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IMPLEMENTATION OF ELECTRONIC LAND CERTIFICATES AS LEGAL LAND OWNERSHIP

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Abstract

With the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates, this is a new breakthrough from the government to protect the public and provide legal certainty regarding ownership of land rights. Due to the frequent occurrence of various land disputes which will ultimately be detrimental to society, such as falsification of land certificates, the existence of multiple land certificates or overlapping land certificates and the rise of the land mafia. The problem formulation for this research is how to implement the implementation of electronic land certificates as legal land ownership? and what about legal protection and certainty after the implementation of electronic land certificates? In practice, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning electronic certificates is relevant to be implemented today in line with the rapid development of science, technology and information. Legal certainty in the process of obtaining land rights is based on statutory rules and government regulations to prevent misuse of land rights, and can provide legal protection for land rights owners. This Ministerial Regulation aims to realize the modernization of land services in order to improve indicators of ease of doing business and public services to the community, thereby optimizing the use of information and communication technology by implementing electronic-based land services.

Keywords: *Electronic Land Certificate, Legal Certainty, Legal Protection*

1. INTRODUCTION

The constitutional framework governing land possession and management in Indonesia is embedded in the 1945 Constitution, specifically Article 33 paragraph (3). This constitutional provision unequivocally asserts that the State holds control over land, water, and natural resources contained within, with the primary objective of utilizing these resources for the maximum prosperity of the people. The inclusion of such provisions in the Indonesian Constitution reflects a foundational commitment to ensuring that the nation's natural wealth benefits its citizens collectively.

The existence of land regulations in Indonesia serves a dual purpose. First and foremost, these regulations aim to transform the destiny of Indonesian citizens concerning their control and ownership of land rights. This is particularly crucial in preventing the unauthorized use of land by individuals who do not rightfully own it. Second, these regulations act as a safeguard against potential abuses of land rights, forming a legal framework that defines various land rights, including ownership, land use, building rights, lease rights, utilization rights, land clearing rights, and others stipulated by the Land Law (UUPA). Importantly, the registration of these rights with the National Land Agency (BPN) is a requisite step to obtain a certificate, a document that serves as a legal guarantee for land ownership. The mechanism for obtaining land ownership certificates is regulated

through Government Regulation No. 24 of 1997 concerning Land Registration, in conjunction with Government Regulation No. 18 of 2021 regarding Management Rights, Land Ownership Rights, Apartment Units, and Land Registration (Alimuddin, 2021).

However, the ownership of land certificates as proof of land rights control undeniably leaves gaps in legal certainty that can potentially harm the people. Issues such as land certificate forgery, dual land certificates, overlapping land certificates, and the prevalence of land mafias lead to various land disputes, ultimately disadvantaging the community (Nafan, 2022). An example of such disputes occurred in Denpasar, Bali, where a lawsuit against dual land certificates emerged in the case of Judge's Decision Number 139/Pdt. G/2020/PN. Dps, related to Unlawful Acts committed by the Defendant and Joint Defendant. The disputed land was legally transferred to the Plaintiff through a legitimate sale according to the law, resulting in the legal consequence that the Defendant and Joint Defendant must adhere to and comply with this legally binding decision (*inkracht van Gewijsde*).

The ramifications of land certificate forgery, dual certificates, and land mafias are far-reaching, resulting in a multitude of land disputes that adversely affect the wider community. This challenges the conventional notion that land ownership certificates inherently provide airtight legal certainty for the public. Consequently, there is a pressing need for a legal paradigm shift that can effectively navigate the intricate dynamics of society. If societal changes transpire, the requisite legal adjustments and augmentations in both positive legal norms and institutional frameworks become imperative for meeting the evolving legal needs of the community (Yusra, 2013). Failure to enact such adaptations would result in legal stagnation, aligning with the widely recognized adage that "the law will inevitably lag behind the progress of time" (*het recht hink achter de feiten aan*).

In response to these challenges, on January 21, 2021, the Minister of Agrarian and Spatial Planning/Head of the National Land Agency issued Ministerial Regulation Number 1 of 2021 concerning Electronic Certificates. This regulation represents a proactive attempt to address the legal needs of society in the face of evolving times. It endeavors to modernize land services, aiming to enhance business ease indicators and public services through the strategic application of information and communication technology in the implementation of electronic-based land services.

The introduction of this regulation has sparked extensive discussions within society, eliciting a range of opinions. While some view it as a progressive move toward modernizing land services, anticipating enhanced security, legal certainty, and protection for land rights holders, others express reservations. Critics perceive the plan as hastily implemented, lacking the necessary maturity in preparation. Their concerns center around potential vulnerabilities in land registration data security, potentially leading to uncertainty in land rights. This diversity of perspectives underscores the complexity and sensitivity of implementing legal reforms in a rapidly evolving societal landscape.

This research aims to investigate and analyze the implementation of electronic land certificates as a form of legitimate land ownership. Within this context, the study will concentrate on two primary aspects: how the implementation of electronic land certificates is executed as a valid measure affirming land ownership and how this system provides legal protection and certainty for landowner’s post-implementation of electronic land certificates. Consequently, the research endeavors to offer a more profound

understanding of the impacts, successes, and challenges associated with the utilization of electronic land certificates in the context of legitimizing land ownership.

2. RESEARCH METHODS

The research in question likely employs a mixed-methods approach, combining legal analysis, documentary examination, and empirical investigation. Initially, the study appears grounded in a comprehensive legal analysis, as evidenced by the examination of constitutional provisions, national laws, and government regulations related to land ownership and the implementation of electronic land certificates. This legal scrutiny encompasses an in-depth review of the 1945 Constitution, Land Law (UUPA), and specific government regulations governing land registration, such as Government Regulation No. 24/1997 and Government Regulation No. 18/2021. The legal analysis serves as the foundational framework, establishing the regulatory context and legal nuances surrounding land ownership and the transition to electronic certificates.

Moreover, the research seems to incorporate empirical methods, including a case study approach. By citing a specific legal case in Denpasar, Bali, involving a dispute over dual land certificates (Putusan Hakim Nomor 139/Pdt. G/2020/PN. Dps), the study delves into real-world instances of challenges associated with land ownership and the potential misuse of land certificates. This empirical dimension likely involves field studies, interviews, and an exploration of tangible cases to elucidate the practical implications, successes, and challenges tied to the implementation of electronic land certificates. Through this combined legal and empirical approach, the research aims to provide a nuanced understanding of the complexities surrounding the legitimacy of land ownership, contributing to discussions on the effectiveness of electronic land certificates and potential legal reforms.

3. DISCUSSION

3.1. Implementation of Electronic Land Certificates as Valid Land Ownership

The regulatory framework governing land registration in Indonesia is structured hierarchically, primarily under the purview of Article 19 of the Agrarian Basic Law (UUPA). The technical intricacies of its implementation are further delineated in Government Regulation Number 24 of 1997, in conjunction with Government Regulation Number 18 of 2021. The latter introduces a regulatory approach characterized by a negative principle containing positive elements. This approach culminates in the creation of a substantively robust proof-of-rights document, serving as compelling evidence. Explicitly, Article 5 designates the National Land Agency (BPN) as the governmental entity responsible for land registration throughout the entire Republic of Indonesia (Urip Santoso, 2019). Moreover, Article 6, paragraph (1), underscores that the implementation of land registration is entrusted to the Head of the Land Office at the District/City level.

In light of the accelerated pace of globalization and the concomitant progress in science, technology, and information, governance structures necessitate adaptation. Foundational to these adaptations are extant laws and regulations, such as Republic of Indonesia Law Number 19 of 2016 concerning Electronic Information and Transactions. The technical modalities of this legislation are subsequently expounded upon in Government Regulation Number 71 of 2019, which pertains to the Implementation of Electronic Systems and Transactions. Notably, Article 1, Numbers 4 and 5, of this

regulation delineate the governance of electronic system providers. This includes public electronic system providers affiliated with government agencies or institutions designated by government entities. Consequently, the implementation of the state through an electronic system finds applicability across various governance domains, specifically within the realm of land, including the intricate mechanisms of land registration systems and their resultant outputs.

The procedural intricacies of land registration within an electronic system are further codified in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates. The culmination of this system yields electronic documents, interpreted in accordance with Article 1, Number 2, of the Ministerial Regulation. Electronic documents are defined as any information transmitted, created, sent, received, or stored in analog, digital, electromagnetic, optical, or similar formats. These documents are perceivable and audible through a computer or electronic system, encompassing various mediums such as writing, sound, images, maps, designs, photos, and the like. Importantly, the electronic document in focus is specifically denoted as an electronic certificate or e-certificate.

In the realm of land registration, data, electronic information, and electronic documents constitute repositories of valid and authentic information related to land rights, encompassing physical, and juridical data. These datasets are meticulously stored within an electronic system database, reflecting a comprehensive implementation process involving data collection, processing, and presentation. The outcomes of this process are categorized into two distinct types: electronic documents issued directly through the electronic system, authenticated through electronic signatures, and documents transformed into electronic format, subsequently validated by authorized officials or designated authorities, and digitally stamped within the electronic system.

The implementation of the aforementioned regulatory framework bears direct consequences on both currently registered land and those slated for future registration. As outlined in Article 12 of the Government Regulation, lands endowed with specific rights, including land rights, management rights, ownership rights to condominium units, encumbrance rights, or waqf land, undergo electronic registration and are issued electronic certificates (e-certificates). These e-certificates serve as tangible proof of ownership, with the corresponding access granted to the rights holder within the electronic system. However, exceptions to e-certificate issuance exist, particularly if the physical or juridical data is incomplete or remains under dispute. In the context of already registered land, the transition involves the replacement of traditional certificates with e-certificates through applications for land registration data maintenance services. This process is contingent upon the congruence of physical and juridical data in the land book and certificates with the corresponding data in the electronic system.

The antecedent design for the transition of land registration services to electronic systems was conceived since the enactment of Government Regulation No. 24 of 1997 (Monalu, 2023). Specifically, Article 35, paragraphs (5), (6), and (7), delineate a gradual approach to storing land registration data using electronic and microfilm equipment. The resulting documents, produced through such means, carry probative force once signed and stamped with the official seal by the Head of the relevant Land Office. The methodologies for storing, presenting, and disposing of these documents, as well as the broader method of managing land registration data with electronic and microfilm

equipment, are prescribed by the Minister. Land registration activities, consequent to this transition, will be issued in the form of electronic documents, reflecting a discernible shift from conventional documentation practices.

These electronic documents signify a transformative departure from conventional documentation practices, signifying a governmental initiative to align with the digital era. The establishment of regulations governing electronic documents underscores the government's commitment to streamlining public services and promoting public engagement in the oversight of governmental activities. The legal framework governing electronic documents is explicitly articulated in Article 1, paragraph (4), of Law Number 19 of 2016. The presence of such regulations is purposively designed to actualize E-government practices, fostering a more streamlined and transparent implementation of government activities.

