction analysis." This concept explains that the position of the idea of a creation that is universal and in the public domain is at the top, with the foundational layer being the expression of the idea that has been realized. Fictional characters can be included in the thematic layer of this expression, but they must meet the criteria for copyright protection (Jened, 2014).

According to the researcher, fictional characters have essential elements, including the fact that each character derived from an author's idea is expressed in tangible form, whether through visuals or writing that can be clearly and distinctly conveyed. Not all fictional characters can be protected by copyright. In the United States, courts have formulated specific tests or standards to set boundaries by applying the Character Delineation Test and Story Being Told Test (Donaldson & Callif, 2008). To be eligible for protection, fictional characters must meet certain criteria, including (Hans, 2018):

a. Fictional characters must possess unique or exceptional characteristics. Fictional characters are extraordinary or unusual in their characteristics, setting them apart from ordinary beings.
b. Fictional characters must be clearly defined and developed with consistent traits, such as clothing, speech or voice, instincts, physical attributes, or interactions with supporting characters.
c. The character should have the potential to be recognized by the public at large. The more well-known a fictional character becomes among the public and the more numerous the works in which the character appears, the better it is for copyright protection.

The Story Being Told Test ensures that the protection of a fictional character, independent of the work in which the character appears, is granted appropriately. With this standard, if the character is not a central element of the story and serves merely as a means to convey the narrative, it seems unlikely for the character to be considered a separate or independent work from the work in which it is told.

The Story Being Told Test may be feasible in Indonesia. To strengthen the fact that fictional characters can be protected from a copyright perspective, their protection can

also be implemented through moral rights. Moral rights are the rights of a creator to prevent others from taking actions that harm the creator. Regulations concerning moral rights originated in the 19th century in France and have since been included in Article 6 bis of the 1928 revision of the Berne Convention, which states:

"*Independently of the author's economic rights and even after the transfer of said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation, or other modification of or other derogatory action in relation to the said work, which would be prejudicial to his honor or reputation.*"

Based on the formulation of this article, the substance of moral rights includes:

a. The right to claim authorship, which is the right to receive recognition as the creator. This can be done by mentioning or including the creator's name in the creation.
b. The right to object to any distortion, mutilation, or other modification of the work, which is the creator's right to reject actions that could distort, cut, or alter parts of the creation or modify it in a way that damages or harms the creator's reputation and honor.
c. The right to object to other derogatory actions in relation to the said work, which is the creator's right to reject any actions or treatments that may disrupt or diminish the creator's honor and reputation.

When related to the protection of fictional characters, moral rights can indeed provide protection. However, protection through moral rights does not separate the fictional character from the original work. The original work, in this context, is the primary source from which the fictional character originates, such as a film, novel, or illustrated book like a comic (the parent work). Additionally, protection related to moral rights is also regulated in the Indonesian Copyright Law (UUHC) in Article 5, which states:

Moral rights are inherent rights of the Creator that are perpetual in nature, including the right to:

a. Include or not include their name on copies in connection with the use of their creation for the public;
b. Use their pseudonym or alias;
c. Modify their creation according to societal norms;
d. Change the title and subtitle of the creation; and
e. Maintain their rights in case of distortion of the creation, mutilation of the creation, modification of the creation, or rights that are damaging to their honor or reputation.

To provide dual protection for fictional characters, a clear depiction of the characters to be protected is necessary. As mentioned earlier, it is important to define and develop fictional characters clearly with consistent traits, such as their clothing, speech or voice, instincts, physical characteristics, or interactions with supporting characters.

3.3. Protection of Fictional Characters related to Fanfiction activities and its relation to Fair Use in Copyright

In many cases, fanfiction that connects fictional characters from the original creator strengthens the argument that fanfiction activities are actually common, and their relationship with copyright uses fictional characters from original works that are protected by fair use. Fair use is a legal doctrine that originated in U.S. copyright law, allowing the use of copyrighted materials in other works under certain conditions (Depoorter & Parisi, 2002). Fair use is one of the copyright limitations designed to balance the interests of copyright holders and the public in broader distribution and use of creative works by allowing it as a defense against claims of limited specific copyright infringement (Aufderheide & Jaszi, 2018).

Fair use, also known as "*Kepentingan yang Wajar*" in Indonesian law, is regulated in Article 15 of the Indonesian Copyright Law (UUHC) and states that copyright use can be carried out, provided that the source is attributed or mentioned and it is not considered a copyright violation:

a. The use of another party's creation for educational, research, scientific writing, report preparation, writing criticism or review without harming the legitimate interests of the creator.
b. The use of another party's creation, in whole or in part, for defense purposes, either in or out of court.
c. The use of another party's creation, in whole or in part, for purposes of lectures solely for educational and scientific purposes, or for free performances or displays, provided it does not harm the legitimate interests of the creator.
d. Reproduction of a creation in the fields of science, art, and literature in braille for the benefit of the visually impaired, unless such reproduction is commercial.
e. Reproduction of a creation other than computer programs, in a limited manner by any means or similar process by public libraries, scientific or educational institutions, and non-commercial documentation centers solely for their activities.
f. Alterations made based on technical implementation considerations of architectural works, such as building creations.
g. The creation of backup copies of a computer program by the owner of the computer program for their own use.

Fair Use is one of the copyright law's protections in using copyrighted materials reasonably and in a limited manner to minimize copyright violations. However, on the internet, various copyright violations can occur, such as copying copyrighted internet content, sharing music data without permission, and reading articles and e-books that may lead to copyright infringements.

Fanfiction and copyright are closely related. Copyright protects the exclusive rights of the original creator to control the use, reproduction, and distribution of their works. Fanfiction, as a derivative work based on an original work, can raise questions about copyright infringement. In essence, fanfiction involves using characters, worlds, or concepts owned by others. Although fanfiction is typically created with the intention of respecting or appreciating the original work, it still involves the use of copyrighted material. Therefore, fanfiction technically infringes on copyright. According to

researchers, there are several limitations to fair use related to the use of fictional characters as seen in the characteristics of fanfiction activities:

First, fanfiction is often published on internet platforms like Wattpad or mobile applications, and these websites do not distribute content for free. Fanfiction works can be accessed through payments made to compensate the fanfiction authors and as administrative fees for the websites. This can be seen as a commercialization of fanfiction, which does not align with the fair use regulations in the UUHC.

Commercialization is regulated in Article 9 of the UUHC. The original creator (in this case, the original creator of the fictional character) has economic rights to publish, duplicate, translate, adapt, arrange, transform, distribute, perform, announce, communicate, and lease their creation. Anyone exercising the economic rights of the creator must obtain permission from the creator or copyright holder. In the case of fanfiction, several economic rights are exercised:

a. Fanfiction involves the transformation of fictional characters from the original copyrighted work.
b. Fanfiction is published on websites, which constitutes an act of communication.

In addition to the violation of economic rights, fanfiction also infringes on the moral rights of the original creator, especially regarding the protection of the creator's rights in case of distortion, mutilation, modification of the creation, or actions that damage the creator's honor or reputation.

From a copyright perspective, fanfiction has the potential to be considered a copyright infringement by the original creator or copyright owner. However, in many cases, copyright owners do not take legal action against fans creating fanfiction. Many copyright owners choose to allow fanfiction to exist because it can help maintain interest and love for the original work. Fanfiction can also serve as an unofficial form of promotion for the original work.

In essence, fanfiction and similar works created by fans in terms of copyright are considered acts of infringement. There is no one solution that benefits both fanfiction creators and original creators. Changes in copyright law, including the protection of derivative works and exceptions to fair use, may be necessary to avoid copyright violations. The other solution is to expand the moral rights of authors, giving them more authority to control how their content is used by others. Ideally, this expansion allows authors to oversee derivative content, such as fanfiction, without relying on the derivative work doctrine. Another possibility is to provide limited licenses to fans who want to create fanfiction. If copyright holders allow their fans to create derivative works freely, fans do not need to worry about being sued, and copyright holders do not need to compete with their fans.

Unfortunately, there is no single solution to resolve the fanfiction and derivative works dilemma. However, better representation from fan communities can help address some of the issues. Well-organized fans are in a better position to negotiate with original creators and copyright holders.

4. CONCLUSION

Based on the comprehensive analysis undertaken, it can be deduced that fictional characters represent an integral component within the primary work, and copyright pertaining to these fictitious personas should be duly acknowledged and safeguarded, encompassing both economic and moral dimensions. The confusion that has arisen from fanfiction has led to legal ambiguity, especially evident within Indonesia's jurisdiction and beyond. Such scenarios recurrently culminate in conflicts between the authors of fanfiction and the proprietors of copyright for the fictional characters in question. In the contemporary digital milieu, derivative works such as fanfiction have indubitably assumed a pivotal role within the realm of internet culture. Consequently, measures necessitate formulation to facilitate fanfiction activities while concurrently upholding the integrity of the original creators' intellectual property rights. A plausible remedy may lie in the establishment of a dedicated forum or platform, thus underpinning fanfiction works and affording a conduit for direct discourse between enthusiasts and the authentic creators. In this context, the purview of fanfiction activities should not be circumscribed exclusively within the realm of economic rights infringement but be regarded as a manifest expression of adulation and endorsement for the progenitor works.

In summation, it is imperative to discern a judicious equilibrium betwixt the safeguarding of the rights of creators of fictional characters and the allowance for aficionados to partake in creative expressions via fanfiction. The creation of a legal framework and platforms that acknowledge and honor both facets of this complex dynamic hold the promise of resolving the ongoing legal impasses and ambiguities surrounding fanfiction, spanning various legal jurisdictions. Such initiatives are poised to cultivate a more harmonious and collaborative rapport between the creators and their devoted fan communities, ultimately conferring advantages upon the broader creative ecosystem.

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Copyrights

LEGAL IMPLICATIONS OF CONSUMER PROTECTION DISPUTES ON CASH DELIVERY SYSTEMS IN E-COMMERCE

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Abstract

This article aims to verify the validity of online purchases and transactions between sellers and buyers through the Cash Delivery System and the legal impact of breach of contract or failure to comply. The methods used in this article are legal research methods employing legal, conceptual, and case-by-case approaches. Based on the research results, online sales contracts will be effective if they meet the four conditions specified in the Criminal Code, in accordance with Law No. 19 of 2016 on Changes to Law No. 11 of 2008 on Electronic Information and Transactions. Therefore, online sales agreements are as robust as other sales contracts. This is a legal application when a buyer makes transactions online through an E-Commerce application under Law Number 19 of 2016 concerning Changes to Law Number 11 of 2008. Electronic products are not clearly and elaborately regulated. According to criminal law, buyers are obliged to compensate for losses, transfer risks, support legal costs, and enter into contracts with the parties concerned.

Keywords: *Breach of Contract, Cash Delivery System, Online Buying*

1. INTRODUCTION

The landscape of information technology has undergone rapid development in Indonesia. Notably, this encompasses cyber technology, more commonly recognized as the internet. In the present context, the internet transcends being a mere luxury item; it has become an accessible resource for individuals across various socio-economic strata, ranging from the middle to upper class. It is pertinent to underscore that the internet has evolved beyond a niche utility; it now stands as an indispensable resource, ubiquitously employed by societies globally.

Within the realm of the internet, electronic communication tools are ubiquitously utilized on a daily basis to execute diverse functions, including data and news consultations, web exploration, email correspondence, messaging through social networks, and crucially, for conducting business transactions. This has implications for the business domain, particularly with regard to the operationalization of marketing activities through the medium of online e-commerce (Kurniawan & Nurwardhani, 2016). The majority of internet-based businesses involve intricate processes of buying and selling, the exchange of goods and services, and the dissemination of information facilitated by computer networks (Yaqin, 2019).

E-commerce, as a specific subset of online transactions, is characterized by dynamic patterns. Diverging from the conventions of traditional markets, where sellers and buyers typically engage in face-to-face transactions concurrently (as per the traditional market concept), online businesses transcend these constraints. Buyers and sellers can transact without necessitating direct physical interaction, thereby facilitating remote engagement in buying and selling activities (Berata & Made, 2016).

This paradigm of online commerce exhibits distinctive features, notably the ability to transcend business boundaries within a specific region and even across disparate

countries. In this mode of commerce, sellers and buyers engage in transactions devoid of physical encounters, affording them the flexibility to conduct business from any location and at any time. The utilization of online services accrues notable advantages for consumers, obviating the need to physically visit sellers and enabling shopping from virtually anywhere (Sulistiawati et al., 2019).

Indonesia represents a nation endowed with substantial market potential, wherein online transactions for buying and selling are buoyed by a sizable population. E-Commerce, an application facilitating online shopping and trade, is compatible with smartphones and can be accessed at any time and from any location. Functioning as an electronic system provider, E-Commerce operates within the legal framework defined by Article 1, number 6a, of Law No. 19 of 2016, which pertains to amendments to Law No. 11 of 2009 concerning Electronic Information and Transactions (referred to hereafter as UUITE). This legal provision stipulates that "the organizer of an electronic system" encompasses individuals, state entities, corporate institutions, and entities facilitating, managing, and/or operating electronic systems, either independently or collectively, for their own or others' purposes.