Upon the completion of electronic land registration, all erstwhile analog document replacements will assume the form of electronic documents. The execution of Regulation of the Minister of ATR/BPN No. 1 of 2021 mandates a proactive stance from the government to anticipate potential challenges that may arise during its implementation. However, the Ministry of ATR/BPN, functioning as the orchestrator of electronic land registration systems, has affirmed its preparedness, despite the phased nature of the electronic registration rollout.

At the regulatory level, the land registration system facilitated through electronic systems is underpinned by robust and comprehensive legal foundations. Nevertheless, the success of a regulation's implementation extends beyond its theoretical soundness to encompass the readiness of various stakeholders involved. This pertains to both the organizers of electronic land registration systems, exemplified by the Ministry of ATR/BPN, and the general public, constituting individuals seeking to register or replace their land certificates. Since the enactment of the Ministerial Regulation on e-certificates on January 12, 2021, the Ministry of ATR/BPN, in collaboration with diverse print and electronic media outlets, has initiated efforts to inform and disseminate information about this regulatory framework. This proactive dissemination aims to serve as a conduit for the public, facilitating their acquisition of knowledge and insights pertinent to the implementation of e-certificates.

3.2. Protection and Legal Certainty Post-Implementation of Electronic Land Certificates

In the broader context, individuals aspiring to establish land certificates are required to initiate the land registration process. Land registration constitutes an ongoing and methodical sequence of activities executed by the State or Government, encompassing the systematic gathering of precise information or data pertinent to designated lands within specific regions. This intricate process encompasses activities such as data processing, meticulous record-keeping, presentation, and the upkeep of both physical and juridical data, manifesting in the form of maps and lists delineating land areas and condominiums. Moreover, this process entails the issuance of certificates as evidentiary documentation affirming ownership rights over lands endowed with established rights, ownership of condominium units, and specific associated rights (Harsono, 2015).

The promulgation of Regulation No. 1 of 2021 by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), specifically addressing electronic certificates, constitutes a governmental endeavor to afford legal protection to its constituents. The concern with electronic certificates does not lie in their physical

manifestation but rather in the electronic procedural trajectory spanning from land registration to certificate issuance. Central to this concern is the imperative of data security, safeguarding the rights holder and affirming the validity of electronic certificates within the purview of legal proceedings. Unlike their physical counterparts, susceptible to loss, misuse, and replication, the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) contends that electronic land certificates boast enhanced security. Nevertheless, the revocation of physical certificates is contingent upon their conversion into electronic form. The safeguarding of electronic land certificates is envisaged through the application of encryption technology, notably cryptography, overseen by the National Cyber and Cryptography Agency (BSSN).

In the pursuit of legal certainty, the promulgation of ATR/BPN Regulation No. 1 of 2021 underscores a commitment to the fundamental principle of legal certainty in the formulation and dissemination of regulations. This commitment ensures the lucidity, reasonableness, and logical coherence of regulations, thereby mitigating doubt and preempting conflicting interpretations with established norms or regulations. This regulatory framework aligns seamlessly with the overarching legal landscape, particularly Law No. 12 of 2011, which accentuates the imperative of legislation embodying the principle of legal certainty. This principle, in essence, serves as a regulatory constraint shaping public conduct and interactions (Marzuki & Sh, 2021).

The overarching objective of land registration activities is to confer legal certainty upon land, thereby serving the interests of land rights holders by facilitating the expeditious substantiation of their entitlement to specific land parcels (Huda & Wandebori, 2021). Legal certainty, integral to this process, finds nexus with the evidentiary paradigm, wherein electronic/digital certificates emerge as valid legal evidence. This status represents an extension of valid evidence as stipulated in Indonesian procedural law.

The ownership of land inherently entails a meticulous registration process, particularly during instances of rights transfer, with the primary aim of fortifying legal certainty and safeguarding all involved parties. This registration process is contingent upon the antecedent registration and documentation of land in a legally valid deed. The imperative to register land serves as a clarion indicator that legal certainty and protection extend to transactions involving the purchase and sale of previously registered land. This strategic approach ensures that the transfer of land rights resultant from such transactions can be duly re-registered and recorded in a valid deed, thereby furnishing robust evidence of ownership legitimacy.

The obligation to register land signals that the sale and purchase transactions which can provide legal certainty and protection are those involving land that has been previously registered and recorded (Wahid et al., 2019). This ensures that the process of transferring land rights resulting from such transactions can be re-registered and recorded in a valid deed, thereby providing legitimate evidence of strong ownership. In a bid to mitigate land disputes and bolster the credibility of land ownership certificates as legal guarantees within the Indonesian legal framework, Regulation No. 1 of 2021 regarding Electronic Certificates was promulgated by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. This regulatory intervention is meticulously crafted to enhance legal certainty concerning land ownership through the utilization of electronic certificates.

The essence of land registration in Indonesia lies in the provision of legal certainty (*rechts cadaster*) regarding land rights and the concomitant legal protection accorded to land ownership. Through the act of registering land, owners acquire a documented proof of ownership, thereby cementing legal certainty. The *recht cadaster* registration process is expressly designed to furnish legal certainty and protection to land rights holders, culminating in the creation of the Land Book and Land Certificate, which comprises a Copy of the Land Book and a Survey Letter (Adrian Sutedi, 2023).

The Ministerial Regulation, in its specificity, addresses the nuanced utilization of electronic certificates as legal evidence. Article 5 of this regulatory framework unequivocally affirms that electronic documents and their tangible counterparts stand as valid legal evidence, representing an extension of valid evidence as dictated by Indonesian procedural law. Notably, for evidentiary purposes, access to electronic documents is facilitated through an electronic system. This elucidation serves to dispel any potential conflicts or contradictions between the Ministerial Regulation and extant legal frameworks.

4. CONCLUSION

Based on the discussion above, the researcher's conclusions encompass two primary aspects. Firstly, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 1 of 2021 concerning Electronic Certificates is considered relevant for current implementation, aligning with the rapid advancements in science, technology, and information. The electronically-based land registration system generates electronic certificates (e-certificates), offering benefits to the public in terms of easy access to digital data and safeguarding against the forgery of land certificates, a foundational element in ensuring legal certainty over land ownership rights. Secondly, legal certainty in the application of electronic certificates as evidence of land possession in Indonesia is expounded upon through legal regulations and factual analysis. The Ministerial Regulation is acknowledged as a legislative framework structured in accordance with the norms of legal drafting. Furthermore, it is recognized as a legal instrument resistant to frequent changes due to its relevance to current conditions.

the research suggests two key measures. Firstly, the implementation of an extensive training program for Human Resources at the National Land Agency Office is recommended to optimize compliance with Regulation No. 1 of 2021 on electronic certificates. This training aims to elevate competency and service quality for the community, with simultaneous widespread socialization efforts for seamless adoption of information technology across all societal segments. Secondly, a focus on upgrading facilities and infrastructure is crucial to ensure accessible, efficient, and effective public services. The envisaged superior services are anticipated to accelerate land certification targets and enhance the efficiency of electronic services in the land sector. The synergistic approach of human resource development and infrastructure improvement is expected to holistically bolster the successful execution of the newly instituted regulation.

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ANALYSIS OF OPPORTUNITIES AND CHALLENGES OF 30% WOMEN REPRESENTATION IN LEGISLATURE: A PERSPECTIVE FROM JOHN RAWLS' THEORY OF JUSTICE

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Abstract

This research aims to explore the possibilities of achieving a 30% representation of women in the legislature through the lens of John Rawls' theory of justice. Additionally, it examines the challenges faced in implementing this representation. The research adopts a normative legal research approach. In essence, Citizens share the same basic rights, one of which is the right to elect and vote. The Election Law regulates the 30% women's representation in the legislature, and efforts are being made to promote and protect women's rights in this regard. These efforts align with Rawls' concept of maximum freedom, which emphasizes that individual rights should not be compromised for the sake of society or the state. However, obstacles persist in achieving the 30% women's representation in the legislature, primarily due to the prevailing patriarchal culture in society. Rawls suggests that non-violent political means can be employed to challenge and overcome such injustices. Implementing affirmative policies is one effective approach to combat the patriarchal culture and promote gender equality.

Keywords: *Challenges, Justice, Opportunities, Women*

1. INTRODUCTION

Indonesia is a country where women face limitations in their ability to work and pursue their goals. Society often perceives women as weak and delicate, while men are seen as strong and superior, particularly in terms of physical strength. This mindset is deeply rooted in the social and cultural fabric of Indonesia. The concept of gender refers to the comparison of differences between men and women based on their biological sex and societal positions.

In response to these disparities, a movement has emerged to promote gender equality - the feminist movement. One area where the differences in gender roles are evident is within the family structure. Feminists argue that the existence of distinct roles within the family lacks fairness and justice. Consequently, women are often viewed as highly dependent on men. Moreover, boys are often given priority in accessing higher education compared to girls. This unequal treatment leads to the marginalization of women, resulting in disparities in roles and wages within the workforce due to the perception of women as weaker.

Discrimination against women workers is still a prevalent phenomenon, despite the state's guarantee of equal rights for both men and women in the 1945 Constitution. Article 28D paragraph (2) specifically ensures that workers are treated equally in terms of job type, position, and wages (Susiana, 2019). However, despite these regulations, discrimination against women in the workforce remains common, often due to differences in physical strength. It is not just in the realm of work that women's involvement is crucial; their participation in politics is also significant. The 1945 Constitution, along with the Human Rights Law (Law No. 39 of 1999), grants Indonesian citizens certain human rights, including the right to participate in government.

Article 43 paragraphs (1) and (2) of the Human Rights Law specifically address the right to vote and be elected, without any mention of gender restrictions. This aligns with the principles outlined in Law No. 68 of 1958, which ratifies the Convention on the Political Rights of Women in Indonesia. Therefore, women possess the same rights as men in the political sphere. The concept of democracy in Indonesia, as reflected in Article 43 of the Human Rights Law, emphasizes the people's sovereignty and the shared power between the state and its citizens (Tridewiyanti, 2012).

As a democratic country, Indonesia has a responsibility to ensure that its elections are of high quality. By conducting elections that meet the standards of quality, the country can achieve favorable outcomes that uphold the sovereignty of its citizens in selecting their representatives at various levels of government, including the Regency/City DPRD, Provincial DPRD, and the central level DPR RI. As the voice of the people, it is crucial that the members of the DPR, regardless of their position, possess the ability to effectively convey the aspirations of the people they represent. (Tridewiyanti, 2012). Given the inherent differences between men and women, it is important to acknowledge that their interests and needs may vary. Therefore, it is imperative to have adequate representation of women in the DPR. This will not only ensure that the concerns and protections required by women are addressed, but also address the issue of oppression that women often face, which is a matter of vulnerability.