Consequently, for individuals seeking to engage in online transactions, domestically or internationally, the absence of a necessity for face-to-face interactions between buyers and sellers is a distinctive feature, as all transactions can be conducted through the e-commerce platform. E-Commerce provides a diverse array of payment methods, including bank transfers, online credit/debit cards, Indomaret, Alfamart, E-Commerce Pay Later, E-Commerce Pay, One Klik, credit card payments, credit facilities, and the Cash Delivery System, which is interpreted as an on-the-spot payment.

In the context of the Cash Delivery System, it is recognized as a secure and prevalent payment method involving the delivery of cash subsequent to the buyer's receipt of the purchased goods (Nugroho, 2017). This method allows buyers to make cash payments at home without necessitating direct encounters with the sellers. The E-Commerce platform itself defines the Cash Delivery System as a form of on-the-spot cash payment, typically executed at the buyer's residence, following the receipt of the ordered items or packages through express delivery.

In essence, the Cash Delivery System is perceived as a secure means of facilitating online purchases, as it affords buyers the opportunity to ascertain the status of their acquired items before concluding the transaction (Le et al., 2019). Despite its perceived security, disputes between sellers and buyers persist. Public sentiment reflects an increasing frustration among buyers regarding the Cash Delivery System. Importantly, it is noteworthy that not only buyers fall victim to unscrupulous sellers; sellers, too, can suffer adverse consequences due to the misapplication of the Cash Delivery System by buyers. Instances where buyers cancel orders utilizing the Cash Delivery System abound, resulting in the delivery party failing to receive the predetermined amount agreed upon during the initial stages of the order. Consequently, sellers incur financial losses, underscoring instances where buyers fail to fulfill their financial obligations, breach contractual agreements, or neglect their responsibilities (Fauzi & Ansari, 2020).

Based on the aforementioned legal events, the legal issues at hand are of significant importance and warrant a legal analysis grounded in the framework of the Information and Electronic Transactions Law (UU ITE). Hence, the chosen title, "Legal Implications of Breach of Contract in Cash Delivery System Transactions on E-Commerce Applications," aims to investigate the legality of online sales agreements through the Cash

Delivery System. The main problem formulation includes inquiries into the legality of such agreements and the resolution of disputes arising from the buyer's breach of contract in online transactions. The research objective is to gain a comprehensive understanding of online sales agreements through the Cash Delivery System between sellers and buyers, and to explore the legal consequences that may arise if buyers engage in breach of contract in online transactions through the Cash Delivery System on E-Commerce applications.

2. RESEARCH METHODS

The research methodology employed in this study is the normative/doctrinal approach, defining law as a composition of regulatory systems. This article is prepared using legal, conceptual, and case-based approaches. The legal sources incorporated in the article serve as primary legal sources, encompassing legislation such as Law No. 8 of 1999 on Consumer Protection, Law No. 19 of 2016 on amendments to Law No. 11 of 2008 regarding Electronic Information and Transactions, and the Civil Code (*KUHPerdata*). Additionally, secondary legal sources include legal books and journals, complemented by tertiary legal sources such as legal dictionaries and the primary Indonesian Dictionary (KBBI).

The selected research approach facilitates a comprehensive examination of legal principles, conceptual frameworks, and case analyses, ensuring a thorough exploration of the implications of the Cash Delivery System in online transactions. This dual-method approach, combining normative and doctrinal elements, is employed to provide a well-rounded and insightful perspective on the legal aspects surrounding online sales agreements and potential breaches of contract through the Cash Delivery System.

3. DISCUSSION

3.1. Legality of Online Purchase Agreements through the Cash Delivery System

An agreement is a legal transaction frequently undertaken by individuals as a result of reciprocal relationships in social interactions (Iswara & Markeling, 2016). An agreement is defined between two or more parties related to certain matters that have been agreed upon by the involved parties (Umboh, 2020). According to Article 1313 of the Civil Code (*KUHPerdata*), an agreement refers to a legal action between two or more parties to mutually bind themselves. An agreement is a legal action conducted by two or more parties who freely commit themselves to an agreed-upon obligation (Palit, 2015). The agreement is deemed valid once the online sales transaction is completed. The sales contract is a common agreement wherein the first party or seller transfers their goods to the other party or buyer, who is obliged to pay for the received goods/products (PNH Simanjuntak, 2017).

With the evolution of time, the purchasing process has advanced, allowing transactions through face-to-face interactions and online platforms or e-commerce. Electronic sales contracts through e-commerce can also arise through legal relationships with telecommunication systems. In online transactions, the involved parties have the freedom to decide what can and cannot be done in the transaction based on the principles of contractual freedom and mutual agreement. The agreement is established when consensus is reached on the commodity or price. This principle generally applies to online

purchases. The principle of mutual consent or agreement is closely related to the principle of freedom of contract. Article 1338 paragraph (1) of the Civil Code states that all valid agreements can function as law for those who have made them.

Furthermore, Article 1338 paragraph (3) of the Civil Code stipulates that contracts must be executed in good faith. In the concept of commercial transactions processed in online stores, it is necessary to settle transactions with good faith in addition to the provisions of the Civil Code. Moreover, parties engaged in electronic transactions, as per Article 17 paragraph (2) of the ITE Law, must provide electronic information or documents during the interaction or circulation of electronic information or documents throughout the transaction.

Online sales agreements through e-commerce need to meet several conditions. Based on Article 1320 of the Civil Code, a valid agreement must cover four conditions, namely:

a. Agreement or consent of all parties.
b. Competence in performing obligations.
c. A specific subject matter.
d. A legal cause.

Points 1 and 2 involve subjective requirements concerning the regulations on individuals or parties entering into contracts. When subjective conditions are not met, the agreement can be voided. Points 3 and 4 are objective requirements governing contracts or agreements resulting from legal actions. If objective conditions are not fulfilled, the agreement may be considered void ab initio.

These conditions are regulated not only by civil law but also by information technology law. Article 5 paragraph (3) of the ITE Law mandates the application of electronic information or documents where electronic systems are used in accordance with this law. Additionally, Article 6 of the ITE Law establishes the validity of agreements. This means that when a seller sells products in an online store, they must provide clear information and perspectives where parties can consult in detail to purchase products later. This refers to the fundamental agreement not prohibited by any basic agreement but must not violate the law. Article 9 of the ITE Law determines that product alliances conducted on the entrepreneur's electronic system must provide complete and accurate information depending on the given goods. This condition also applies to business actors who must include clear and easily understandable terms and information. Sales from online stores, based on trust that the selling party may not be the original owner of the goods and in the case of intermediaries, not a third party responsible for replacing lost goods, require careful attention to product information. After the contract is completed, the buyer typically takes over and can determine the payment method, one example being the Cash Delivery System. Cash Delivery System refers to the cash payment method after the goods have been delivered to the buyer.

In light of the detailed elucidation provided above, the validation of the online purchase agreement facilitated by the Cash Delivery System hinges on its fulfillment of the four essential requirements delineated in Article 1320 of the Civil Code, alongside compliance with the pertinent provisions outlined in the Information and Electronic Transactions (ITE) Law. These critical conditions encompass the unanimous agreement or consent of all parties involved, ensuring that each party has the legal competence to fulfill their respective obligations, defining a specific subject matter integral to the

transaction, and establishing a lawful cause for the agreement. The subjective requisites, encapsulated in the first two conditions, pertain to the regulatory framework dictating the eligibility of individuals or entities entering into contracts. Non-compliance with these subjective prerequisites renders the agreement susceptible to annulment. In contrast, the objective conditions, encapsulated in points three and four, govern the essence of the contract and the legal foundation underpinning the agreed-upon obligations. Should these objective criteria remain unmet, the agreement could be deemed null and void ab initio. Therefore, a meticulous adherence to these stipulations, guided by both the Civil Code and the ITE Law, is imperative to establish the legal soundness and validity of online purchase agreements, particularly those employing the Cash Delivery System.

3.2. Resolution of Disputes in Online Buying and Selling Transactions through the Cash Delivery System

In the current era of globalization, online buying and selling have become commonplace for many individuals. This trend is evident in the substantial growth of e-commerce in Indonesia. Stores or applications operating in the online commerce realm, such as online buying and selling, provide easy access via smartphones. The transaction process between sellers and buyers is facilitated by E-Commerce. E-commerce websites are popular among both younger and older demographics.

The emergence of the Covid-19 pandemic has significantly intensified the use of e-commerce. The population has been advised to stay at home unless for urgent needs. Consequently, the middle to upper-class population has increasingly turned to e-commerce to meet their daily needs during the pandemic. Online shopping during this pandemic has various advantages, especially through E-Commerce applications (Rakhmawati et al., 2021). E-Commerce often offers free shipping, promotions with discounts ranging from 5% to 90%, and cashback up to 50%. Additionally, e-commerce is renowned for its flash sales, which distinguishes it from others and attracts users, making them loyal. E-Commerce provides various payment methods to facilitate online transactions, including online credit/debit cards, Alfamart, E-Commerce Pay Later, Bank Transfers, Indomaret, E-Commerce Pay, One Klik, Kredivo, Credit Card Installments, and Cash Delivery System or cash on delivery.

Newcomers to the e-commerce world feel more confident and less worried about whether the ordered goods will be delivered in accordance with their quality, as payment can be made when the goods arrive. Conceptually, the Cash Delivery System payment method is an alternative where the buyer pays when the goods are safely received in good condition, as promised. The Cash Delivery System can instill trust in buyers and from customers to sellers when shopping online. However, issues persist between sellers and buyers. Generally, buyers are more often portrayed as victims of failed sellers. Simultaneously, some sellers also become victims due to consumer failures.

A case in point is an incident in Manado, where a school principal refused to pay for Cash on Delivery (COD) items already sent, citing a misunderstanding of the system. This news was uploaded to Instagram by @Terang_media and Liputan6.com. Eventually, the school principal clarified and apologized for the misunderstanding. Despite the apology, the seller still incurred losses because the delivered goods or packages corresponding to the order were not paid for. As a result, the seller suffered a loss, and

the buyer committed a breach or non-performance of the previously agreed-upon agreement between the seller and the buyer.

In reciprocal activities involving two legal subjects, rights and obligations arise for each legal subject to support their activities. As discussed earlier, online sales contracts become effective when the agreement is reached, and other details are regulated in Article 1320 of the Civil Code. Sellers must provide specific, honest, and accurate information about the goods sold online to customers. This is in line with Article 9 of the ITE Law. Conversely, consumers must comply with the payment terms of the purchased products as agreed with the seller, and subsequently, the buyer acquires rights to the purchased goods. Meanwhile, the seller is obliged to deliver the goods as agreed with the buyer.

If the rights and obligations of the buyer or seller are not executed properly or do not meet the requirements, the aggrieved party can file a claim for compensation. Compensation arising from non-performance is outlined in Book III of the Civil Code, Article 1243 – Article 1252 of the Civil Code (Salim & Sh, 2021). Non-performance is a failure or inadequacy of the obligations and rights regulated in the agreed-upon agreement (Fauzi & Ansari, 2020). There are three types of non-performance:

a. Failure to fulfill the obligation at all.
b. Fulfillment of the obligation but not on time.
c. Fulfillment of the obligation but not perfectly.

The occurrence of non-performance in online transactions is attributed to two primary factors: external and internal (Setiawan, 2021). External factors may manifest as adverse economic conditions, such as death due to natural disasters, insufficient supply, heightened demand, damaged goods at specific times, and inadequate distance. Conversely, internal factors may arise from negligence, malicious intent, inadequate education and morals, as well as financial difficulties. In accordance with Law No. 8 of 1999 on Consumer Protection, sellers possess both rights and obligations in online buying and selling transactions, including:

a. Seller's Rights: Defined in Article 6 of the Consumer Protection Law, sellers have the right to receive payment commensurate with the agreed-upon price and the condition of the service and/or goods sold. They are also entitled to legal protection against customers engaging in improper behavior.
b. Seller's Obligations: Outlined in Article 7 of the Consumer Protection Law, sellers are obligated to act in good faith during business activities and provide accurate, honest, and truthful information regarding product use, repair, and maintenance. Sellers must ensure the quality of services or goods, offering compensation, indemnification, or replacement if the received service or goods fail to meet the agreed-upon terms.

Buyers, similarly, possess rights and obligations in online transactions, as specified in Law No. 8 of 1999 on Consumer Protection:

a. Buyer's Rights: Stipulated in Article 4 of the Consumer Protection Law, buyers have the right to receive goods, determine goods and/or services, and receive these items in accordance with the agreed-upon exchange rate, conditions, and guarantees promised. They are also entitled to accurate, clear, and honest information about the condition and guarantees of goods and/or services.

b. Buyer's Obligations: Defined in Article 5 of the Consumer Protection Law, buyers are obliged to act in good faith during the purchase of products and/or services and pay according to the agreed-upon exchange rate.

The principle of absolute responsibility is applicable in cases of non-performance in online transactions (Perdana & Dahlan, 2014). In the realm of E-Commerce, consumers find themselves in a weak position, with the onus entirely on the seller. Consequently, sellers bear full responsibility for all activities in e-commerce transactions. In the aforementioned case, where the buyer failed to pay, the buyer assumes responsibility for their actions. Article 21, paragraph (2), letter a of the ITE Law states that in transactions conducted without involving a third party, all legal consequences fall upon the transacting parties.

Furthermore, according to the Civil Code, the repercussions of a buyer's/debtor's non-performance in fulfilling the agreement result in losses for the seller. The legal consequences arising from consumer non-performance encompass:

a. The buyer must compensate the seller for the suffered losses, with the seller holding the right to receive performance (Article 1243 of the Civil Code).
b. The buyer must obtain a court decision regarding the agreement, along with compensation (Article 1267 of the Civil Code).
c. The buyer must bear the risk of non-performance (Article 1237, paragraph (2) of the Civil Code).
d. The buyer must cover court costs if sued in court (Article 181, paragraph (1) of the HIR).

Consumers who engage in non-performance are obligated to compensate the seller. However, such compensation is contingent upon meeting various conditions, such as:

a. Proving negligence in committing non-performance.
b. Not being in an urgent situation.
c. Not raising objections or defenses against the compensation claim proposed by the party experiencing the loss.
d. Receiving a summons or not acting negligently.

If a buyer commits non-performance and acts in bad faith, the buyer is accountable for their actions. The seller, as the aggrieved party, can pursue legal remedies based on the ITE Law, specifically Articles 38 and 39, which address dispute resolution. These articles state that "any person can file a lawsuit against the party causing them harm in the online payment process and resolve disputes through arbitration or alternative dispute resolution agencies." This is due to electronic evidence being deemed valid in court.

4. CONCLUSION

The legality of a purchase and sale agreement through online transactions via the Cash Delivery System between sellers and buyers is generally unrestricted in determining any agreements they wish, guided by the principle of freedom to contract, provided such agreements do not contravene the constitution or prevailing regulations. Engaging in online transactions necessitates good faith from all involved parties. As per Article 1320

of the Civil Code (*KUHPerdata*), the validity of an online purchase and sale agreement is contingent upon meeting the four conditions stipulated in the article. Furthermore, in accordance with the Civil Code, the legitimacy of an online purchase and sale agreement aligns with the provisions of the ITE Law, specifically in Article 5 paragraph (3), Article 6, and Article 9. Thus, an online purchase and sale agreement is recognized as valid if it satisfies the requisites outlined in Article 1320 of the Civil Code and the ITE Law.

The legal ramifications arising from a buyer's default in an online transaction through the Cash Delivery System on an E-Commerce platform, as per the ITE Law, lack explicit and detailed articulation. According to the Civil Code, a defaulting buyer is obliged to compensate, assume risk transfer, cover legal expenses, and terminate the contract with the injured party. In the event of an error, dispute resolution can be pursued by the buyer in the context of online buying and selling through the Cash Delivery System, where the seller, as the aggrieved party, can employ legal remedies in accordance with the provisions of the ITE Law, particularly in Articles 38 and 39 concerning dispute resolution. Articles 38-39 stipulate that "any person can file a lawsuit against the party causing them harm in the online payment process and resolve disputes through arbitration or alternative dispute resolution agencies." This acknowledgment stems from the recognition of electronic evidence as valid in court proceedings.

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RESPONSIBILITY OF THE HEAD OF THE NATIONAL LAND AGENCY FOR THE ISSUANCE OF LAND OWNERSHIP CERTIFICATES WITH ADMINISTRATIVE LEGAL DEFECTS

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Abstract

This paper delves into the responsibility of the head of the national land agency in handling administrative defects in Land Ownership Certificates (SHM) within the purview of administrative law. Employing a normative juridical research method, the study discerns that deficiencies in SHMs arise from various factors, whether intentional or unintentional. Such shortcomings may manifest in the data supplied by applicants during the certificate creation process or result from errors, both intentional and unintentional, in the identification of objects and subjects. Object-related discrepancies include inaccuracies in land mapping and measurement, while subject-related errors involve misinformation provided by applicants. This research aims to elucidate the origins of administrative defects in SHMs and underscores the pivotal role of the head of the national land agency in rectifying and preventing such issues. By understanding these factors, this study contributes to the broader discourse on enhancing the efficacy and reliability of land ownership certification processes, emphasizing the need for proactive measures to address and mitigate administrative defects.

Keywords: *Certificate of Ownership, Legal Defects, Responsibility*

1. INTRODUCTION

Land is an essential need for every individual, extending beyond their lifetime as even in death, individuals require a plot of land. Functioning as a source of life, the significance of land in existence is dual-fold, serving as both a social asset and a capital asset. As a social asset, land acts as a binding element within Indonesian society, fostering cohesion among its members. As a capital asset, land is a pivotal factor in development, and its utilization should be maximized for the equitable welfare of the population while ensuring its sustainability (Setiabudi, 2013).

The land policy in Indonesia is rooted in Article 33, Paragraph (3) of the 1945 Constitution, stating that "land, water, and natural resources contained therein are controlled by the State and used to the maximum for the prosperity of the people." In line with this, the Basic Agrarian Law, Law Number 5 of 1960 (UUPA), was enacted as positive law, forming the basis for land regulations in Indonesia.

Various regulations derived from the UUPA were subsequently enacted, including Government Regulation Number 10 of 1960, which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration. Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997 outlines the Implementation Provisions of Government Regulation Number 24 of 1997 on Land Registration to establish legal certainty in land matters. Land registration serves not only to protect the owner but also to determine the status, ownership, rights, and usage of a parcel of land. The clarity of registered rights, the subject of rights, and the object of rights are legal certainties sought through land registration, resulting in the issuance of a certificate as proof of ownership (Mujiburohman, 2018).

Article 19, Paragraphs (1) and (2) of the UUPA stipulate that the consequence of registering land rights is the issuance of a certificate, commonly known as a land certificate. Land certificates play a crucial role in establishing legal order in land matters and facilitating economic activities within society. These certificates are official evidence of land ownership, duly registered by authorized institutions in accordance with the law (Lubis & Lubis, 2008).

According to Andrian Sutedi, land registration involves a series of planned and continuous activities by the government, including the collection, processing, bookkeeping, and presentation of physical and juridical data related to land parcels (Adrian Sutedi, 2023). The primary objective of this registration process is to ensure legal certainty and meet the needs of both society and the government.

A Certificate of Land Ownership (SHM) may suffer from administrative defects due to various factors, whether intentional or unintentional. Errors can arise from inaccurate information provided by the applicant during the certificate issuance process or from mistakes in both intentional and unintentional subjects and objects. Object-related errors may involve inaccuracies in land mapping and measurement, while subject-related errors may pertain to inaccurate statements provided by the applicant (Gayatri et al., 2021).

Administrative defect is the presence of shortcomings or flaws due to non-compliance with procedures. A certificate with administrative defects is considered problematic, and its annulment can be pursued by the applicant or anyone adversely affected by its issuance. Since a certificate represents a decision of state administration (government administrative decision), the applicant can formally raise objections in writing to the relevant Government Agency and/or Official responsible for the decision, as stipulated in Article 77 Paragraph (2) of the Administrative Law. This procedural step aims to ensure legal certainty regarding land ownership (Gayatri et al., 2021). Recognizing land rights as a fundamental and significant entitlement for individuals' dignity and freedom, it is also the state's obligation to provide legal certainty for these rights, even while acknowledging limitations imposed by others, society, and the state itself. This must be handled with precision to prevent land disputes (Handayani, 2019).

In the case outlined in Decision Number: 181/B/2022/PT.TUN.JKT, the dispute concerns Certificate of Ownership No. 01612, dated December 17, 2017, Survey Letter No: 1210/JK/2017, dated November 28, 2017, located in Juata Kerikil Village Rt.06, North Tarakan District, Tarakan City, North Kalimantan Province, with an area of 1,445 m2, owned by Yoseph Jalaq. Upon learning of the issuance of Certificate of Ownership No. 01612 on December 17, 2017, Survey Letter No: 1210/JK/2017, dated November 28, 2017, in Juata Kerikil Village Rt.06, North Tarakan District, Tarakan City, North Kalimantan Province, covering an area of 1,445 m2, owned by Yoseph Jalaq, the plaintiff sent multiple letters to the Head of the Tarakan Land Office, but received no response. On January 31, 2022, the plaintiff attempted to formally object to the issuance of the certificate through written correspondence, as evidenced by the receipt of the letter. However, as of the filing of this lawsuit, there has been no response from the defendant. Despite efforts, the plaintiff has not received any acknowledgment or response, leading them to believe that Certificate of Ownership No. 01612, dated December 17, 2017, Survey Letter No: 1210/JK/2017, dated November 28, 2017, in Juata Kerikil Village Rt.06, North Tarakan District, Tarakan City, North Kalimantan Province, covering an area of 1,445 m2, owned by Yoseph Jalaq, has indeed been issued.

The objective of this study is to examine and analyze the responsibilities and authorities of the Head of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Atr/Bpn). The study aims to gain an in-depth understanding of the roles and duties undertaken by the head of this office within the framework of land regulations in Indonesia. The analysis is expected to provide insights into key aspects related to the responsibilities and authorities of the Head of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. The specific case presented, as exemplified in Decision Number: 181/B/2022/PT.TUN.JKT, involves investigating administrative defects in Certificate of Ownership No. 01612, dated December 17, 2017, and Survey Letter No: 1210/JK/2017, dated November 28, 2017, in Juata Kerikil Village, North Tarakan District, Tarakan City, North Kalimantan Province, owned by Yoseph Jalaq. The study further explores the plaintiff's attempts to address the administrative defects and seek resolution through official channels, emphasizing the importance of legal certainty in land ownership.

2. RESEARCH METHODS

The research conducted adopts a normative legal approach, a methodology focused on the examination of literature and secondary data, commonly known as legal literature research. Employing multiple research approaches, namely the Statute Approach, Conceptual Approach, Analytical Approach, and Case Approach, this study draws on primary, secondary, and tertiary legal sources. The data collection technique involves the identification and inventorying of relevant positive legal norms. The analysis of legal materials employs grammatical, historical, and systematic interpretation.

3. DISCUSSION

3.1. Responsibility and Authority of the Head of the Ministry of Agrarian Affairs Spatial Planning/National Land Agency (ATR/BPN)

Land registration in the administrative order in the District/Tarakan is the authority carried out by the Land Office to create legal certainty and protection, as well as to reduce land disputes in the District/City of Tarakan. The activities of land registration formalize land ownership based on ownership evidence or control over the land. In addition to legal and technical aspects, land registration implementation is also related to administrative tasks. In other words, land registration activities involve administrative tasks such as determining land rights and registering land transfer.

It can be said that activities involving legal aspects or the collection of legal data until the issuance of land books, certificates, and other general registers, as well as recording changes in the future, mostly involve administrative tasks. The limited amount of land that can be owned by humans, coupled with the increasing population, results in an increase in land value and various land issues, especially regarding land ownership.

The government, in Article 5 paragraph (1) point c of People's Consultative Assembly Decree Number IX of 2001, formulated a policy of agrarian reform, namely "Conducting land data through comprehensive and systematic inventory and registration of possession, ownership, use, and utilization of land in the implementation of land reform." Administrative land disputes arise as a result of the land administration system. Ideally, land administration accountability clarifies land ownership through evidence issued by the land office, namely land certificates.

The issuance of land certificates stems from the existence of underlying rights, such as maps or deeds in the field of land as a result of legal actions such as buying and selling, exchanging, donating, inheriting, and so on. The lack of accountability in land administration results in various issues regarding proof of land ownership, such as the issue of duplicate certificates. The lack of accountability in land administration impacts the lack of transparency in land administration, preventing the public from obtaining information about a piece of land. The absence of accountability and transparency in land administration also leads to issues with proof of land ownership, including underlying rights, ultimately causing land disputes within society.

Discussing land administration as described above inevitably touches on the government's actions to achieve good governance. Therefore, the focus on land administration issues related to proof of land ownership is on the principles of accountability, transparency, and responsibility. Article 4 paragraph (2) of Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA) states that land rights not only grant the authority to use a certain part of the earth's surface, called "land," but also the body of the earth beneath it, water, and the space above it (Widodo, 2001). Thus, the definition of "land" includes the earth's surface on land and underwater, including the sea (Harsono, 2015).