More than half of Indonesia's population is comprised of women, yet their representation in the legislature is significantly lower compared to men. The reasons for advocating for women's representation in politics can be categorized into four arguments, namely (Phillips, 2018): 1) The role model argument suggests that men cannot adequately represent the interests and perspectives of women due to their differing roles in society; 2) The justice argument opposes discrimination against women and argues that their exclusion from political representation perpetuates injustice; 3) The argument of differences in interests highlights the unique needs and concerns of women that may not be addressed without their representation in politics; and 4) The argument for revitalizing democracy suggests that the inclusion of women in politics can lead to a more inclusive and participatory public sphere, ultimately strengthening democracy.

The first two arguments emphasize the importance of fair distribution of social resources, including political influence, which should be accessible to all individuals regardless of gender (Phillips, 2018).

Following the amendments made to the 1945 Constitution and the enactment of Law No. 12 of 2003 on Elections of DPR, DPD, and DPRD, affirmative action policies were implemented to address the underrepresentation of certain groups in important positions due to discrimination. In the political field, the affirmative action policy towards women is regulated in Article 65 paragraph (1) of the 2003 Election Law, which requires political parties to ensure at least 30% representation of women in nominating candidates for members of the DPR, DPD, and DPRD. This policy was further emphasized in Law No. 7 of 2017 concerning Elections.

John Rawls, an American philosopher and political scientist from the 19th century, developed a theory of justice that was inspired by his personal experiences of witnessing the subordination of blacks by whites in America. Rawls' theory departs from other theories of justice, such as utilitarianism, social contract, liberalism, and intuitionism. Rawls' theory criticized Mill's utilitarianism theory, which prioritizes benefits and views justice as an agreement of large parts. Instead, Rawls believes that justice is a right that

should be fulfilled for all levels of society, from the lowest to the highest. In this context, the author will analyze the opportunities and challenges of 30% women's representation in the legislature in Indonesia based on Rawls' theory of justice.

The problem at hand is to examine the possibilities of achieving 30% women's representation in the legislature, taking into account John Rawls' theory of justice. This involves understanding the extent to which Rawls' principles can support and promote gender equality in political decision-making. Additionally, the challenges associated with implementing this level of women's representation in the legislature need to be identified and addressed. Previous research has explored similar topics, such as the legal analysis of the minimum 30% quota for female legislative candidates proposed by political parties in legislative elections (Irfandi & Muhdar, 2022). However, this current study differs in its focus. Instead of solely examining legal rules and implications, this research aims to investigate the opportunities and challenges of women's representation within the context of the 30% rule, using John Rawls' theory of justice as a lens. The primary objective of this study is to identify the opportunities for achieving 30% women's representation in the legislature, as well as to understand the challenges that may arise during the implementation process.

2. RESEARCH METHODS

Research methods refer to the techniques employed to gather data pertaining to the subject of study with the aim of resolving a problem. In the composition of this article, the author has employed normative research methods. The normative research method encompasses a series of procedures aimed at identifying legal rules, principles, and doctrines that can be utilized to address the legal issues at hand. The two approaches utilized in the composition of this article are the statute approach and the fact approach. The statute approach involves examining statutory regulations that are relevant to the legal matters under discussion (Marzuki, 2017). The laws and regulations utilized include Law No. 7 of 2017 concerning General Elections, as well as other laws that bear relevance to the research topic.

3. RESULTS AND DISCUSSION

3.1. Opportunities for 30% Women's Representation in the Legislature when Viewed in Light of John Rawls' Theory of Justice

The presence of women as representatives constitutes a manifestation of standing for someone and concurrently signifies a mode of acting for someone. The constraint of access represents a formidable challenge for women, as the complete accommodation of women's interests within the political domain remains elusive (Kiftiyah, 2019). The equitable representation of women's interests and needs by women themselves is posited as a more just paradigm. Realizing such representation necessitates policy initiatives, notably through affirmative action, as an affirmative response to overcome discriminatory impediments. The political sphere is construed as an avenue wherein women can effectuate positive change consonant with societal expectations.

Politics assumes a pivotal role in the realization of fundamental rights. The non-fulfillment of women's rights within the political sphere, therefore, poses a considerable obstacle to the attainment of other rights such as employment, health, and education. Thus, the strategic reinforcement of affirmative action policies emerges as imperative

during such junctures. The inherent objective of law is to refine notions of justice and to serve as a legal characteristic. Legal politics delineates a policy trajectory involving the enactment of new legislation or the revision of extant laws to align with national objectives. Legal politics concurrently represents a mechanism to actualize justice, ensure legal certainty, and confer societal benefits. Typically, legal politics engages with extant law (*ius constitutum*) and aspirational law (*ius constituendum*). Standardized regulations provide a firm basis for the unequivocal application of each legal principle (Sopiani & Mubaraq, 2020). The concerted efforts through legal politics exemplify a strategic endeavor to meet societal needs.

Affirmative action, grounded in a resolve to transcend discriminatory circumstances, has prompted observations characterizing its execution as indicative of indirect discrimination, thus denoted as reserve discrimination. Subsequently, a recurring inquiry emerges as to whether affirmative action embodies a form of discrimination. Addressing this query necessitates contextualization within extant Human Rights Law. Article 1, clause (3), of the Human Rights Law explicates discrimination as any form of differentiation, exclusion, affront, or restriction rooted in human distinctions across various contexts. Drawing upon the substance of this article, it may be deduced that affirmative action does not, in essence, embody a discriminatory policy, given its lack of impact in fostering distinctions, exclusions, or affronts against any individual.

Gender equality, introduced to Indonesia as an import from the West, revolves around the imperative for equilibrium in gender roles. The discourse on gender in Indonesia gained prominence in the 1980s. Collaborative initiatives between national and international Non-Governmental Organizations (NGOs) have engendered heightened awareness concerning gender relations within the Indonesian populace. NGO-led programs, including training sessions on the imperative of gender mainstreaming, have been instrumental in fostering societal consciousness, particularly within the Indonesian context.

The discourse on equality encompasses two principal concepts: competitive equality and equality of results. The former is designed to eradicate formal impediments, exemplified by affording women a platform for expression and subsequently reinstating women's agency over their rights. The latter, equality of results, is conceived to not only eliminate hindrances but also to institute positive mechanisms, as exemplified by the quota system, to engender equitable outcomes. The application of affirmative action policies, incorporating a quota system, seeks to realize the conceptual framework of equality of results.

The landscape of Indonesian politics continues to exhibit a pronounced male dominance. In querying the extent of female participation within the political sphere, an inherent challenge materializes in effectuating gender equality. Nevertheless, recent trends suggest progress in women's access to politics, marked by a discernible rise in practical political involvement. This upsurge is not confined solely to legislative roles but also extends to women assuming positions as regents/mayors, governors, within bureaucratic echelons, and other spheres (Gusmansyah, 2019). For the purposes of this discussion, the focus remains on legislative positions. Presented herewith are post-affirmative action election results in Indonesia, detailed in the ensuing table:

Table 1. Women's Representation in the Indonesian Legislature

Period	Female	Male
2004-2009	65 people/(11%)	485 people/(89%)
2009-2014	101 people/(18,10%)	459 people/(82,00%)
2014-2019	97 people/(17%)	463 people/(83%)
2019-2024	120 people/(21%)	455 people/(79%)

As delineated by the presented table, the affirmative action initiative targeting a 30% representation of women in the Indonesian legislature in 2004 yielded 65 seats out of a total of 550 DPR seats, equivalent to 11%. Subsequently, in the 2009 general elections, the representation of women experienced a substantial and drastic augmentation to 101 seats out of the total 560 seats, corresponding to 18%. Conversely, in the subsequent general elections of 2014, the representation of women in the legislature saw a decline to 97 seats out of the total 560 seats, constituting 17%. In the subsequent general elections of 2019, women's representation rebounded, reaching 120 seats out of the total 575 seats, equivalent to 21%.

Initiatives aimed at fostering an increment in the number of seats for women in the legislature are discernible. These initiatives include the imposition of a minimum 30% candidacy requirement in regional electoral districts (*dapil*), coupled with punitive measures for non-compliance with the stipulated 30% female legislative candidate threshold. This constitutes a constructive intervention seeking to enhance the electability of women as representatives in the legislative arena. However, the observed decline in the number of women representatives in the legislature in 2014 underscores persisting vulnerabilities within the affirmative action policies.

John Rawls' theory of justice emerges as a discerning lens for scrutinizing potential lacunae within legal policies, particularly in the conceptualization of justice for women (Fadli, 2017). The prevailing application of gender justice theory by state authorities, emphasizing parity between men and women without due consideration for gender-specific nuances, has engendered systemic injustice across various developmental spheres. In the context of gender justice, Rawls' difference principle assumes relevance. The crux of the difference principle posits that social and economic differentials should be regulated to accrue the maximum benefit to the least privileged. Rawls contends that disparate elements necessitate specific rules tailored to advantage the most vulnerable segments of society.

Rawls propounds three conceptions of justice (Mochtar & Hiariej, 2021), encompassing:

a. Maximization of liberty: Acknowledging fundamental rights such as freedom of speech, electoral participation, public office occupancy, personal property ownership, etc., without compromise for societal or state interests.
b. Equality for all: Confining social freedom to the exception that permissible inequality serves to maximize benefits for the least prosperous members of society.
c. Equality of opportunity and eradication of opportunity-based inequalities derived from wealth and birth.

Of these three concepts, the first holds particular relevance to the discourse on achieving 30% female representation in the legislature. Rawls' notion of maximal liberty ensures that the right to vote and stand for election is universally applicable, transcending

gender disparities. Thus, Rawls' conceptual framework proves instrumental in discerning and addressing the challenges and opportunities pertinent to women's engagement in the legislative sphere.

3.2. Challenges in the Implementation of 30% Women's Representation in the Legislature

In essence, women possess equal Human Resources (HR) capabilities as men. The presence of an Election Law that incorporates an affirmative action policy presents a significant opportunity for women to secure positions within the legislative sphere. However, it is important to acknowledge that the path is not without its obstacles. Women face numerous challenges when it comes to political participation. The implementation of a 30% women's representation in the legislature encounters various types of hurdles. These obstacles encompass cultural barriers, normative challenges, and institutional limitations. Let us first delve into the cultural challenges. These hindrances stem from the Indonesian society itself, where women are often deemed unfit for such positions and are instead expected to confine themselves to domestic roles. The prevailing stereotype that women are unsuited for political involvement exerts a significant influence on the political system in Indonesia (Sulastri, 2020).