Agrarian law, when viewed from the content of legal regulations, is the law that governs matters related to land. This not only concerns the legal relationship between humans and land but also regulates the provision, use, and maintenance of land (Ali, 1996). Every activity of a state body or official in regulating and organizing the provision, use, and maintenance of land constitutes land administration activities. Therefore, the definition of land administration can be stated as efforts and activities related to the organization of policies concerning everything related to land and land rights with the aim of ensuring legal certainty and land order. The scope of land administration activities is as follows:

a. Land Allocation and Use

Land allocation and use are related to land-use planning. Land-use planning can be interpreted as the optimization of the productivity of land, water, space, and the natural resources it contains, carried out in an integrated and balanced manner for various development activities. This is based on capability maps issued by the National Land Agency (BPN) regulated within a spatial planning plan, aiming to benefit the current and future generations. In this context, the term land-use planning is emphasized in the context of spatial arrangement (Zaidar & HUM, 2014). The legal provisions governing spatial planning are stipulated in Law Number 26 of 2007 concerning Spatial Planning. The implementation of spatial planning includes regulation, guidance, implementation, and supervision of spatial arrangement. Administrative activities in spatial planning are mainly applied to spatial planning implementation. The tasks of spatial planning implementation include spatial planning, land use, and control of land use.

b. Land Provision

Land provision activities are related to land acquisition policies. The legal basis for land acquisition policy is Law Number 2 of 2012 concerning Land Acquisition for Development Purposes for the Public Interest. Land acquisition procedures closely related to land administration tasks include location determination, approval of location determination, submission of applications to initiate land acquisition to the

Land Acquisition Committee, determination of land location boundaries, issuance of Price Determination Decree by the Land Acquisition Committee, relinquishment of rights, and application for land rights (Lubis & Lubis, 2011).

c. Land Maintenance

Article 15 of the Basic Agrarian Law states that land maintenance, including its fertility and prevention of damage, is the obligation of every individual, legal entity, or institution with a legal relationship with the land. This provision implies that land maintenance is related to the legal relationship with the land. In other words, land maintenance also involves the regulation of land rights. The administrative aspect of land administration in regulating land rights is about land registration. According to Government Regulation Number 24 of 1997, the administrative aspect is referred to as juridical data, while the technical aspect is physical data. Juridical data refers to information about the legal status of land areas and registered housing units, their rights holders, other involved parties, and other encumbrances.

If it is stated as the registered legal status of the land, it means there is evidence indicating a legal relationship between individuals and their land. This evidence of the legal relationship is then formalized through land registration activities. Land registration activities that formalize land ownership, based on ownership evidence or control over the land, involve both juridical and technical aspects. In addition to legal and technical aspects, land registration implementation is also related to administrative tasks. In other words, land registration activities involve administrative tasks such as determining land rights and registering land transfer. It can be said that activities involving legal aspects or the collection of legal data until the issuance of land books, certificates, and other general registers, as well as recording changes in the future, mostly involve administrative tasks.

The following are the regulations related to administrative activities in land registration (Fahmal & Malian, 2006):

- Land registration activities before the issuance of land certificates, such as the determination of land rights, including land conversion, recognition and affirmation of land rights, granting land rights, rejection of land rights, land redistribution and consolidation, and land trust.
- Administrative activities after the issuance of land certificates due to changes in juridical data (subject of rights, type of rights, and duration of land rights), including land rights transfer, land rights transfer, extension of land rights duration, land rights renewal, land rights change, land rights cancellation, land rights revocation, land rights encumbrance, data changes due to court decisions, data changes due to name changes, land rights deletion, and certificate replacement.
- Administrative activities after the issuance of land certificates due to changes in physical data or the object of land rights, including land division, land separation, and land merging. As a law-based state, in relation to the issuance of land certificates, the government must provide legal certainty. Legal certainty can be achieved when government actions are carried out accountably.

The discourse underscores the fundamental necessity of good governance in the organizational framework of governmental authority. It posits that legal frameworks should encapsulate procedural equity, system transparency, disclosure of work outcomes, public accountability, and a commitment to public openness, aligning with the General

Principles of Good Governance (AAUPB). The AAUPB is depicted as a guiding norm, steering the government towards establishing accountability within the National Land Agency.

The collaborative interplay between the National Land Agency and AAUPB is heralded as a conduit for a government characterized by cleanliness and authority. The delineation of AAUPB principles within Law Number 28 of 1999, focusing on a corruption-free state administration, elucidates the significance of legal certainty, orderly state administration, public interest, transparency, proportionality, professionalism, and accountability (Urip Santoso, 2019).

In relation to land administration, the principle of Publicity is recognized in land registration, stating that everyone has the right to access information about registered land. According to Morico (2007) this information is grounded in the principles of:

a. Transparency, as a fundamental democratic principle, encompasses the entitlement of individuals to comprehensive information regarding all facets of decision-making within the governmental apparatus, which, in turn, exerts a direct or indirect influence on the community at large. These imperative mandates governmental entities to engage the public in a participatory manner, affording them an unimpeded platform to overtly articulate their collective aspirations.
b. Openness, as a cognitive disposition, underscores the imperative of acknowledging the public's entitlement to receive information that is both precise and veracious concerning government activities. This mental attitude is predicated upon an unwavering commitment to furnishing accurate, honest, and non-discriminatory information, all while carefully navigating the delicate balance between public disclosure and the safeguarding of personal rights, group interests, and state secrets. Such an ethos of openness buttresses the overarching framework of transparent governance, wherein governmental entities willingly provide accurate information and remain receptive to external input or requests from various stakeholders.

Transparency in land registration is crucial for the procedures and services provided by the Land Office to meet the expectations of the community, especially applicants registering land. By consistently implementing the transparency principle, information related to the process up to certificate issuance is expected to be accessible to all parties. This accessibility enables prompt corrections by the Land Office if any information is deemed inaccurate.

It is clear that issues related to certificates are quite complex, such as the occurrence of duplicate certificates. Ideally, for the same property, there should not be two certificates issued. The process leading to certificate issuance must emphasize transparency to enable accurate cross-checking with the local community or all stakeholders. Neglecting the principle of transparency has led to problems regarding duplicate certificates. On the other hand, certificates are strong evidence of one's ownership rights to land, making their existence valuable and crucial. Additionally, prioritizing the responsive principle, outlined in the National Land Agency's Performance, is essential. A fundamental principle towards the agency's goals is responsiveness, meaning the government must be sensitive and promptly responsive to societal issues, formulating policies that address all social groups within their cultural characteristics. In realizing the responsive principle, strategic efforts are required to

provide humane treatment to various societal groups impartially. The government should not be passive but responsive to all aspects of society, including land administration services. The responsive principle emphasizes that every institution and its processes should be directed towards serving various stakeholders. There is concern that the government's passive or less responsive attitude in service, including in public administration, will result in land administration services that fail to meet the needs of the community.

In accordance with the principle of responsiveness, each element of the government is required to adhere to two ethical dimensions, namely individual ethics and social ethics. Individual ethical qualifications demand that government bureaucracy practitioners possess criteria for professional capabilities and loyalty (Wibowo, 2022). Conversely, social ethics necessitate their sensitivity to various public needs. The implementation of the principles of transparency and responsiveness in public service is expected to engender accountable government actions, denoting actions that can be justified to the public.

The case example of Decision Number 181/B/2022/PT.TUN.JKT is presented, wherein the judge's acceptance of the appeal and reinforcement of the State Administrative Court's decision is explicated. The decision, announced through an open electronic trial, highlights the procedural aspects of the judicial process, with specific details pertaining to the Panel of Judges involved and the absence of disputing parties or their legal representatives during the announcement.

A mandate does not result in any change in authority, as it only pertains to internal relations, such as the Minister's relationship with employees to make specific decisions on behalf of the Minister. Juridically, authority and responsibility remain with the ministry organ. Employees decide technically, while ministers decide juridically (Ridwan, 2006). Attribution is considered a normal way to acquire government authority. The entity authorized by legislation can form authority. Positive administrative law contains various provisions on attribution. Delegation, on the other hand, is defined as the transfer of authority (to make "decisions") by government officials (State Administrative officials) to another party, and that authority becomes the responsibility of the other party.

Thus, government accountability in issuing land ownership certificates can be realized by conducting the process transparently and prioritizing strong responsiveness to all stakeholders. Based on the outlined concepts, the normative assessment of transparency, responsiveness, and accountability in government administration, especially in the issuance of certificates, can be examined first based on the operational standards held by the Land Office. Factual observations suggest that one factor leading to land disputes in society is the passive stance of the Land Office during the land registration process, merely accepting documents submitted by applicants. It can be argued that there is no effort from the Land Office to ascertain whether the requested land registration is subject to disputes or has potential disputes, creating a lack of legal certainty in land registration.

The lack of transparency in land ownership is attributed to limited data and information on land possession. This limitation can lead to land disputes and concentration of land ownership in rural areas and/or a small portion of the urban population. In response to these challenges, regulatory measures, exemplified by Chief of the National Land Agency of the Republic of Indonesia Regulation Number 6 of 2013 on Public Information Services in the National Land Agency environment, have been

promulgated. This regulation serves as a sequel to Article 7, paragraph (3) of Law Number 14 of 2008 concerning Public Information Transparency.

Concerning the responsibility of the Land Office in land administration, in instances of deliberate or unintentional negligence, the community retains the right to demand accountability from the Tarakan Regency/City Land Office. This can be pursued through legal avenues, such as filing a lawsuit, with the aim of annulling administratively flawed certificates and restoring the rights of the rightful landowner. In the provision of public services by the government, including within the realm of land affairs, it is imperative that the government displays responsiveness to complaints, addresses demand, and fulfills the needs of the community. This approach ensures that the issuance of certificates is executed in an effective and accountable manner. The integration of transparency and responsiveness into public services is anticipated to yield government actions that are accountable, denoting actions that can be substantiated and justified to the public.

According to Mukhopadhyay's Accountability Theory, accountability is an integral part of an institution's actions (policies/services) in the public sector. The greater the accountability, the better the service provided because accountability contributes to the efficiency of resource utilization and prevents employees from acting improperly (non-feasance) or engaging in misconduct (malfeasance) (Patarai, 2015). Thus, government accountability in issuing land ownership certificates can be achieved through transparent processes and a strong emphasis on responsiveness to all stakeholders.

4. CONCLUSION

The allocation of responsibilities and authorities to the Head of the National Land Agency Office/Agency for Agrarian and Spatial Planning (ATR/BPN) signifies a significant institutional decision. Specifically, this decision designates the Chief of the Land Office in Tarakan as the recipient of delegated responsibilities. The assigned responsibilities to the Chief of the Land Office primarily pertain to administrative matters related to a specific property. This property is identified by Land Certificate Number 01612, issued on December 17, 2017, and Survey Letter Number 1210/JK/2017, dated November 28, 2017. Located in Juata Kerikil Village, RT 06, North Tarakan Sub-District, Tarakan City, North Kalimantan Province, the property spans 1,445 square meters and is registered under the ownership of YOSEPH JALAQ. These administrative responsibilities, delegated by the Head of the National Land Agency Office/Agency for Agrarian and Spatial Planning (ATR/BPN) in Tarakan, underscore the intricate nature of land governance and the importance of meticulous attention to detail in land administration.

In essence, the delegation of responsibilities underscores the nuanced responsibilities entrusted to the Chief of the Land Office. This involves overseeing the administrative facets of a specific landholding, encompassing the issuance and verification of land certificates and survey documents. The detailed geographical and ownership particulars further highlight the specificity and gravity of the Chief's responsibilities. This institutional decision reflects a commitment to effective land governance, emphasizing the role of administrative precision in upholding transparency, legal certainty, and accountability in the realm of land administration within the jurisdiction of Tarakan City, North Kalimantan Province.

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BRIS AT IDX: A LOOK AT HOW SHARIAH BANK MERGER WORKS IN INDONESIA

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Abstract

This article provides a comprehensive exploration and analysis of the complex legal framework surrounding the merger of PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah, resulting in the establishment of Bank Syariah Indonesia (BSI). The analysis meticulously categorizes the legal requirements applicable to both private and public Shariah banks, referencing key regulations such as POJK 41/2019, Law 40/2007, POJK 15/2020, POJK 74/2016, and others. The study delves into the essential elements of the merger process, navigating through the intricacies involved in formulating a comprehensive merger plan. This includes a detailed examination of share evaluation methodologies and the resolution of associated rights and obligations. The article places significant emphasis on the disclosure of material facts, highlighting the importance of transparently communicating information that has the potential to impact stakeholders. Additionally, the analysis extends to the multifaceted approval processes required for the successful execution of the merger, encompassing internal approvals from boards of directors and commissioners, as well as regulatory bodies. The article sheds light on the intricate procedures and criteria outlined by the Indonesia Stock Exchange (IDX) regarding such transformative transactions, further adding complexity to the overall process.

Keywords: *Bank Merger, Bank Syariah Indonesia, Shariah Bank*

1. INTRODUCTION

Indonesia, with an estimated 240 million Muslims comprising a remarkable 86.7% of its total population, stands as the world's most populous Muslim-majority nation, underscoring the country's profound Islamic heritage (The Royal Islamic Strategic Studies Centre, 2023). The nation's endeavor to address the financial needs of its substantial Muslim population has been an integral facet of its historical trajectory. The development of Shariah-compliant banking in Indonesia represents a noteworthy milestone, arising from the imperative to meet the financial requirements of the country's sizable Muslim demographic. A pivotal juncture in this evolutionary process unfolded in 1991 when Bank Muamalat Indonesia emerged as the inaugural financial institution to conduct operations based on Shariah principles. The establishment of Bank Muamalat Indonesia in 1991 marked a pioneering initiative, signifying the commencement of Shariah-compliant banking in Indonesia. This milestone heralded the inception of a financial sector committed to adhering to Islamic principles, prohibiting practices such as charging interest (*riba*) and involvement in unethical or haram activities.

The creation of Shariah-compliant banking aimed to provide a platform for the Muslim population to conduct financial transactions that align with their religious beliefs (Kettell, 2011). The significance of this step cannot be overstated. With the establishment of Bank Muamalat Indonesia, the country's Muslim population finally had access to a financial institution that provided services in line with their religious beliefs. For decades, Muslims in Indonesia had grappled with the ethical dilemma of participating in conventional banks that charged interest, as such practices were viewed as conflicting

with the principles of Islamic finance. With the introduction of Shariah-compliant banking, the Indonesian Muslim population gained access to a financial system that aligned with their values, creating a profound shift in the nation's financial landscape (Adrian, 2009).

The year 1992 saw the Indonesian government's introduction of Law No. 21 of 1992 on Banking, which allowed banks to operate on a profit-sharing principle without explicitly mentioning Shariah principles. Adopting the profit-sharing concept was a significant development as it acknowledged the existence and importance of Shariah banks within the Indonesian financial landscape. This legal framework categorically separated conventional banks and profit-sharing banks, making it clear that institutions could not operate under both principles, not even through branch offices. The legal separation of Shariah banks and conventional banks, while recognizing the importance of Shariah-compliant banking, has presented unique challenges to the competitiveness of the former. One significant challenge has been their inability to match the scale of the already established and often larger conventional banks. This has implications for their ability to provide a wide range of services, extend their geographical reach, and establish trust within the market. While conventional banks can capitalize on their existing infrastructure, Shariah banks have often faced limitations in channeling significant capital towards their operations.

Law No. 7 of 1998, officially known as the "Law of the Republic of Indonesia Number 10 of 1998 Concerning Amendments to Law No. 7 of 1992 Concerning Banking," introduced significant changes and clarifications in the financial sector. This law had several key implications for Shariah banks operating in Indonesia. First, it reaffirmed the legal standing of Shariah-compliant banking within the Indonesian financial system, underscoring their legitimacy and importance. Furthermore, it expanded the regulatory framework for banking activities, including those of Islamic banks, addressing issues related to risk management, capital adequacy, and prudential standards. One of the notable impacts of Law No. 7 Of 1998 on Shariah banks was the formal recognition of the Dual Banking System in Indonesia, allowing for the coexistence of both conventional and Shariah-compliant banks. This recognition facilitated a more structured environment for Shariah banks to operate and grow, giving them a clear legal foundation.

It can’t be denied that the pivotal moment in the evolution of Indonesia's legal framework for Islamic banking occurred with the passage of Law No. 10 of 1998. This legislation laid the foundation for Shariah-compliant banking operations in the country. However, it was perceived as lacking the specificity needed to effectively govern the unique nature of Islamic finance, especially in light of the continuous growth in Islamic banking activities. The rapid growth and diversification of the Islamic banking sector in Indonesia underscored the need for a more comprehensive and specialized legal framework. Law No. 21 of 2008 concerning Islamic Banking (the Islamic Banking Law) was introduced in response to these evolving dynamics. This legislation marked a significant shift towards greater regulatory clarity and specificity.

The central focus of the Islamic Banking Law was to ensure that Islamic banking operations were conducted in strict accordance with Shariah principles. By offering regulatory clarity, the law aimed to provide legal certainty not only for Islamic banking institutions but also for stakeholders and the broader public who engage with Islamic financial products and services. The law highlights the principles of profit-and-loss sharing (*mudharabah*), equity participation (*musharakah*), purchase and resale

(*murabahah*), lease (*ijarah*), and lease and purchase (*ijarah wa iqtina*) as the foundation for Islamic banking products and services. These principles align with Islamic finance values and ensure that financial activities benefit a broader population segment while adhering to ethical standards (Djaja, 2019).

The most significant leap in Indonesia's legal framework for Islamic banking occurred in 2008 with the introduction of Law No. 21 concerning Islamic Banking. This legislation provided clarity, specificity, and a comprehensive framework for Islamic banking operations, ensuring that they operated in strict accordance with Shariah principles. Law No. 21 of 2008 ("Law 21/2008") facilitated the establishment of standalone Sharia-compliant banks in Indonesia. This simplified the licensing process, reducing bureaucratic hurdles, and satisfying the rising demand for Islamic banking services among the predominantly Muslim population. The increased competition in the Shariah banking sector led to the development of innovative products and services, enhancing their appeal to customers (Chong & Liu, 2009).

The oversight and regulation of the banking sector have also undergone significant developments. In Indonesia, the supervision and regulation of commercial banks are collaboratively administered by the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK) and the Central Bank of Indonesia (Bank Indonesia). OJK is entrusted with the responsibility of conducting micro-prudential supervision and regulation of individual banks, aligning its practices with the statutory provisions delineated in Law No. 21 of 2011, which pertains to the Financial Services Authority. In parallel, Bank Indonesia is engaged in macroprudential supervision while maintaining close coordination with OJK. Bank Indonesia primarily focuses on upholding economic stability by overseeing banking institutions, overseeing licensing processes, and formulating regulations for the banking system as a whole. These functions are expressly detailed in Articles 7 and 8 of Law No. 23 of 1999, with the responsibilities stipulated in Article 8(3) being delegated to OJK (Keuangan, 2017).

The regulatory development throughout the years paved the way for the creation of banks, such as PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah, these banks, each individually significant, operated under a common objective: to align their financial practices with Islamic principles. However, the fiscal landscape in Indonesia experienced a paradigm shift in early 2021, marked by the Indonesian government's strategic initiative to initiate a merger involving these three state-owned Shariah banks. This monumental undertaking sought to create a single, formidable entity, Bank Syariah Indonesia (BSI). This union was not merely a financial merger but a comprehensive transformation encompassing the legal, regulatory, and strategic dimensions that shape the Islamic finance sector in Indonesia.

BSI's emergence as the largest Shariah bank in Indonesia is essential for the development of Islamic finance in the country. As of the second quarter of 2020, prior to the merger, the three constituent Shariah banks boasted substantial assets, with PT Bank BRI syariah Tbk standing at Rp49.6 trillion, PT Bank BNI Syariah at Rp50.78 trillion, and PT Bank Syariah Mandiri at an impressive Rp114.4 trillion (Kurniawan, 2023). The formation of BSI, with these impressive assets combined, established it as the largest Shariah bank in Indonesia. As of the fourth quarter of 2022, BSI's assets further expanded, reaching Rp305.72 trillion (Katadata, 2023). Such growth is a testament to the success of this endeavour and its potential to impact the broader Indonesian economy.

The merger of PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah into BSI represents a strategic move aimed at strengthening the position of

Shariah banking within Indonesia's financial landscape. Mergers in the financial sector, especially involving state-owned banks, are complex undertakings, characterized by multifaceted challenges. A merger of this magnitude entails the integration of disparate systems, processes, and corporate cultures. Such integration is fundamental to achieving operational efficiency and cost synergies post-merger. However, it necessitates meticulous planning and execution to ensure a smooth transition (Iqbal & Mirakhor, 2011). The successful completion of the merger hinged on obtaining regulatory approvals and establishing a clear legal framework. Given the inherent complexities of merging banks operating under Islamic finance principles, rigorous review and approval were required from Islamic finance scholars and regulatory authorities. These approvals ensured that the merger and BSI's operations complied with Shariah principles and legal requirements. The legal framework also played a critical role in defining the rights and responsibilities of stakeholders, including shareholders and customers. The framework provided the foundation for asset transfer and valuation, a process essential for the equitable treatment of shareholders and the smooth transition of assets to BSI. One of the most critical aspects of the merger was the transparent and fair transfer of assets from the individual banks to BSI. Valuation of these assets had to be conducted meticulously to prevent disputes and to guarantee that shareholders received just compensation for their contributions. Accurate valuation was not only a legal necessity but also essential for maintaining the trust of stakeholders, particularly investors and depositors (Sawitri, 2022).

This article aims to explore the various stages involved in establishing Bank Syariah Indonesia. It focuses on understanding the complex merger process, analyzing regulatory compliance, highlighting the challenges faced, celebrating achievements, and learning valuable lessons. This journey of establishment serves as an interesting case study, providing insights into the intricacies of financial sector mergers and the significant role played by regulatory and legal frameworks in shaping Islamic finance in Indonesia. The subsequent sections of this article will delve into the legal and regulatory complexities that characterized this transformative journey, offering insights into the challenges faced and the measures taken to ensure compliance. It will also extract lessons from this remarkable journey and assess its implications for the ongoing development of Islamic finance in Indonesia and its potential impact beyond national borders.

2. RESEARCH METHODS

The research methodology employed in this study combines a normative-legal approach with a case study approach. Normative-legal represents an approach that centers its focus on the regulatory aspects governed by legal norms and principles, particularly those that dictate what "ought to be" within the legal framework (Arikunto, 2012). Meanwhile, the case study approach represents an approach that tries to understand how the relevant regulation is applied within the case discussed (Marzuki, 2017). The primary aim of this research is to comprehensively analyze the relevant legal provisions governing the merger of Islamic banks and the associated limitations, with a specific emphasis on its corporate aspects with the Bank Syariah Indonesia merger serving as a case study on the relevant legal provisions affecting a real merger.

The research process employs an extensive literature review as a primary tool to gain a comprehensive understanding of the merger process and challenges of Islamic banks in Indonesia, specifically Bank Syariah Indonesia. This involves an in-depth study

of academic papers, government reports, legal documents, and scholarly works related to Islamic finance and banking in Indonesia.

The data utilized in this research is categorized as secondary data, obtained from sources external to the researcher's original experimentation and analysis. These data sources are further classified into three main categories: primary legal materials, secondary legal materials, and non-legal materials.

Primary legal materials encompass authoritative legal sources, such as statutes, regulations, and official legal documents. Secondary legal materials include academic legal publications and legal commentaries. Non-legal materials encompass a broader spectrum of sources from disciplines other than law, including academic works, reference materials, and interdisciplinary studies.

3. RESULTS AND DISCUSSION

3.1. BSI Merger Legal Framework

This section aims to unravel the merger preparation of BSI. Merger is a complex and crucial process that involves various stages and considerations. All the merging banks need to comply with the regulations and prepare the required documents that have been put in place by the legal framework. Under Law 21/2008, Shariah bank mergers have no specific rule. Instead, it delegates the roles of governing Shariah bank mergers to other regulations specifically governing bank mergers through Article 17 paragraph 3 of Law 21/2008.

Considering that the BSI Merger consists of private Shariah banks (PT Syariah Mandiri and PT BNI Syariah) and a public Shariah bank (PT BRI syariah Tbk), this paper will divide the legal framework into two categories, one concerning the framework that private Shariah banks have to adhere to and one concerning the framework that public Shariah banks have to adhere to.

a. The Private Shariah Bank
   Rules and regulations concerning the merger of private Shariah banks are regulated under POJK 41/2019 and Law 40/2007.
b. The Public Shariah Bank
   While the merger of a public Shariah bank shares the same regulations as the merger of private Shariah banks, there is some additional regulation that a public Shariah bank has to adhere to for merging. Those regulations are POJK 15/2020 POJK 74/2016, POJK 31/2015, Law 8/1995, and Government Regulation 28/1999.