To enter the political domain, women must alter societal stigmas perceiving them as delicate figures. The attributes attributed to both women and men are social constructs. Obstacles for women entering politics emanate from the family environment, necessitating permission from family members before venturing into political contests. Within families, opinions on women's political participation vary, influenced by the social contract mentioned earlier. Family structures strongly uphold the division between domestic and public roles.

Reflecting on history, women's involvement predates independence, evidenced by the presence of female independence fighters such as Cut Nyak Dien, R.A Kartini, Tri Bhuana Tungga Dewi, demonstrating that women's spirit and capabilities parallel those of men. Additionally, even before the affirmative action policy, some women held seats in the DPR, albeit in minimal numbers.

In the contemporary era, the increased openness of politics and the proliferation of political parties signify greater societal willingness to participate in politics. Women should capitalize on this opportunity by securing 30% representation in the legislature to enhance the quality of democracy. The assessment of democracy quality hinges on the attainment of specific political values and the functioning of political life. While progress has been swift for women in areas such as education, technology access, and employment, political advancement has not kept pace.

The deeply ingrained cultural division of roles between women and men in Indonesia, particularly in rural areas, results in terms such as "second sex" for women. For instance, the Javanese term "*tiyang wingking*" denotes someone in the rear, symbolizing a woman's place in the kitchen. This exemplifies a hindrance to women's representation in the legislature, reinforcing the patriarchal culture that confines women's roles to domestic spheres, excluding political activities.

Further challenges in the implementation of 30% women's representation lie in normative aspects, conflicting with several laws and regulations in Indonesia. This contradiction weakens the effectiveness of affirmative action. Conflicting regulations

stem from legislative and executive branches of the government, as well as judicial decisions. Examples include:

a. Law No. 39 of 1999 on Human Rights (Human Rights Law): This law outlines that justice and gender equality can be achieved when women's representation is guaranteed, yet the explanation in Article 46 emphasizes providing opportunities and equal positions for women, framing it as unnatural bestowal rather than an inherent right.
b. Constitutional Court Decision No. 22-24/PUU-VI/2008 on the enforcement of affirmative action: This decision annulled provisions in Law No. 10 of 2008 on Elections for the DPR, DPD, and DPRD, changing candidate determination from numerical order to popular votes (Sayuti, 2013). Supporters of affirmative action rejected this decision, deeming it far from the principles of justice, arguing that revoking affirmative action equates to discriminatory actions against women, hampering women's representation in parliament. This policy clash could be seen as conflicting with the positivist legal theory, which adheres strictly to enacted laws without considering sociological conditions.

The third obstacle arises from the institutional side, focusing on political parties. Political parties, integral elements of democratic nations, contribute to the political system's functionality. However, the implementation of cadre development by political parties often falls short of ideal standards. The role of political parties is influential in national dynamics, serving as vehicles to represent interests and mobilize the masses. Proper cadre development within political parties would, at the very least, provide women with adequate education in political realms (Kumar, 2017). Political education, akin to political socialization, is crucial for preparing and refining soft skills within political work, understanding their constituents, garnering aspirations, managing community bases, and more. Determining the level of women's representation in the legislature is a responsibility of political parties (Wijayanti & Iswandi, 2021).

Examining the justice theory proposed by John Rawls, his concepts exhibit strong support for recognizing human rights and obligations, especially in the political domain. Rawls advocates for equal participation rights in society's decision-making processes. Envisioning that this concept ensures the safeguarding of everyone's interests within the social structure, Rawls acknowledges the existence of a realm where laws applied lack justice, permitting citizens to engage in nonviolent political actions to oppose and alter injustices (Hasanuddin, 2018).

The most influential hindrance in implementing 30% women's representation in the legislature lies in the cultural or societal realm. The cultural aspect referred to here is the patriarchal culture, causing subordination of women. This subordination impacts the political sector, creating barriers to women's representation in the legislature. In this context, Rawls's perspective becomes relevant, advocating for political action to oppose and transform such injustices through nonviolent means. In this regard, citizens, especially women, can utilize affirmative action to challenge patriarchal culture.

Affirmative action should be situated within Rawls's framework of thinking, particularly the difference principle. Although affirmative action may not equate women with men, its presence should be accepted and respected, as it safeguards marginalized parties, namely women. The condition of oppressed women primarily stems from the patriarchal culture they encounter. This situation necessitates the application of the difference principle, where justice must be experienced by the least advantaged, namely

women. In legal policies, affirmative action should be employed as a means to honor human rights (Lingga & Jebaru, 2023). Women's participation in politics aims to build and advance societal well-being. The honor extended to women for participating in fair politics aligns with Rawls's belief that every citizen possesses something irremovable, and justice, based on the well-being of society as a whole, cannot displace it (Rawls, 2020).

4. CONCLUSION

The representation of women in the legislature plays a crucial role in ensuring that their rights are fulfilled. If women's political rights are not protected, it becomes difficult to secure other rights such as employment, health, and education. To address this issue, the Election Law mandates a 30% representation of women in the legislature through affirmative action policies. According to Rawls, every citizen has the right to vote and be elected, and this right should not be compromised for the benefit of society or the state. Women have the opportunity to represent their communities in the legislature and other public positions.

Despite the affirmative action policies, there are still obstacles to achieving the 30% representation of women in the legislature. These obstacles stem from cultural, normative, and institutional factors. The patriarchal culture in society is a significant cultural obstacle that perpetuates the subordination of women. Conflicting laws and regulations, as well as Constitutional Court decisions, create normative barriers to women's representation. Finally, the lack of regeneration of women in political party institutions is an institutional obstacle. Rawls suggests that non-violent political action can be taken to address injustice, and affirmative action is one such action that can challenge patriarchal culture.

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ELECTRONIC LEGAL CERTAINTY OF THE ROYA DEED OF ENCUMBRANCE

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Abstract

The authority of a Notary is a distinct jurisdiction, grounded in Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning the Position of Notary. The mortgage right, serving as collateral, is registered by the bank through a Notary/PPAT with the local National Land Agency. This process results in the issuance of a Deed of Mortgage Encumbrance (APHT) for the land used as collateral. Subsequent to the termination or deletion of the mortgage right, the note or mortgage right is electronically written off. The research problem is formulated as follows: What is the mechanism for electronic mortgage registration, and what is the legal certainty of electronic mortgage deeds? The electronic mortgage registration can be conducted either directly by the community or with the assistance of a Notary in their respective locations, facilitating the process for the community. The introduction of Electronic Mortgage Rights brings positive benefits to the community, banks/creditors, and PPAT, streamlining the mechanism for binding and registering mortgage rights, making it more efficient, faster, and cost-effective. Moreover, Regulation of the Minister of ATR/Head of BPN Number 5 2020 ensures legal certainty and protection for the public, particularly creditors. When executing a Roya Deed of Mortgage, the debtor must appear before a notary, ensuring legal certainty as authentic evidence of their actions, in accordance with Article 15 paragraph (1) of the Notary Position Law.

Keywords: *Electronic Roya, Legal Certainty, Mortgage Rights*

1. INTRODUCTION

The pivotal role of a Notary/PPAT in fortifying the positions of involved parties and ensuring legal protection and certainty within an agreement cannot be overstated. Functioning as a public official, the Notary/PPAT is mandated to possess competence in their role. The jurisdictional authority vested in a Notary is distinctly delineated by Law Number 2 of 2014, an amendment to Law Number 30 of 2004, specifically addressing the Position of Notary (Saputra et al., 2020).

As articulated in Article 15, paragraph (1) of Law Number 2 of 2014, Notaries are bestowed with the authority to draft Authentic Deeds encompassing all acts of agreements and resolutions mandated by laws or desired by concerned parties. This encompasses guaranteeing the date of deed creation, preserving the deed, furnishing copies, and providing excerpts of the deed.

In their official capacity, Notaries wield the power to create deeds for mortgage rights, a process wherein the debtor seeks consultation with the Notary. The Notary's role assumes paramount importance in this context, as the debtor necessitates legal certainty and authentic evidence of their actions (Patni & Putro, 2023).

The term "*mortgage rights*" finds statutory mention in Article 51 of Law Number 5 of 1960 regarding Basic Agrarian Principles. This article delineates mortgage rights that can be imposed on ownership rights, land-use rights, and building-use rights. However,

the subsequent enactment of Law Number 4 of 1996 concerning Mortgage Rights Over Land and Related Objects expounds upon the collateralization of land, buildings, and existing plants in loan transactions (Yoandri, 2021). These assets, due to their transferable nature, can be employed as security for lenders, with "Mortgage Rights" being the term specifically associated with land collateral.

Banks, effectuating the registration of mortgage rights through Notaries/PPAT with the local National Land Agency, culminate in the issuance of a Deed of Mortgage Encumbrance (APHT) for the pledged land. When the credit process between a debtor and a banking institution concludes due to the debtor settling their debts, the encumbrance rights under the debtor's name can be removed through a process known as "roya." In legal terminology, "*roya*" signifies the elimination or removal, denoting the cancellation of the encumbrance rights as a result of the debtor fulfilling their obligations (Sholihin et al., 2022). Article 22 of Law Number 4 of 1996 governs this cancellation process, detailing the Land Office's execution of the "*roya*" of the mortgage rights record in the land rights book and its certificate. The Mortgage Rights Certificate is declared invalid by the Land Office, and if the certificate is not returned, it is duly recorded in the Mortgage Rights book (Yoandri, 2021).

Mandatory registration of Mortgage Rights at the Land Office is stipulated by Article 13, paragraph (1) of the Agrarian Law. The registration process, as per Article 13, paragraph (5) in conjunction with paragraph (4) of the Agrarian Law, is deemed complete on the day the Mortgage Rights land rights book is furnished with the requisite documents for registration, no later than 7 working days after the signing of the Mortgage Rights Grant Deed. Upon the issuance of the Mortgage Rights Certificate, a legal transfer of rights from the debtor to the creditor is documented. The Certificate of Land Rights undergoes a corresponding transfer to the name of the Mortgage Rights holder (creditor), establishing the Mortgage Rights at that juncture. The Mortgage Rights Certificate and the Certificate of Land Rights are then conveyed to the Mortgage Rights holder (usually a Bank) or its designated representative, as outlined in Article 14, paragraph (4) in conjunction with Article 13, paragraph (3).

The inception of Mortgage Rights inevitably signifies a corresponding termination point (Valentini & Yogantara, 2021). According to Article 18, paragraph (1) of the Mortgage Law (UUHT), the cessation of Mortgage Rights is stipulated under various circumstances (Hamzah, 2020), namely; a) the extinguishment of the debt secured by Mortgage Rights; b) the voluntary release of Mortgage Rights by the holder thereof; c) the clearing of Mortgage Rights based on a ranking determination by the Chief of the District Court; and d) the removal of the land rights burdened by Mortgage Rights. These conditions intricately outline the nuanced scenarios under which Mortgage Rights, a form of property security, cease to hold legal sway. Such legal provisions highlight the multifaceted nature of Mortgage Rights and necessitate a comprehensive understanding to navigate the complexities within the realm of property law.