3.2. Merger Plan Regulations

A Merger Plan is a blueprint for conducting a merger, crafted by the directors of the merging companies. Following the formulation of a merger plan, the subsequent step involves seeking approval through a voting process at the General Meeting of Shareholders. As outlined in Article 123 of Law 40/2007 directors of the companies conducting a merger should arrange a merger plan, a typical merger plan should cover the following elements:

a. Names and Registered Locations: Identification of each company involved in the merger.

b. Rationale and Requirements: Explanations and justifications provided by the Board of Directors of the merging company, including any requirements for the merger.
c. Share Evaluation and Conversion: Procedures for assessing and converting the shares of the merging company into those of the receiving company.
d. Amendments to Articles of Association: Proposed amendments to the articles of association of the receiving company in case of a merger.
e. Financial Reports: Financial statements for the past 3 fiscal years of each merging company, as stipulated in Article 66(2)(a) of Law 40/2007.
f. Continuation or Termination Plan: Plans outlining the future of the business activities of the merging company.
g. Pro Forma Balance Sheet: A pro forma balance sheet for the receiving company, complying with generally accepted accounting principles in Indonesia.
h. Resolution of Status, Rights, and Obligations: Procedures for addressing the status, rights, and obligations of members of the Board of Directors, Board of Commissioners, and employees of the merging company.
i. Resolution of Rights and Obligations with Third Parties: Procedures for handling the rights and obligations of the merging company with third parties.
j. Shareholder Rights: Procedures for addressing the rights of shareholders who oppose the merger.
k. Board of Directors and Board of Commissioners: Names and compensation details for members of the Board of Directors and Board of Commissioners of the receiving company.
l. Merger Timeline: Estimated timeline for the merger process.
m. Progress Report: A report on the current state, progress, and achievements of each merging company.
n. Company Activities: Details about the primary activities of each merging company, including any changes during the current fiscal year.
o. Issues Impacting Merging Company: Information on any issues that have arisen during the current fiscal year, affecting the activities of the merging company.

The bank merger plan shares some similarities with the requirements outlined earlier, but there are specific differences and additional elements mandated by POJK 41/2019. Article 9 of POJK 41/2019 segments the merger plan into three main sections:

a. First, Information about the banks involved in the merger. The additional rules specific to POJK 41/2019 are as follows:
    - Name, registered location, office network, business activities/products/activities, organizational structure, capital structure, shareholders, and the composition and names of members of the Board of Directors, Board of Commissioners, and Shariah Supervisory Board for each participating bank.
    - Financial statements and financial performance data, compliant with POJK 37/2019, for the last three audited fiscal years by public accountants for each bank undergoing the merger or consolidation
b. Second, Information about the merger plan. The additional rules specific to POJK 41/2019 are as follows:
    - Inclusion of interim financial statements and financial performance information for the current fiscal year concerning the merger.

- Legal counsel's perspective on the legal aspects of the merger or consolidation.
- A summarized report from an independent appraiser evaluating the fairness of the merger or consolidation.
- Disclosure of any conflicts of interest involving the participating banks and their respective members of the Board of Directors, Board of Commissioners, or Shariah Supervisory Board, if applicable. Expert opinions on specific aspects of the merger or consolidation, if deemed necessary.

c. Third, information about the resulting bank. The additional rules specific to POJK 41/2019 are as follows:
   - Details about the name, registered locations, office network status, business activities/products/activities, organizational structure, capital structure, shareholders, organizational structure, composition of the Board of Directors, Board of Commissioners, and Shariah Supervisory Board, along with information technology and human resources.
   - Plans for changing the bank's name and logo.
   - Pro forma financial data audited by public accountants, covering financial statements like the balance sheet, income statement, comprehensive income statement, equity changes statement, minimum capital adequacy requirement calculation, and bank financial ratios.
   - Projections for the bank's financial health during at least two assessment periods, ensuring a minimum Composite Rating of 3 (PK-3). The plan should include corrective actions if the bank's health is projected to fall below a Composite Rating of 3 (PK-3) during the two assessment periods.
   - An explanation of the potential benefits and risks associated with the merger or consolidation, along with strategies for risk mitigation.
   - Confirmation from the bank undergoing the merger or consolidation that the resulting bank will assume all rights and obligations of the bank undergoing the merger or consolidation.
   - Business plans.

Meanwhile, for a public company status bank as ruled in Article 77 of POJK 41/2019, the merger plan requirement will also have to adhere to rules set in POJK 74/2016. Article 4, Article 6, and Article 7 of POJK 74/2016 detail what public company (here also applies to public bank) merger plan should include. Additional elements listed in POJK 74/2016 are as follows:

a. A summary of crucial financial data sourced from audited financial statements conducted by Public Accountants for each company involved in the merger. If the company engaging in Business Merger is a Public Company, the summary should encompass the last 2 (two) years. If the company engaging in Business Merger is not a Public Company, the summary should span the last 3 (three) years.
b. A concise overview of the appraiser's report about the valuation of shares for each company participating in the merger. encompassing at a minimum: The identity of involved parties, the subject under evaluation, the objectives of the assessment, assumptions and constraining factors, evaluation methodology and approaches, and conclusive valuation results.

c. Any material changes affecting the nature, financial state, or other aspects influencing the Public Company resulting from the merger must be comprehensively included in the merger plan.
d. Information about the prospective Controlling Shareholder of the Public Company, along with a concise overview of the management's analysis and discussion concerning the company participating in the merger.

The merger plan that has been arranged by the directors of the companies conducting the merger together, it must have its summary announced to the public through a national newspaper and each company website no later than the end of the second working day after obtaining the approval of the Board of Commissioners and at least 30 days before convening the General Meeting of Shareholders (GMS). Afterwards, proof of the announcement must be submitted to OJK no later than two working days after the announcement to the public.

A public company must also submit their statement of merger that includes the merger plan to OJK as ruled under Article 11 of POJK 74/2016. OJK has the authority to seek modifications and/or supplementary information for scrutiny or public disclosure. Should the OJK require further details or modifications to the merger statement, the public company is mandated to provide these within a maximum of ten working days from the date of receiving the request, and subsequently, disclose the changes or additional information to the public two working days prior to the commencement of the GMS, as stipulated in Articles 14 and 15 of POJK 74/2016. A General Meeting of Shareholders (GMS) can only be convened once the statement of merger is deemed effective. The statement of merger achieves effectiveness when no further alterations or supplementary information are requested, typically within 20 days from its most recent revision.

PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah published their summary of the merger plan to the public on 21 October 2020 and the statement of the merger on 11 December 2020. The merging companies' board of directors had successfully satisfied all the requirements outlined in the rules above. PT BRI syariah Tbk acts as the surviving entity in the merger and plans to change its name to Bank Syariah Indonesia after the merger has been completed. After the merger, PT BRI syariah Tbk's branch office would surmount over 1200 locations. The new capital structure planned following the merger plan would leave the parent company of the three Sharia banks to hold shares as follows: PT Bank Mandiri (Persero) Tbk (the parent company of PT Bank Syariah Mandiri) has a majority ownership of 51.2%, PT Bank Negara Indonesia (Persero) Tbk (the parent company of PT Bank BNI Syariah) holds 25% of the shares, and PT Bank Rakyat Indonesia (Persero) Tbk (the parent company of PT Bank BRI syariah Tbk) owns 17.4% of the shares, the remainder 6.4 % is in the hands of other shareholders. All amounting to a total of around Rp 40 trillion authorized capital. This results in PT Bank Mandiri (Persero) Tbk acting as the prospective controlling shareholders at the company receiving the merger.

3.3. Material Fact Disclosure

POJK 31/2015 mandates that a merger is considered a material fact, necessitating its disclosure to the public and reporting to the OJK. Material fact, as per the definition in Law 8/1995 under Article 1 number 7, encompasses information of significance and relevance about events, incidents, or details with the potential to influence security prices

on the Stock Exchange and the decisions of investors, prospective investors, and other stakeholders. Compliance with the regulations stipulated in Articles 3 and 4 of POJK 31/2015 requires the submission of announcements and reports of material facts within two working days from the time such information becomes known. These announcements should be made available on the public company website in Indonesia, in both English and the national Indonesian language, as well as on the IDX website and a national Indonesian language newspaper. The announcement should consist date of the event, the type of the event, description and impact of the event.

However, Article 6 of POJK 31/2015 does not explicitly address whether the term 'merger' encompasses the pre-merger processes. The inclusion of the Merger Plan and any subsequent changes falls under the broader category of 'other material facts' as delineated in the article. Letter number S.B.051-PDR/10-2020 which was published on 21 October 2020 acts as the fulfilment of the requirement by PT BRI syariah Tbk.

3.4. Proper Assets and Shares Valuation Obligation

Within their respective roles, the board of directors and commissioners are bound by a fiduciary duty to both the company and its shareholders. This duty obliges them to ensure that the merging entities, whether the dissolving or surviving company, contribute significant value to the stakeholders. This fiduciary duty, with the board of directors and commissioners acting as principals, necessitates the operation of the business in a manner that consistently serves the best interests of the company and its shareholders, who act as the ultimate beneficiaries (Munir, 2002). This fiduciary duty principle has been laid out in Law 40/2007, specifically under Article 92, paragraphs 1 and 2, Article 97, paragraph 2 for the Board of Directors, and Article 108, paragraphs 1 and 2, along with Article 114, paragraph 2 for the Board of Commissioners. The phrase “in accordance with policies deemed appropriate” used in Article 92 paragraph 2 was then further explained to mean policies that are based, among other things, factors such as expertise, available opportunities, and industry standards within a related business context.

As previously discussed, the formulation of a merger plan for companies necessitates the inclusion of an expert opinion, particularly when deemed necessary (Hu, Shao & Yu, 2022). This requirement involves a comprehensive expert assessment of various facets, including the assets, liabilities, operations, and overall well-being of the merging companies. Following the standard practices of mergers and acquisitions, this evaluation and disclosure to shareholders must occur before the formulation of the merger plan, ideally commencing even before the initiation of negotiation processes by the involved companies (Corporate Finance Institute, 2019). An approach commonly employed to guarantee an impartial and equitable assessment of assets or a business involves utilizing the services of the Office of Public Appraisal (KJPP). Nevertheless, it's important to note that KJPP services are subject to certain limitations. KJPP is exclusively authorized to appraise properties and businesses in accordance with Article 5 of the Ministry of Finance Regulation 228/2019.

3.5. General Meeting of Shareholders Quorum for Approval Regulation

As ruled under Article 14 of POJK 41/2019 and Article 17 of POJK 74/2016, the banks that are conducting the merger require the approval of each GMS, especially regarding the merger plan and the merger deed concept. There are distinct rules and requirements regarding the General Meeting of Shareholders for private and public companies. GMS for private companies is regulated under Law 40/2007, while for public

companies OJK had promulgated POJK 15/2020 as a specific rule on conducting GMS for public companies. Private companies typically face fewer reporting and disclosure requirements compared to public companies, while public companies are subject to comprehensive reporting and disclosure requirements.

The quorum for a General Meeting of Shareholders (GMS) in the context of a merger in Indonesia is typically governed by Law 40/2007 and the company's articles of association, but public companies also have to follow the rules set under POJK 15/2020. The quorum refers to the minimum number of shareholders or shares that must be represented at the meeting to make it valid and capable of making binding decisions. The rules regarding GMS quorum in the context of a merger are generally similar for both public and private companies in Indonesia. Below are some key points regarding GMS quorum in the context of a merger:

a. Quorum Requirements: The quorum is the minimum number of shareholders or shares that must be represented at the GMS to validate the meeting and any decisions made. While the specific quorum requirements can vary based on the company's articles of association, the law often prescribes at least ¾ of the total voting shares are present or represented at the first meeting. If a decision or the quorum requirements cannot be met, then the second meeting requires at least ⅔ the total voting shares to be present or represented at the meeting. For public companies as ruled in Article 43 letter e of POJK 15/2020, if the quorum for the second GMS cannot be achieved, the third GMS can be deemed valid and granted decision-making authority. This is contingent upon attendance by shareholders holding valid voting shares and meeting the attendance and decision-making quorum requirements, as determined by the OJK upon the Public Company's request.
b. Vote Threshold: In the context of mergers in Indonesia, a substantial proportion of shares or votes must be represented for approval. According to both Law 40/2017 and POJK 15/2020, a decision is deemed valid when it receives the approval of more than ¾ of the total voting shares present during the first or second GMS.
c. GMS Minutes and Summary: The minutes of the GMS under Article 90 of Law 40/2007 and Article 49 of POJK 15/2020 are mandatory and must be drafted and signed for each GMS, with the document signed by the meeting's chairperson and at least one shareholder, as designated by the GMS attendees. Signatures are unnecessary if the GMS minutes are documented in the format of a notarial deed. For public companies, some additional rules are set for the GMS minute under Articles 49 and 50 of POJK 15/2020. The notarial deed for the GMS minute must be drawn up by a notary registered with OJK. Then GMS minutes must be submitted to the OJK at least 30 days after the GMS is held.

GMS approval mentioned previously is then incorporated into the merger deed prepared by a notary public in the Indonesian language as ruled under Article 128 of Law 40/2007 and Article 16 of POJK 74/2016.The GMS for the BSI merger was convened on 15 December 2020 and included a comprehensive meeting agenda. The primary objectives of this GMS were to secure approval for the merger, discuss and approve the merger plan, outline the concept for the deed of merger, address changes to the articles of association, and determine the appointment of new management for the merged entity.

Of particular note are the significant changes to the articles of association that were proposed and approved during this GMS. These changes are integral to the merger process and pertain to the substantial increase in the authorized capital to Rp 40 trillion, which is divided into 80 billion shares. Additionally, the paid-up capital was augmented to Rp 20,515,604,471,500.00, distributed among 41,031,208,943 shares. Most notably, the change in the official name of PT BRI syariah Tbk to PT Bank Syariah Indonesia was sanctioned during the GMS.

Subsequently, the deed of merger, a critical legal document that formalizes the merger process, was prepared. This pivotal document was first drafted on 16 December 2021 and subsequently restated on 14 January 2021. These actions were carried out and formalized under the guidance of Jose Dimas Satria, S.H., M.Kn., who served as the notary public for these essential proceedings. The deed of merger, with its legal and linguistic precision, serves as a foundational element in the merger process, encapsulating the GMS approval and reflecting the culmination of intricate legal and financial procedures.

3.6. OJK and Minister of Law and Human Rights Approval

Following the approval granted by the GMS, the Board of Directors of all participating merging companies is required to formally request a permit for the merger from OJK. This request must be submitted no later than three working days after the GMS decision to approve the merger. The request should be accompanied by essential documentation, including the notarized GMS approval minutes, the approved merger plan, the merger deed, amendments to the surviving bank's articles of association, and the financial report or information related to the merging banks' financial performance if the request is made more than six months after the merger plan summary is announced.

Article 18 of POJK 41/2019 outlines that OJK, within 14 working days from the receipt of the request, assesses the completeness and authenticity of the submitted documents, the suitability of the prospective Board of Directors and Commissioners, the Controlling Shareholders, and conducts interviews with the Shariah Supervisory Board. The latest financial performance of the entities is also considered in this evaluation. Upon satisfying these criteria, OJK grants permission for the merger. Subsequently, a proposal for approval and/or notification of amendments to the surviving bank's Articles of Association is forwarded to the Minister of Law and Human Rights within 30 days from the date specified in the Articles of Association amendment deed, as stipulated in Article 129 of Law 40/2007 and Article 21 of POJK 41/2019. Specific changes requiring approval or mere notification are detailed under Article 21 of Law 40/2007.

OJK officially approved of the merger for the BSI merger to go ahead on January 27 2021 via letter Number SR-3/PB.1/2021. Ministry of Law and Human Rights has also issued approval to all of the changes to the Deed of Association via Letter No. AHU-AH.01.10-0011384 dated January 28 2021. With all approval received, the merger will be effective on 1 February 2021 as the date listed on the Merger Plan. PT BRI syariah Tbk names are no longer used and officially have been replaced with PT Bank Syariah Indonesia Tbk. By Law, all the liabilities, assets and other obligations of the merging banks are now under the BSI book, this includes any credit lent, customer funds, accounts etc.

3.7. IDX Rules on Additional Shares of The Surviving Company

As an entity receiving the merger PT BRI syariah Tbk (BRIS) gains a massive increase in capital, represented by new additional shares. To complete the merger PT BRI syariah Tbk issued 31.130.700.245 new shares. This move increased the total number of outstanding shares in the stock market from 9.716.113.498 to 40.846.813.743 shares. New shares issued are then converted to the new shareholders at the agreed-upon rate in the merger plan. The rates of conversion to newly issued BRIS shares are as such: 1:34,97 for Bank Syariah Mandiri's shares and 1:3500,2767 for Bank BNI Syariah's shares. Regarding the regulatory framework governing the listing of new shares resulting from a merger, the Indonesia Stock Exchange (IDX) issued a directive known as Board of Directors Decision Number Kep-001/BEJ/012000, regarding Stock Listing Rules Number I-G, which pertains to Business Merger and Consolidation (SLR: I-G). SLR: I-G was introduced to provide comprehensive guidance on the procedural aspects of such corporate actions.

Section B of SLR: I-G mandates that the surviving listed entity in a merger must promptly submit an application to IDX for the listing of additional new shares on the following trading day after the merger submission statement has been filed with the Financial Services Authority (OJK). IDX is then obliged to furnish their in-principal approval for the listing within five trading days after the request submission. In addition to the merger submission statement, the application must be accompanied by the documents, projected schedules regarding the merger, and other information important for the merger (including information about the dissolving companies) as outlined in Section B. 1b. Furthermore if the dissolving companies in the merger is not a publicly listed company, important information about the companies that need to be disclosed to the IDX to protect the interest of investor are as follows: Statement of Debt/Obligation; Analysis from the management about its material obligation, extraordinary event and abnormal transaction; business risk; description about the business; business activities and prospect; management, oversight and human capital; production and marketing; last 3 years audited by listed public accountant financial report.

Furthermore, the listed entity is obligated to keep IDX informed through written reports at various pivotal stages of the merger process, including when the merger statement is deemed effective by OJK, the General Meeting of Shareholders' decision on the merger, receipt of OJK's merger permit, and any other pertinent merger permits obtained from relevant institutions. This mechanism ensures that IDX remains informed and engaged throughout the various stages of the merger. Notably, BRIS initiated the request for the listing of additional shares on October 21, 2020, as documented by Mutmainah & Putra (2022).

Section C of SLR I-G delineates the procedural steps for listing the newly issued additional shares following the formalization of the merger, marked by the execution of the merger deed and the subsequent approval/acknowledgement from the Minister of Law and Human Rights. Both the copy of the deed of merger and approval/acknowledgement from the Minister of Law and Human Rights are required to be submitted at the latest one trading day after obtaining such documents. Submission of the documents mentioned above must also be accompanied by a fixed schedule decision on the tentative schedule and information given during the request for the listing, other information as listed in sections c.6 and c.7 of SLR I-G. This notably includes information regarding the ownership of new shares, the date of listing of new shares, total outstanding shares after addition, the theoretical price of the shares, and the date when the newly listed shares can

be traded. The shares of the resulting company are first traded through the formation of an opening price, if such a price cannot be formed then the theoretical price submitted will be used as the basis for trading the shares.

Section D of SLR I-G provides a legal framework for the recognition of merging companies' collective share certificates as proof of ownership of newly issued shares in the receiving company. The conversion rate, as agreed upon, determines the value of each merging company's collective share certificates in terms of the receiving company's shares. However, it is crucial to note that the use of these collective share certificates as proof of ownership has a limited duration, which is stipulated in the schedule provided in Section C.

During the timeframe specified in the schedule, the proof of ownership can be converted into the collective share certificate of the receiving company. Section D.5 imposes an obligation that any request for this conversion must be completed within five trading days after the submission of such a request. Furthermore, transactions on the stock exchange involving receiving company shares that use proof of ownership are permissible as long as they adhere to the prescribed timeline, which cannot extend beyond five trading days following the listing of the newly issued shares. Settlement of these transactions must occur before exceeding five trading days after the specified time limit concludes. This regulatory framework ensures the integrity and legality of ownership transfer in the context of corporate mergers.

The successful listing process of the newly issued shares of PT Bank BRI syariah Tbk (BSI) is a significant milestone in the completion of BSI's merger. This process, initiated with Company Letter No. S.B.065-PDR/01-2021 dated January 27, 2021, which pertained to the Application for Listing of Additional Shares Resulting from the Merger, followed by IDX's share listing announcement letter No. Peng-P-00041/BEI.PP1/01-2021, signifies one of the final steps in the merger. It highlights the company's commitment to ensuring the seamless transition of ownership and capital structure in line with regulatory requirements. The successful listing of newly issued shares marks one of the final steps in a public company's journey towards the realization of a merger. It is crucial to note that these shares will eventually become integral to the post-merger company's capital structure and shareholder dynamics. Their listing serves as a vital aspect of ensuring transparency, market access, and compliance with regulatory standards.

4. CONCLUSION

The examination of the Bank Syariah Indonesia's (BSI) merger preparation elucidates the intricate legal framework and regulatory nuances inherent in such a complex corporate initiative. Governed by Indonesian laws and regulations, this merger provides insightful perspectives into the sophisticated process of amalgamating private Shariah banks (PT Syariah Mandiri and PT BNI Syariah) with a public Shariah bank (PT BRIsyariah Tbk). This comprehensive discussion unravels key aspects, including the legal framework classification, merger plan requirements, material fact disclosure, assets and shares valuation, GMS quorum, OJK and Minister of Law and Human Rights approval, and IDX rules on additional share listing.

The successful execution of BSI's merger stands as a testament to the efficacy of the existing legal and regulatory framework in facilitating intricate financial transactions. It underscores the paramount importance of adhering to the rule of law and best practices

to ensure the transparency and integrity of corporate consolidations within the financial sector. As suggestion for future academic, a comparative analysis of legal and regulatory frameworks governing bank mergers in Indonesia and other nations holds promise for yielding valuable insights and contributing to regulatory refinements. Additionally, studying stakeholder perspectives, evaluating post-merger performance, and advocating for regulatory clarity in public bank mergers offer promising research avenues to enhance our understanding of financial transactions and contribute to regulatory advancements.

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ANALYSIS OF THE DISPUTE RESOLUTION MECHANISM OF THE TRIUMVIRATE MINISTER AS THE EXECUTOR OF PRESIDENTIAL DUTIES IN INDONESIA

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Abstract

The 1945 Constitution regulates the position of triumvirate ministers, including the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense, collectively empowered to replace the president and vice president in case of a vacancy. The exercise of this authority increases the likelihood of disputes among the three ministers while performing presidential duties in Indonesia. The conflicting implications of the triumvirate minister position and its assumed powers stem from the diverse backgrounds of the three different institutions. Therefore, a clear mechanism is necessary for resolving conflicts among triumvirate ministers. This study employs normative legal research methods with a statutory law approach, utilizing primary legal material and secondary legal materials such as books and journals. The findings reveal that the dispute resolution mechanism for triumvirate ministries is fundamentally within the purview of the Constitutional Court, as affirmed by the Constitution. However, a lack of detailed derivative regulations has led to a blur in norms related to the interpretation of state institutions outlined in the Constitution. This gap arises due to the absence of regulations that provide a comprehensive explanation of these state institutions.

Keywords: *Dispute Settlement Mechanism, President, Triumvirate Minister*

1. INTRODUCTION

Indonesia stands as a sovereign nation underpinned by the rule of law, wherein the conduct of national life and governance must consistently reflect the principles of a legal state grounded in constitutional supremacy. The realization of constitutional supremacy, as a foundational tenet of the state, is contingent upon a systematic framework that consistently affords protection and guarantees the constitutional rights of every citizen. In the capacity of a legal state, it becomes imperative for the nation to actively engage in providing legal certainty, a condition that can only be attained through the continuous scrutiny and rectification of gaps, ambiguities, and conflicts inherent in the plethora of existing legal regulations (Santika, 2021).

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), beyond reiterating the concept of a legal state, unequivocally establishes the presidential system of governance. As articulated by Sri Soemantri, distinctive features of the presidential system in the UUD NRI 1945 encompass the direct election of the President and Vice President by the populace in a unified ticket and the President's exemption from accountability to the People's Consultative Assembly (MPR) as it no longer serves as the executor of the people's sovereignty. In consonance, Arendt Lijphart delineates three criteria defining a presidential system, namely: (1) executive power vested in an individual rather than a collective entity; (2) the direct election of the executive by the people; and (3) a fixed term immune to revocation or annulment through parliamentary procedures (Yani, 2018).

Within the framework of a presidential system, the President assumes the dual role of head of state and head of government in executing state functions. Acknowledging the impracticality of the President's direct involvement in day-to-day governance affairs, the president relies on state organs that align with executive functions. Thus, the Ministerial role becomes instrumental as the technical executor of governance (Adiwilaga et al., 2018).

The Ministerial position, within Indonesia's constitutional system, assumes a distinctly political character. Politically, Ministers are appointed and dismissed by the President, wielding political authority. The significance of Ministers within Indonesia's constitutional framework is underscored by the 1945 Constitution, which allocates regulations pertaining to State Ministers to a discrete chapter outside Chapter III dedicated to the Powers of State Governance. Article 17 of Chapter V on State Ministries delineates key provisions, including the President's collaboration with State Ministers, the presidential authority to appoint and dismiss Ministers, each Minister's oversight of specific governmental affairs, and the legislative regulation of the establishment, alteration, and dissolution of State Ministries.

The constitutional framework in Indonesia recognizes the presence of three ministerial positions collectively known as the Minister Triumvirate or Triumvirate Ministers. Triumvirate is interpreted to signify a trinity, a triad, or the collective authority held by three individuals. In the practical realm of Indonesian politics, both connotations are employed to elucidate the concept of triumvirate. These three ministerial roles are occupied by the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense. The statutory positioning of these ministers, or the Minister Triumvirate, is delineated in Article 8, paragraph 3 of the 1945 Constitution. This article stipulates that in the event of the simultaneous cessation of the President and Vice President due to demise, resignation, dismissal, or an inability to fulfill their duties, the responsibilities of the presidency are collectively shouldered by the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense. Subsequently, within thirty days, the People's Consultative Assembly (MPR) convenes to elect the President and Vice President from two pairs of candidates proposed by political parties or coalitions. These candidates must have secured the highest and second-highest votes in the preceding general election until the completion of their term (Tutik, 2020).