After the termination of Mortgage Rights, the next step involves the expunging of records or "*roya*" (cancellation) of Mortgage Rights. This record clearance or "*roya*" serves administrative order, and according to Adrian Sutedi, it does not hold legal implications for the already terminated Mortgage Rights (Sutedi, 2019). The Mortgage Law (UUHT) specifies a clear procedure and schedule for the implementation of this cancellation, granting the District/City Land Office 7 (seven) working days after receiving the request to carry out the "*roya*" of Mortgage Rights.

As per Article 22 of the UUHT, following the termination of Mortgage Rights, the District/City Land Office removes the record of the Mortgage Rights from the land title book and its certificate. The relevant Mortgage Rights Certificate is withdrawn, and along with the Mortgage Rights land title book, is declared invalid by the Land Office. If, for any reason, the aforementioned certificate is not returned to the Land Office, it is duly noted in the Mortgage Rights land title book (Rahma Wicaksono, 2021).

In cases where the Mortgage Rights Certificate is lost due to the creditor's negligence, theft, or force majeure after the debtor's debt is settled but has not been "*roya*-ed," or when it is in the debtor's possession after full debt settlement but hasn't been "*roya*-ed," or if the cancellation document is lost, a notarized "*Akta Roya Hak Tanggungan*" is typically prepared by a Notary. Subsequently, this deed is submitted to the Land Office. Since the proof of Mortgage Rights lies in the Mortgage Rights Certificate, for the purpose of recording the termination of Mortgage Rights, the land title certificate and evidence of Mortgage Rights cancellation must be submitted.

As of July 8, 2020, the Ministry of ATR/BPN has introduced an electronic service accessible to Notaries/PPAT and Financial Services through the Land and Mortgage Information Service, enabling direct registration without the need to visit the land office. Electronic Mortgage Rights (HT-el) are regulated by the Minister of ATR/Head of BPN Regulation No. 5 of 2020 concerning Electronic Mortgage Rights Services (Permen ATR/BPN 5/2020). HT-el is implemented to enhance Mortgage Rights services, adhering to principles of transparency, timeliness, speed, simplicity, and affordability for public service, while also adapting to legal, technological, and societal developments.

Permen ATR/BPN 5/2020 outlines provisions for the electronic execution of "*roya*" to facilitate straightforward, swift, and cost-effective registration and cancellation (Nada, 2022). Online "*roya*" via the ATR/BPN website is exclusively conducted by Land Deed Makers (PPAT) or notaries (Hambali, 2022). The process differs from manual "*roya*" in that the applicant's documents are scanned and registered through the website, directly corrected by the "*roya*" executor, bypassing the land office counter. Consequently, Notaries/PPATs are not required to physically visit the Land Office (Sari & Andraini, 2021).

The research will specifically concentrate on two pivotal issues, as expounded in the background: firstly, explicating the mechanism involved in the electronic registration of mortgage rights; and secondly, scrutinizing the legal certainty inherent in electronic cancellation deeds of mortgage rights. The primary objective of this study is to provide a substantive contribution to a more comprehensive comprehension of the implementation and legal ramifications stemming from the processes associated with the electronic registration and cancellation of mortgage rights. This endeavor is undertaken in accordance with the dynamic developments in technology and the pertinent regulatory framework within Indonesia.

2. RESEARCH METHODS

In this research, a combination of qualitative and mixed methods approaches is employed to investigate the mechanisms of electronic registration and cancellation of mortgage rights. Additionally, the study aims to analyze the legal certainty associated with electronic cancellation deeds of mortgage rights. The qualitative approach is implemented through in-depth interviews with key stakeholders, including land officials, notaries, and legal practitioners involved in electronic mortgage rights processes. These

interviews are designed to comprehend the legal perspectives and practical procedures underlying the implementation of electronic mortgage rights. Simultaneously, the mixed methods approach involves the design and distribution of a survey to a diverse group of stakeholders, encompassing notaries and other involved parties. The survey is structured to gather quantitative data regarding the general perceptions of legal certainty associated with electronic cancellation deeds of mortgage rights.

3. DISCUSSION

3.1. Mechanism of Electronic Registration of Mortgage Rights

The extinguished Mortgage Right necessitates the annotation or cancellation of the Mortgage Right record on the Mortgage Right certificate. The purpose of such annotation or cancellation (*roya*) of the Mortgage Right, likewise in the land register or the relevant land certificate, is to inform the public that the respective lands have been released, unburdened by the Mortgage Right.

The annotation or cancellation (*roya*) of the Mortgage Right poses a challenge if the Mortgage Right Certificate is lost for some reason because it is not feasible to carry out the cancellation when the object to be canceled, namely the Mortgage Right Certificate itself, is absent. In practical terms, when such a situation arises, the involvement of a notary with the authority to create deeds is required. This involves the creation of a notarial deed known as the Roya Mortgage Right Deed.

The legal aspect arising from the removal of the Mortgage Right (Roya) from the land certificate is that, with the elimination of the Mortgage Right or Roya from the land certificate, this information becomes public knowledge. The community becomes aware that the previously encumbered land is now free and has reverted to its original state. Additionally, this Roya is carried out for the sake of administrative order and does not have legal implications for the extinguished Mortgage Right. If the land certificate is not promptly annotated or canceled, the land certificate still remains in the name of the Mortgage Right holder, in this case, the creditor (Bank). As it is still under the name of the creditor (Bank), the owner of the land certificate cannot execute legal actions until the land certificate is canceled or annotated (Wahyuni et al., 2022).

The Roya Mortgage Deed is formulated by a Notary in accordance with Article 122, paragraph (1) of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997, governing the Implementation of Government Regulation Number 24 of 1997 pertaining to Land Registration. This article specifies the procedures for the registration of the termination of the Mortgage Right, consequent to the discharge of the debt secured by the said Mortgage Right. The stipulations include:

a. A declaration from the creditor attesting to the satisfaction or full settlement of the debt secured by the Mortgage Right, documented in either an authentic instrument or an underhand written statement.
b. Presentation of evidence of debt settlement issued by the authorized party receiving the payment.
c. The citation of auction minutes related to the Mortgage Right object, accompanied by a statement from the creditor relinquishing the Mortgage Right for an amount exceeding the auction proceeds, documented in an underhand written statement.

Beyond adherence to the aforementioned regulations, the Notary's execution of the Roya Mortgage Deed is grounded in their authority to produce deeds, as per Article 15,

paragraph (1) of the UUJN. This authority extends to the creation of authentic deeds concerning all requisite legal acts, agreements, and arrangements, as mandated by legislation or as desired by concerned parties. The notary ensures the accurate dating of the deed, preservation thereof, issuance of engrossments, copies, and excerpts, subject to the condition that such responsibilities are not delegated to another official or individual as designated by law.

The act of rescinding or "*roya*" of the Mortgage Right, whether performed by the Land Office or enacted through the Roya Mortgage Deed drafted by the notary, shares a fundamental purpose. It serves to elucidate the complete settlement of a loan or credit by the debtor, resulting in the automatic extinguishment of the associated mortgage right. Consequently, the Mortgage Right is expunged. The notarial creation of the Roya Mortgage Deed is necessitated by the loss of the mortgage right certificate (Hamzah, 2020).

Diverging from the process applicable to Land Certificates, where loss or damage permits the issuance of a substitute certificate, no such provision exists for Mortgage Right certificates. This omission is predicated on the potential detriment to both parties—creditor and debtor—stemming from the loss of the Mortgage Right certificate. Specifically, the debtor may face adversity in the event of default, hindering the creditor's ability to petition for the auction of the Mortgage Right object, as the certificate cannot be appended to the auction application submitted to the State Receivables and Auction Office (KP2LN). Conversely, the creditor encounters challenges in effecting the cancellation of the Mortgage Right at the Land Office (Alfitra, 2021). In instances of genuine loss, the replacement mechanism entails the execution of the Roya Mortgage Deed by the notary, a prerequisite for effecting the cancellation of the extinguished mortgage right.

The Roya deed serves as a prerequisite for maintaining systematic land administration. Its role underscores the customary practice within the notarial profession. Functioning as a notarial deed, the Roya deed assumes the position of a surrogate for the lost Mortgage Right certificate, facilitating the prerequisites for the registration of the release or cancellation of the mortgage right. In practical terms within the domain of land registration, the status of the Roya deed pertaining to the mortgage right, as crafted by the notary, aligns with that of the lost Roya certificate, serving as a requisite for the registration of land ownership rights. Importantly, the Roya Mortgage Deed, crafted by the notary, assumes the role of a surrogate exclusively for the lost Mortgage Right certificate in the cancellation process—not for execution. Consequently, its status is not equated with the Mortgage Right Certificate, which possesses executive authority, as it lacks specific regulation within prevailing laws or established norms.

The evolution of services related to Mortgage Rights prompted the government to enact Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 5 of 2020 concerning Integrated Electronic Mortgage Rights Services, abbreviated as Permen ATR/BPN Number 5 of 2020. The issuance of this regulation signifies a transformation characterized by the simplification of the electronic registration process for Mortgage Rights. The updated regulatory framework is a strategic governmental effort aimed at facilitating individuals seeking land Mortgage Rights assurances for business endeavors, eliminating the need for physical visits to local Land Offices. Permen ATR/BPN No. 5 of 2020 mandates the electronic registration of Mortgage Rights, obviating the requirement for physical evidence submission at Land Office counters.

The advent of Electronic Mortgage Rights aligns with the concept of Cyber Notary, wherein technological advancements are harnessed to enhance the daily functions of notaries. This encompasses digital document processes, electronic execution of deeds, teleconferencing for General Shareholders Meetings (RUPS), and analogous activities. The primary role of Cyber Notary is to provide certification and authentication within the realm of electronic transactions. Certification entails endowing notaries with the authority to act as Certification Authorities, thereby issuing digital certificates to relevant parties. Authentication, on the other hand, pertains to legal compliance in executing electronic transactions (Jauhari, 2021).

The execution of Electronic Mortgage Rights (HT-el) commences with the verification and validation of user accounts, including creditors and *Pejabat Pembuat Akta Tanah* or Land Deed Officials (PPAT), designated as collaborators by the Ministry of Agrarian and Spatial Planning/National Land Agency. Subsequently, the HT-el registration process ensues, culminating in the issuance of the HT-el certificate. All procedural aspects adhere to the requisites outlined in Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 5 of 2020, executed in an electronic format.

Articulated in Article 5, paragraph (1) of Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 5 of 2020, the organizational framework for Electronic Mortgage Rights (HT-el) services encompasses the Ministry in an administrative role, the Land Office as the implementing authority, and Creditors, PPAT, or other entities designated by the Ministry, functioning as users. Conversely, users of the Electronic Mortgage Rights System include creditors and PPAT or other entities stipulated by the Ministry. Notably, creditors, as specified in paragraph (1) subclause a, may manifest as either individuals or legal entities in accordance with prevailing legislation.

The mechanism for online Roya, accessible through the Ministry of Agrarian and Spatial Planning/National Land Agency website, is confined to execution by Land Deed Officials (PPAT) or notaries (Hambali, 2022). The procedural steps for undertaking online Roya entail:

a. Accessing the website htel.atrbpn.go.id via smartphone or PC.
b. Logging in and inputting the username and password in the designated fields.
c. Navigating to the 'Service' menu and selecting 'Roya.' Choosing the regional office, followed by the selection of the Land Office, concludes with the 'Create New File' button.
d. Upon success, a menu displaying completeness information emerges. Entry of the Mortgage Right number, year, and code is required in the provided columns. Subsequent steps involve clicking 'Search Mortgage Right' and 'Upload.'
e. A preview of the Mortgage Right certificate materializes. If accurate, the 'Upload' button is pressed.
f. Completion of the preceding steps leads to the display of the type and number of rights earmarked for cancellation. Initiating the 'Add Roya Certificate' function, selecting the certificate, and subsequently clicking 'Upload' follows. Verification of certificate information, rights holder details, and last record particulars precedes the 'Save' action.
g. Progressing to the document upload menu, stakeholders upload the Roya certificate from the creditor, the application form, and the Roya certificate

number. This phase concludes with the 'Upload' command. Confirmation of file accuracy prompts the 'Continue' click, unveiling the payment order menu.

h. Execution of the payment for the invoice denotes the conclusion of the process, with the submitted Roya certificate application undergoing processing by the relevant authorities at BPN.

3.2. Legal Certainty of The Electronic Deed of Encumbrance

In the procedural undertaking of formulating the Roya Mortgage Deed, the debtor engages the services of a notary, underscoring the indispensable role played by the notarial function in this process. Within this framework, the debtor seeks both legal certainty and the establishment of authentic evidentiary instruments for their actions. Consequently, the Roya Mortgage Deed, from a juridical perspective, necessitates the intervention of a notary, functioning in their official capacity as a public officer endowed with the authority to draft authentic deeds.

In the interest of securing legal certainty, as delineated in Article 18, subsections (1) and (2), in conjunction with Article 22 of the Mortgage Right Law, pertinent to debtors who have fulfilled their financial obligations, the Mortgage Right imprinted on the land certificate and associated land registers must undergo annulment or cancellation. Subsequent to the debtor's discharge of liabilities, the creditor initiates the production of a Roya request letter directed to the Land Office. This communication explicitly asserts that the debt, which was collateralized by the pertinent Mortgage Right, has been duly settled, resulting in the extinguishment of the Mortgage Right. On this basis, the eradication of encumbrance records within the land title utilized as collateral is formally petitioned at the Land Office (Yuslim et al., 2023).

The provisioning of Mortgage Right services is codified within Law Number 4 of 1996, yet it lacks the requisite implementing regulations or nuanced technical directives. Recognizing this lacuna, the Ministry of Agrarian and Spatial Planning/National Land Agency has promulgated policy frameworks to govern the implementation of Mortgage Rights. This strategic initiative aims to elevate the qualitative standards of services while effecting a seamless transition towards digital transformation through the integration of electronic service provisions. The operationalization of Electronic Mortgage Rights is codified within Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 9 of 2019. However, this policy has since been rescinded and supplanted by Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 5 of 2020. Concomitant with this regulatory transition, Technical Guidelines Number 2/Juknis-400.HR.02/IV/2020 were issued. The ensuing discourse provides a comparative analysis grounded in regulatory frameworks between conventional Mortgage Right services and their electronic counterparts.

Table 1. Comparison of Conventional HT Services and Electronic HT Services

No.	Aspects compared	Conventional HT Service	Electronic HT Service
1	Office staff and applicant interaction	Direct physical interaction	Interaction through the system
2	Service time	4 days, during office hours	Unlimited even on holidays
3	File completeness	Physical files in the form of photocopies and originals	Scanned digital data
4	Time required	7 days or more	7 days exactly
5	Submission of results	Physically handed over at the HT certificate delivery counter	Digital certificate sent to applicant's email
6	HT charging process	A note is made directly on the physical land title certificate.	Physical land title certificate Notes are provided separately from the certificate and sent via email, printed and framed with the land title certificate separately
7	*Warkah* (physical copy)	The physical copy is stored in the physical copy storage room.	Digitally stored on the system

In essence, the comparison above highlights that the legal regulation of land rights assurance, coupled with the integrated service of Electronic Mortgage Rights, represents a highly efficient innovation in terms of time and brings positive benefits to the community, banking/creditors, and land deed officials (PPAT), despite existing implementation challenges. The benefits derived from Electronic Mortgage Rights services include efficient, fast, and easy mechanisms for encumbrance and registration processes, more certain costs, and quicker and guaranteed legal protection for creditors.

The differences between conventional registration of Mortgage Rights and the Electronic Mortgage System (HT-el) are noteworthy. First, the registration process, previously handled by land deed officials (PPAT), is now undertaken by creditors. Second, all documents are submitted to the Land Office in digital form (uploads) without physical paperwork. Third, there is no longer a face-to-face interaction in the registration of mortgage rights. Fourth, the mortgage rights certificate can be directly printed along with its records. Fifth, the signature on the mortgage rights certificate is electronically generated by the HT-el system. However, the Roya process at the Land Office does not yet utilize the HT-el system. The manual Roya process takes a maximum of three days to complete. If a Roya application takes more than three days, it is due to data validation being conducted beforehand.

4. CONCLUSION

The research concludes that the mechanism of implementing electronic mortgage can be carried out directly by the community or with the assistance of a Notary in their respective regions, providing ease in the implementation of electronic mortgages for the public. The electronic implementation of Mortgage Rights brings positive benefits by expediting and simplifying the mechanism of encumbrance and registration of mortgage rights, ensuring cost certainty, and protecting the legal rights of the community, especially creditors. The process of creating a Deed of Mortgage Rights still requires the role of a Notary as a public official to provide legal certainty and as an authentic instrument in accordance with applicable laws.

The researcher recommends two key actions. Firstly, during the implementation of the electronic royalty mechanism, continuous public awareness campaigns are advised. Secondly, it is recommended that the Land Office simplifies the royalty process for debtors who have settled their debts by providing clear and concise information about the procedures and associated costs, facilitating debtors in obtaining the necessary royalty deed.

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VIOLATION OF ETHICS BY PUBLIC OFFICIALS IN RELATION TO CORRUPTION CASES

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Abstract

The public ethics of state officials in the administration of clean government holds an important position and role as a guide for good behavior in carrying out their duties. The occurrence of political corruption is not solely attributed to the extent of authority possessed but is also rooted in the violation of the ethics of state officials. This study employs qualitative research methods and a literature approach to explore law violations stemming from breaches of state officials' ethics, focusing on the Hambalang Political Corruption case handled by the KPK. The investigation delves into how violations of state officials' ethics transpire, originating from both the executive and legislative branches.The breach of state officials' ethics in this case is linked to the struggle for interests in securing funds to support a candidate for the general chairmanship of a political party. Beyond implicating the executive and legislature, the corruption also involves the private sector. The manipulation of legal loopholes in preparing the APBN is exploited to inflate the value of the Hambalang project, resulting in substantial budgets, profits, and an escalation of corrupted funds. The case study reveals ethical violations by state officials, characterized by dishonest behavior, data manipulation, and a lack of transparency to secure approval for the Hambalang project. These ethical transgressions are coupled with legal violations, ultimately eroding public trust in endeavors to establish a corruption-free government, particularly concerning officials affiliated with political parties.

Keywords: *Clean Governance, Political Corruption, Public Ethics of State Officials*

1. INTRODUCTION

Upholding the law without considering ethics or morality is like attempting to navigate a ship on a waterless ocean. Legal norms and ethical or moral norms are comparable to the two sides of a coin, signifying that a regulatory text and the legal conduct of state officials encompass both dimensions. Law functions as a regulator and controller, interlinked with the execution of state functions and how state officials exercise their authority in accordance with prevailing legislation (Baharuddin, 2014). Meanwhile, ethics serves as a behavioral controller, safeguarding the honor and dignity of state officials who are entrusted, professional, ethical, and cultured.

In the context of the Pancasila state of law, state functions extend beyond the enforcement of laws to also include upholding societal morality, including substantive justice. This is attributed to the tenets of Pancasila, which encompass belief in God and humanism. This background underscores that a democratic rule of law and a democracy based on the law will thrive within the framework of Pancasila and the constitution when executed by trustworthy, professional, ethical, and cultured state officials. Conversely, instances of corruption, bribery, and abuse of authority serve as evidence that such officials lack trustworthiness and culture, in addition to violating the law.

This is substantiated by the prevalent phenomenon of ethical violations by state officials, nearly becoming a political spectacle on a daily basis, including by the highest-ranking officials within a state institution. Several cases of ethical violations have resulted in dismissals from office. Within the realm of judicial power, instances involve the

Constitutional Court (MK), namely the Chief Justice Akil Mochtar and Constitutional Judge Patrialis Akbar. In the Supreme Court (MA), this transgression was committed by Supreme Judge Ahmad Yamani. In the legislative domain, cases involve the Speaker of the People's Consultative Assembly Setya Novanto, the Speaker of the House of Representatives Ade Komarudin, and the Speaker of the Regional Representative Council Irman Gusman.

In addition to these cases, instances of ethical misconduct frequently arise within the legislative sphere, such as legislators playing games during plenary sessions, watching explicit content, engaging in physical altercations during council sessions, absenteeism, and the presence of special attendance. The issue of ethical violations by state officials leads to a decline in public trust in these institutions. For instance, within the judiciary, suspicion is cast upon rulings, with some perceiving them as products of political compromise. According to the Indo Barometer survey (2020), the People's Consultative Assembly and the Regional Representative Council hold the lowest positions (least trusted by the public) with scores of 54.3% for the Regional Representative Council and 44.8% for the People's Consultative Assembly. This indicates that approximately 50% of respondents or the public lack trust in the performance of these state institutions.