The provision concerning the role of the Minister Triumvirate as temporary successors for 30 days introduces a novel challenge within Indonesia's constitutional landscape. During this period, the pivotal duties of the presidency, encompassing both the head of state and head of government roles, are delegated to the Minister Triumvirate. Should a dispute arise, particularly in matters of decision-making, considerations, or the allocation of authority among the Minister Triumvirate comprising the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense, an issue surfaces concerning the procedural mechanisms for dispute resolution. Moreover, questions emerge regarding the designated authority responsible for adjudicating or resolving disputes among the Minister Triumvirate. Diverging from previous research, exemplified by studies such as "The Constitutional Position of the Minister Triumvirate as the Executor of Presidential Duties in the Presidential System of Government in Indonesia" by Titik Triwulan Tutik in the Journal of Islamic Law and Legislation 'Al-Daulah', this study distinguishes itself by not only addressing the constitutional aspects of the Minister

Triumvirate but also delving into the mechanisms for dispute resolution within this tripartite ministerial structure.

Examining the aforementioned issues provides a foundational premise for this article. Key questions revolve around the constitutional standing of triumvirate ministers within the Indonesian framework and the existing mechanisms for resolving disputes among triumvirate ministers when undertaking presidential responsibilities during vacancies. This article endeavors to scrutinize the positioning of triumvirate ministers within the Indonesian constitutional apparatus, assess the dispute resolution mechanisms concerning triumvirate ministers in the execution of presidential duties, and, more broadly, contribute to the refinement of Indonesia's legal and constitutional framework through a comprehensive examination of the articulated issues. The analysis presented herein aims to enhance scholarly understanding and discourse surrounding the intricate interplay of constitutional roles and dispute resolution mechanisms within the Indonesian political landscape.

2. RESEARCH METHODS

The chosen methodological foundation is the juridical-normative approach, which inherently involves a textual examination of the law through legislative regulations. Within this framework, the conceptualization of legal principles is guided by established norms and guidelines that govern human interactions (Muhammad Syahrum, 2022). The adoption of a statutory approach in this writing signifies an examination of various regulations and an exploration of all facets related to the specific issue under discussion. This method facilitates a comprehensive analysis of legal texts and principles, enabling a nuanced understanding of the legal landscape surrounding the subject matter.

In constructing this article, the author draws upon a diverse array of data sources. Primary sources include national regulations, forming the legal bedrock for the analysis. Additionally, secondary sources such as juridical reviews, scholarly opinions, legal journals, and research findings contribute valuable insights, enriching the discussion. Furthermore, tertiary sources like legal dictionaries are incorporated, enhancing the precision and clarity of the legal terminology used throughout the writing (Ali, 2021). This methodological approach ensures a well-rounded exploration of the subject matter, combining a rigorous analysis of legal texts with insights from scholarly perspectives and empirical research.

3. RESULTS AND DISCUSSION

3.1. The Position of the Minister Triumvirate in the Indonesian Constitutional System

Triumvirate is a term derived from Latin, meaning three men in a dominating political regime, each referred to as a member of the triumvirate. According to the Indonesian Dictionary, Triumvirate signifies a governance or authority held collectively by three individuals as a unified entity. In its formation, a triumvirate can be established through both formal and informal mechanisms, where the individuals involved hold an equal position on paper, although practical equality among the three is seldom realized. Triumvirate also describes a term applicable to a country with three different leaders, each labeling themselves as a singular leader (Sudrajat, 2022).

In the context of the Indonesian constitutional system, the position of the Minister Triumvirate exists within the framework of Indonesian legislation and has been implemented in the history of the political leadership transition in Indonesia. Constitutionally, the position of the Minister Triumvirate is emphasized in Article 8, paragraph (3) of the 1945 Constitution, stating that "If the President and Vice President pass away, resign, are dismissed, or are unable to perform their duties simultaneously within their term, the duties of the presidency are assumed jointly by the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense. No later than thirty days thereafter, the People's Consultative Assembly (MPR) holds a session to elect the President and Vice President from two pairs of candidates proposed by political parties or coalitions of political parties whose candidates for President and Vice President received the highest and second-highest votes in the previous general election until the end of their term (Hudi, 2018).

The implementation of the triumvirate concept first emerged during the transition period from the old order to the new order in 1966. This is reflected through the politically effective March 11th order (*Supersemar*). The concept of *Supersemar* illustrates the need for collective leadership in the form of cooperation to gain public support domestically and internationally. During this period, the collective leadership fell under the responsibility of Soeharto, who held the mandate conveyed by *Supersemar* to restore order and national security stability. Additionally, Sri Sultan Hamengku Buwono IX played a transitional role in solving rehabilitation issues and national economic stability. The third figure, Adam Malik, was tasked with restoring international trust (Taum, 2020).

The term triumvirate in the Indonesian constitutional system is further emphasized in MPR Decree No. VII/MPR/1973 concerning the Incapacity of the President and Vice President. In this MPR Decree, it is stipulated that when the President and Vice President are permanently and evidently incapacitated, the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense-Security collectively assume the Temporary Acting Presidential Position. The three ministers collectively execute the presidential duties until the President and Vice President are definitively determined by the MPR to replace the previous president and vice president. The People's Consultative Assembly must convene a special session no later than one month after the President and Vice President are permanently incapacitated to elect and appoint the President and Vice President. This means that the triumvirate holds authority for a maximum of 30 days, counting from the permanent incapacitation of the President and Vice President.

The mention of the triumvirate ministers normatively emerges in the People's Consultative Assembly Decree Number VII/MPR/1973 concerning the Incapacity of the President and/or Vice President of the Republic of Indonesia. Based on Article 5 of the Decree, it stipulates provisions regarding the permanent incapacity of the President and/or Vice President as follows:

a. In the event of the President and Vice President being permanently incapacitated, the People's Consultative Assembly, no later than one month after their permanent incapacity, shall convene a Special Session to elect and appoint a President and Vice President whose term will end in accordance with the remaining term of the replaced President and Vice President.
b. Since the President and Vice President are permanently incapacitated, the Ministers holding the positions of the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense-Security collectively perform the

Temporary Acting Presidential Position, and the regulation of their work is determined by the respective Ministers.

c. The Temporary Acting Presidential Position carries out the daily duties of the President until the President and Vice President elected by the Assembly assume their roles.

Constitutionally, through Article 8, paragraph (3) of the 1945 Constitution, the triumvirate ministers are intended so that in the event the President and Vice President pass away, resign, are dismissed, or are unable to perform their duties simultaneously, there is a constitutional solution specified in the 1945 Constitution. This solution entails the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense jointly assuming the duties of the presidency. With this provision, it is expected that prolonged constitutional crises will not arise. Additionally, Article 8, paragraph (3) underscores that the holders of these three ministerial positions have a constitutional status distinct from other ministers. If there is a simultaneous vacancy in the positions of President and/or Vice President, they collectively receive constitutional authority to act as the acting President according to the 1945 Constitution (Sulardi & Esfandiari, 2020).

In essence, in the scenarios outlined in the 1945 Constitution, these three ministers obtain equal constitutional authority to act as the acting President according to the constitution. Elaborating on the provisions of the 1945 Constitution, the holders of these three ministerial positions hold a crucial status, surpassing the authority held by Coordinating Ministers, who are considered more senior in the cabinet or internal presidential structural system. These triumvirate ministers, individually and collectively, have a critically important status in the constitutional system because, normatively, they are constitutional subjects who derive direct power from the 1945 Constitution, serving as the executors of the presidential duties when the specified conditions are met.

3.2. Mechanism for Resolving Disputes among Triumvirate Ministers in Fulfilling Presidential Duties Vacancy

The existence of the Triumvirate Ministers, comprising the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense, each institutionally endowed with predetermined tasks and authorities, gives rise to significant differences in their characteristics, ranging from their core functions to the diverse backgrounds of the ministers. This opens up a broad possibility for disputes, issues, or disagreements among these Triumvirate ministers. These differences in characteristics can manifest as a competition for the superiority of authority among each minister.

Another issue may arise between the Triumvirate Ministers as a unit and other institutional subjects of the State. Theoretically, on paper, disputes may arise among the three of them and non-Triumvirate Ministers, who are usually considered as senior officials or institutions, such as the coordinating minister in their respective fields, responsible for coordinating the three Triumvirate ministers. Additionally, there is the possibility of political competition between independent or combined political parties, attempting to position the serving Triumvirate ministers as a political accommodation to support one of them as a permanent replacement for the president or vice president. In the event of such possibilities, it becomes a significant challenge for the country to maintain its political stability within the 30-day period, as stipulated in Article 8, paragraph (3) of the 1945 Constitution (Madjid, 2022).

Disputes and/or conflicts among Triumvirate ministers from a constitutional perspective fall under the full authority of the Constitutional Court to mediate and provide solutions in maintaining political balance in Indonesia. This is related to the authority granted to the Constitutional Court by the 1945 Constitution, which, in cases of disputes among Triumvirate ministers, places the resolution authority in the hands of the Constitutional Court. Article 24C of the 1945 Constitution states that "The Constitutional Court has the authority to adjudicate at the first and final level, and its decisions are final, to examine laws against the Constitution, settle disputes over the authority of state institutions whose authority is granted by the Constitution, decide the dissolution of political parties, and decide disputes over the results of general elections"(Nuridahwati, 2020). The Constitutional Court Law Number 24 of 2003 and its amendments do not explicitly elaborate or explain what is meant by state institutions whose authority is granted by the Constitution. Similarly, in Article 24C of the 1945 Constitution, as the constitutional basis for the Constitutional Court, there is no formulation related to what the term "state institution" actually means (Siahaan, 2022). The absence of meaning in the phrase "authority granted by the Constitution" creates confusion and multiple interpretations in analyzing whether the authority is explicit or implicit. Based on this, vulnerabilities arise, giving rise to normative ambiguity that poses a legal problem within the legal system in Indonesia.

Article 10, paragraph (1) b, and Article 65 of the Constitutional Court Law contain *subjectum litis* and *objectum litis* requirements, both of which, in practice, are applied by the Constitutional Court cumulatively and absolutely, not as options. Therefore, even if the *subjectum litis* has been fulfilled but the *objectum litis* has not, the petition is always deemed "inadmissible." Furthermore, regarding disputes over authority among state institutions granted only by law, this becomes crucial because disputes over authority in carrying out the functions of such state institutions are likely to occur (Alfarisi, 2020).

Constitution, as the authority held by the Constitutional Court (MK), is crucial, especially to rectify the boundaries and division of tasks and authority among these relevant state institutions through MK's final decisions (Kosariza et al., 2020). This will address the problem of overlapping authority between state institutions. However, in reality, there are still legal issues related to the ambiguity of norms in measuring state institutions granted by the Constitution in resolving disputes over authority among state institutions in the Constitutional Court. The lack of legal clarity regarding which state institution can submit a petition poses a legal challenge in Indonesia that needs to be promptly addressed, considering that the mechanism of replacing presidential duties by the triumvirate ministers may lead to conflicts between state institutions. Nevertheless, it can be interpreted that state institutions whose authority is granted by the Constitution are bodies or institutions clearly regulated in the 1945 Constitution. However, it is important to reconsider and redefine the scope of institutions whose authority is granted by the Constitution, as there is still an ambiguity in defining these state institutions.

4. CONCLUSION

The normative position of the Triumvirate Ministers in Indonesia is regulated in the 1945 Constitution through Article 8, paragraph (3), which states that if there is a vacancy in the positions of the President and Vice President, the execution of presidential duties is carried out collectively by the Minister of Foreign Affairs, the Minister of Home

Affairs, and the Minister of Defense. Historically, during the transition from the old order to the new order in Indonesia, the execution of presidential duties by the triumvirate ministers occurred through the March 11th order and was further regulated by the Decree of the People's Consultative Assembly Number VII/MPR/1973 regarding the Conditions of the President and/or Vice President of the Republic of Indonesia being Impeded. In the implementation of presidential duties by the three triumvirate ministers, conflicts among them are likely to arise, given the competition for superiority and political elements that influence the execution of presidential duties by the triumvirate ministers for 30 days.

The mechanism for resolving disputes if conflicts arise among the triumvirate ministers lies in the hands of the Constitutional Court, which constitutionally has the authority to settle disputes between state institutions whose authority is granted by the Constitution. However, this poses a legal problem due to the lack of specific criteria or further explanations regarding what is referred to as state institutions in the Constitution. This lack of clarity may hinder the dispute resolution process for institutions that can be categorized as petitioners, limiting the Constitutional Court's discretion in accepting cases of disputes between state institutions. Therefore, it may be necessary to formulate normative regulations that provide clear criteria for interpreting state institutions in the Constitution.

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