Recognizing that such violations damage the constitutional system and erode the foundations of the state's authority, there is a need for a redesign in ethical provisions and their enforcement by establishing an independent and impartial ethical judiciary. this research endeavors to systematically investigate the interplay between legal regulations and ethical norms, particularly within the context of ethical violations by state officials across different branches of government. The overarching objective is to contribute scholarly insights that inform potential reforms in ethical governance. By proposing recommendations, including the establishment of an independent and impartial ethical judiciary, the research seeks to advance academic discourse on the complexities of addressing ethical transgressions in public office, ultimately aiming to bolster the principles of accountability, transparency, and trustworthiness within state institutions.

2. RESEARCH METHODS

This research is a legal inquiry within the field of law, aimed at contributing to the academic discourse and enhancing legal practices within society, with a particular emphasis on the enforcement of constitutional ethics among state officials. Concurrently, it seeks to reconceptualize the institutional framework of ethical adjudication, aspiring towards an ideal configuration. Employing a normative legal research methodology, the study engages in the systematic exploration of secondary data through both a statutory approach, which focuses on regulations governing ethics and their enforcement, and a case approach, which delves into discussions surrounding instances of ethical violations committed by state officials. Methodologically, data collection involves a comprehensive examination of primary legal materials, secondary legal sources, and tertiary legal materials through library research (Amiruddin, 2016). The analytical framework employed is qualitative and descriptive, facilitating the construction of ideal ethical provisions and the establishment of an independent and impartial ethical adjudication system. Through careful data selection and subsequent comprehensive analysis, the research aims to address key questions and contribute to the scholarly understanding of ethical governance within the legal framework.

3. RESULTS AND DISCUSSION

3.1. State Official Ethics

Pancasila serves as the moral foundation and a source of law, morality, and ethics in Indonesia, encapsulating legal and ethical values that guide the nation's governance. The legal norm system should be based on Pancasila, necessitating the enhancement of legal authority to align with Indonesian national values. Pancasila acts as a margin of appreciation for the behavior of state administrators. It sets boundaries for the permissibility or prohibition of certain behaviors by state officials within the context of values and principles.

Meanwhile, the 1945 Constitution not only contains legal norms but also moral or ethical norms, serving as both a legal and moral or ethical guide. The terms "moral" and "ethics" are used interchangeably, both relating to human behavior, actions deemed good or bad, right or wrong, just or unjust, appropriate or inappropriate, ethical or unethical, and moral or immoral. Moral or morality is typically employed in evaluating an action (legal thoughts and actions).

Ethics and morality can stand alone in certain contexts, such as constitutional interpretation. The constitution encompasses legal, ethical, and moral norms, each standing independently as a perspective for understanding contextualization. The concept of the living constitution or the living law acknowledges the influence of values on the moral aspects of a judge's life, reflected in their decisions (Putrijanti, 2013). Another term is "moral justice." A judge's function goes beyond making honest and independent decisions; it rests on the judge's awareness, where accountability lies before the divine and humanity.

For example, in the judicial review of laws related to the expansion of adultery offenses (covering non-marital acts), an appropriate decision is one devoid of constitutional morality, as opposed to constitutional ethics. However, if a constitutional judge imparts political education to specific political parties (including contributing thoughts to a particular political party), constitutional ethics are more applicable in this context. Ethics are employed to assess existing value systems; thus, it serves as a benchmark for evaluating actions related to morality, such as corruption, adultery, gambling, and others.

Ethics differs from law or legal norms. Law is regulated in legislation with sanctions emphasizing institutional penalties, while ethics is governed by a code of ethics with sanctions related to specific positions (reprimands and removal from office). From a positivism perspective, law and morality are considered separate entities with no inherent connection (Dimitrijevic, 2016). However, their coexistence has implications within the legal system. Another viewpoint argues that law and morality are inseparable entities, integrative within a unified meaning. Understanding the constitution or the 1945 Constitution and legislation involves recognizing the interdependence of these entities, even though legal norms are often prioritized in practice. This is because interpreting the constitution does not always require reading its text but contextualizing it within a society rich in moral values and norms.

Constitutional articles are not entirely or always self-explanatory when approached solely from a legal standpoint (Asshiddiqie, 2015). Therefore, to capture their meaning, a moral perspective is necessary, as well as political, economic, cultural, and other perspectives. Prohibitions against corruption, murder, fraud, and adultery in legislation constitute legal norms that simultaneously include elements of moral norms. Moral norms are constructed/codified in the form of legal norms. This condition impacts the adherence

to moral norms, which are enforced with strict sanctions in legislation. Similarly, moral norms compiled into a code of ethics should be formulated as justly and fairly as possible. Oversight of judge behavior is meaningless if the ethical norms do not embody principles of truth, justice, and equality. Jimly Asshiddiqie notes, "How can we expect to uphold the law if ethics in social, national, and state life is entirely non-functional? Religion flourishes everywhere, but morals, etiquette, and ethics are not prioritized in the process of forming the quality and integrity of national behavior." Ethics should teach individuals and emphasize how each person should follow and embrace moral teachings, ensuring that actions are always grounded in moral values.

Law born from ethical values comprehensively cannot be implemented without the enforcement of inherent ethical values that have been embedded in Indonesian society since ancient times (Butt & Lindsey, 2008). In various countries, public officials are regulated by ethical rules alongside legal regulations. Ethical provisions pertain to morals, addressing the values of good and bad, worthy and unworthy, or appropriate and inappropriate. Morality is an internal instrument related to personal attitudes and personal discipline because it reflects character (Mellema, 2010). Additionally, kindness, goodness, honesty, loyalty, sincerity, and honesty are forms of ideal morality. The type of constitutional ethics that should be regulated in laws and codes of ethics as a guide for the behavior of state officials includes trustworthiness, independence, impartiality, integrity, fair and objective behavior, honesty, wisdom, prioritizing public interest, responsibility and professionalism, an open personality and noble character, adherence to legal rules and other norms in society, and discipline (Lailam, 2020).

3.2. Analysis of Corruption Cases Based on Profession

The pervasiveness of corruption within governmental spheres, causing detriment to both society and the state, underscores the imperative for heightened vigilance, comprehensive preventive measures, and rigorous repressive actions (Asshiddiqie, 2022). An illustrative case currently under public scrutiny is the corruption involving Puput Tantriana, the Regent of Probolinggo. In contravention of the ethical standards expected of a public official, Tantriana stands accused of engaging in the corrupt practice of trading public office.

As of June 1, 2020, official data from the Corruption Eradication Commission (KPK) reveals a disconcerting trend, with a cumulative total of 1207 individuals implicated in corruption cases based on their respective professions or positions. Disaggregating this data unveils a noteworthy distribution, wherein private sector individuals occupy the foremost position, comprising 26% of the total cases (308 individuals). Subsequent to this, members of the DPR (People's Consultative Assembly) and DPRD (Regional People's Representative Council) account for 23% of cases (274 individuals), while eselon I/II/III officials contribute 19% (230 individuals). The remaining 13% is distributed among various other professions, with Mayors and Regents constituting 10% (122 individuals).

It is discernible from the data that the echelons of societal elites, particularly within the bureaucratic machinery and public offices, present a substantial propensity for involvement in corrupt activities. The case of Puput Tantriana, who ascended to her position through a public electoral process, accentuates the betrayal of trust bestowed upon public officials and the misuse of the authority vested in them. In the broader context of the proliferation of corruption cases, especially implicating local leaders and their familial connections, it behooves the government to take cognizance of these

disconcerting trends. Such occurrences should serve as a clarion call for a concerted effort to combat the reprehensible scourge of corruption, emphasizing the importance of instilling anti-corruption values from an early stage in the fabric of governance and leadership.

3.3. Case of Violation of State Officials' Ethics

In the understanding of state institutions, they can be comprehended by positioning them within the framework of the *trias politica* (legislative, executive, and judiciary) or can be expanded to include state auxiliary organs, agencies, or independent commissions. This means that the definition of state officials can be categorized based on positions in these institutions, but it can also be narrowly defined, including only members of the DPR (People's Consultative Assembly), the President, and Judges. In this research, the definition of state institutions and officials is limited to the scope of national executive power (DPR and DPD) and judicial power (Supreme Court and Constitutional Court). The President is not included in this scope because the 1945 Constitution provides a mechanism for impeachment if the President violates ethics and morality.

State officials are not considered a general profession, similar to the Constitutional Court's ruling that constitutional judges are not "judges" in the general sense, so they cannot be overseen by the Judicial Commission (Chakim, 2014). Similarly, state officials, such as legislators or DPR members, are not considered a general profession. Therefore, it is more accurate to refer to them as state officials whose code of ethics is positioned as such, and issues of ethics are not individual matters but public issues that their "behavior" must be transparently accountable for because the positions they hold are a trust of the people (the public interest). If criminal behavior or violations of the law are public concerns, violations of ethics and morality should also be public concerns, even though in the process of law enforcement and ethics, some exceptions may be made.

Over a period of 5 years, violations of ethics and the law have damaged the state order and shattered public trust. This is undoubtedly due to the actions of the highest officials in state institutions who have committed ethical and legal violations.

3.3.1. Case Example: Chronology of the Corruption Case of the Suspended Regent of Probolinggo, Puput Tantriana

It began with the setback of the second stage of the Village Head Election (*Pilkades*) agenda in Probolinggo Regency, which was supposed to be held on December 27, 2021. The Deputy Enforcement and Execution of the Corruption Eradication Commission (KPK), Karyoto, explained that in Probolinggo Regency, a total of 252 village heads from 24 districts had completed their term since September 9, 2021. As a result, the positions of village head were temporarily vacant.

To address this, officials from the Regional Civil Service Agency (ASN) of Probolinggo Regency, with the proposal from the district heads, were selected as village heads. However, in the process, there was a special requirement that the names proposed by the district heads must first obtain approval from Hasan Aminuddin, a Member of the Indonesian Parliament (DPR RI) and also the husband of Probolinggo Regent Puput Tantriana Sari. This approval took the form of Hasan Aminuddin's signature as the representation of Regent Puput Tantriana on the proposal note.

In addition, each candidate for village head was required to pay a fee of Rp20 million and a bribe in the form of renting village land at a rate of Rp5 million per hectare

(nasional.sindonews.com, 2021). With allegations of corrupt practices in the buying and selling of positions, the KPK conducted a sting operation (OTT) against Regent Puput Tantriana, Hasan Aminuddin, and several other parties involved. The KPK detained 19 people and declared 22 people as suspects, with 18 suspected as givers and 4 as receivers (nasional.sindonews.com, 2021).

The givers were suspected of violating Article 5 paragraph (1) letter a or letter b or Article 13 of Law No. 31 of 1999, while the receivers were suspected of violating Article 12 letter a or Article 12 letter b or Article 11 of Law No. 31 of 1999.

3.3.2. Behavior Violating Ethics by Suspended Regent of Probolinggo, Puput Tantriana, and the Urgency of Public Officials' Ethics

The Regent of Probolinggo, Puput Tantriana, served in her second term from 2018 to 2023, with her first term from 2013 to 2018. Previously, the position of Regent of Probolinggo was held by her husband, Hasan Aminudin, who served for two terms. In 2018, the pair of Puput Tantriana and Timbul Prihanjoko won the Probolinggo Regency Election with a winning vote of 57.6%. However, amidst Puput Tantriana's term as Regent, she became involved in a case of bribery, buying and selling positions, gratification, and money laundering (TPPU), which can be categorized as a violation of public officials' ethics. In this case, the Corruption Eradication Commission (KPK) revealed that Regent Puput Tantriana imposed a tariff on the position of village head in Probolinggo. Every civil servant who wanted to occupy that position was required to pay a bribe of Rp20 million and village land fees of Rp5 million per hectare. This reflects that Regent Puput Tantriana abused her power for personal enrichment and benefit. As reported by dpr.go.id (2021), the standard ethics for public officials include:

a. Complying with religious teachings
b. Upholding oath and promises
c. Adhering to laws and regulations
d. Behaving as a patron to subordinates and society
e. Always being honest in actions and words
f. Acting as a servant and enlightener of society
g. Behaving as a social integrator

Based on the above standards of public officials' ethics, it is clear that Puput Tantriana deviated from her authority and violated the standards of public officials' ethics. Ethics for public officials should be the foundation for their actions, behavior, and service to the entire society with responsibility. Public officials or leaders will be examples or patrons, setting examples for many people, from subordinates to the general public, in behavior and actions (Yunus, 2018). In this corruption case, the suspended Regent Puput Tantriana is no longer considered a leader who can be a role model or a good example. Moreover, the fact that public funds were misused demands that public officials provide the best for the public. However, Puput Tantriana did not uphold the trust of the people as the Regent of Probolinggo. Furthermore, public officials should be able to build public trust, making their positions more effective.

Contrary to the actions of the suspended Regent Puput Tantriana in this case, she has been proven to violate laws and regulations and behave dishonestly by accepting bribes for the buying and selling of positions, gratification, and money laundering related to the job selection in Probolinggo Regency in 2021. This undermines public trust in a

public official's ability to carry out their duties and exercise their authority. Automatically, a violation of the oath of office also occurred for personal interests. In addition, sanctions for ethical violations so far have not been able to have a deterrent effect, so in reality, cases of public officials violating ethics continue to emerge. The corruption case currently being widely discussed is the case involving the suspended Regent Puput Tantriana. Therefore, it is evident that the government is not maximizing the manifestation of public ethics, so the urgency of public officials' ethics, which is classified as important, must be continuously optimized to minimize future violations of public ethics.

3.3.3. Factors Leading to the Corruption by the Suspended Regent of Probolinggo, Puput Tantriana

According to Indonesia Corruption Watch (ICW), corruption cases at the regional government level are rampant due to the suboptimal central supervision system. Another cause of corruption at the regional level is the delegation of authority to regions in personnel matters, making it prone to cases of buying and selling positions, as exemplified by the Regent of Probolinggo.

Moreover, Herman Nurcahyadi Suparman, Acting Executive Director of the Regional Autonomy Monitoring Committee (KPPOD), added that the lack of integrity among public officials is also a factor causing the rampant buying and selling of positions in the regional government. The setback of the Village Head Election agenda also creates opportunities for corruption, collusion, and nepotism for selected civil servants, authorized by the region to fill vacant village head positions. As regulated in Article 82 paragraph (1) and (3), if there is a delay in the village head election, civil servants are selected as temporary officials by the authorized regional head. Corruption will not occur if the perpetrators do not have the intention to commit such extraordinary crimes, even if there are loopholes or opportunities to do so (Maroni, 2012). In other words, corruption is inseparable from the weak integrity of public officials in maintaining prevailing ethics and norms.

In the case of the buying and selling of positions by the Regent of Probolinggo and related parties, integrity is one of the underlying issues for both parties involved in corrupt practices. Therefore, there needs to be improvement in regulations, supervision, and the enhancement of integrity among public officials and civil servants through various related programs. Integrity is the key to the success of state administration free from corruption, collusion, and nepotism practices.

3.3.4. Ethical Perspective on the Corruption Actions of the Suspended Regent of Probolinggo, Puput Tantriana

Leaders or officials within the government sphere also have a teaching function by serving as examples for the public. It is regrettable if those elected and trusted by the community do not fully fulfill their duties with utmost responsibility. As in the case of Puput Tantriana, by engaging in corrupt actions, she indirectly teaches unethical behavior to her subordinates or those around her. In this context, we examine the perspective of corruption actions from the ethical theories of deontology and teleology.

Deontological ethics views an action as good or bad based on the action itself without assessing the purpose or consequences of the action. In any context, corruption is considered wrong and always wrong because it is seen as detrimental, neglectful, and

sacrificing the public. Similarly, the corrupt actions by the suspended Regent of Probolinggo, Puput Tantriana, fall within the scope of deontological ethics. On the other hand, when viewed from the teleological ethics theory, the goodness or badness of an action is judged based on the purpose or consequences of the action. In this case, Puput Tantriana engaged in bribery for the buying and selling of positions, gratification, and money laundering with the goal of enriching herself, resulting in negative consequences for the country and the public.

3.4. Impact of Corruption on the Public Administration Environment

Corruption can breed greed, cynicism, and selfishness among individuals. Additionally, corruption has the potential to undermine the moral and intellectual standards of society. If this occurs in the public administration environment, the interests and needs of the public will be difficult to fulfill because state officials tend to prioritize their personal interests (Wiryanto, 2016). Furthermore, the prevalence of corruption cases in the public administration environment can also result in long-term negative externalities. Widespread corruption cases can create a perception of normalization within the community, considering corruption as a "culture" in public administration. One of the most crucial components in the state's functioning is public trust.

Corruption can erode public trust in the government as the state administrator. The public may perceive that the government is incapable of fulfilling its duties in accommodating public interests. Public trust is a key component of the success of public service delivery. The lack of public trust will also affect the community's interest in participating in any public policies set by the government.

If the public does not trust the government, the formulated programs will be challenging to implement (Syahuri, 2010). Moreover, corruption is an extraordinary crime with the capacity to dismantle a government regime. Corruption can trigger instability in the political and economic conditions of a country, potentially leading to disharmonious relations between the government and the public. Under certain circumstances, corruption has the ability to weaken the government's authority in a manner that lacks dignity.

4. CONCLUSION

With the increasing number of ethical violations committed by state officials, the need for an independent and impartial ethics court has become more urgent. However, some ethics institutions are still under the control of state institutions, which can lead to potential conflicts of interest. To establish a truly independent and impartial ethics court, certain conditions must be met, including the establishment of a law specifically regulating the ethics of state officials, the creation of a transparent and accountable code of ethics enforcement process, and the strengthening of procedural laws governing the ethics court. Ultimately, the decisions made by the ethics court must be final and binding.

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LEGAL ANALYSIS OF THE LIMITED LIABILITY COMPANY NAME CHECK SYSTEM THROUGH ONLINE GENERAL LEGAL ADMINISTRATION

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Abstract

A Limited Liability Company (LLC) is gaining popularity within various business circles as a legal entity consisting of directors, commissioners, and shareholders. Establishing an LLC requires adherence to specific requirements and procedures to obtain legal documents, with evidence and manifestation of legality aspects presented, registered, and ratified by the Directorate General of Law and Human Rights through the online system. Formally, the deed for LLC establishment must be drafted in Indonesian by at least two individuals, meeting the material requirements specified in Article 9 of Law Number 40 of 2007 concerning Limited Liability Companies. The procedure for creating a Deed of Establishment by a notary is governed by Article 39 of Law Number 2 of 2014 concerning the Position of Notaries, involving presenters approaching the notary, verification of the name, signing of the deed, registration with the relevant Ministry, and issuance of a Legal Entity Decree. Notaries may encounter obstacles, including technical issues like system inaccessibility, addressed through communication with AHU Online (Online General Legal Administration), and non-technical issues resolved through improvements. Responsibility for material truth lies in the validity of the deed, while responsibility for formal truth involves adherence to statutory regulations in the deed-making process.

Keywords: *Law, Limited Liability Company, Name Checking System, Online General Legal Administration*

1. INTRODUCTION

The Limited Liability Company or LLC (*Perseroan Terbatas or PT*) currently stands as the preeminent modality for economic engagement, owing to its inherent limited liability characteristics and the expeditious facilitation it accords to proprietors (shareholders) in the transfer of corporate ownership through the divestiture of all shares. In accordance with Article 1, paragraph (1) of Law Number 40 of 2007 pertaining to Limited Liability Companies, a Limited Liability Company constitutes an accord engaging in commerce with a capital structure exclusively apportioned into shares, adhering to legislative mandates and their regulatory implementations. Consequently, it is evident that each Limited Liability Company embodies a juridical entity founded upon capital collaboration, committed to commercial pursuits.

Upon the establishment of a Limited Liability Company for business purposes, adjustments may become imperative, encompassing considerations such as infusion of supplementary capital, alterations in shareholder composition, redefinition of objectives and goals, managerial structural modifications, among others. Any alterations pertinent to the corporate identity or information, in any manifestation, necessitate strict compliance with extant regulations. The information contained within the articles of association mandates immediate revision in the event of changes, obligating the Limited

Liability Company to effect modifications to its articles of association. Changes to a Limited Liability Company must be meticulously documented in a deed of amendment to the articles of association, an act necessitating notarial execution. As articulated in Article 19 of Law Number 40 of 2007 on Limited Liability Companies, colloquially known as the UUPT, it governs that "changes to the articles of association are contingent upon determination by the General Meeting of Shareholders (hereinafter referred to as RUPS), and the procedural intricacies of changing the articles of association must be explicitly outlined in the RUPS notice" (Adjie & Gunarsa, 2013).

The legal status of a Limited Liability Company as a juridical entity is singularly predicated upon the endorsement conferred by the Ministry of Law and Human Rights (hereinafter referred to as KEMENKUMHAM) (Farazenia et al., 2019). Subsequent to this endorsement, the Limited Liability Company attains juridical entity status, thereby assuming autonomous rights and responsibilities emanating from its legal actions. Deliberations in the RUPS encompass modifications to the articles of association deemed essential for its standing as a juridical entity. When alterations to the articles of association occur, such amendments must be incorporated or articulated in the Notary Deed in the Indonesian language, as stipulated in Article 21, paragraphs (4) and (5) of the UUPT.

The UUPT remains silent on specific provisions delineating the modalities for certifying the establishment of a Limited Liability Company; whether by conventional or electronic means is left unaddressed. Consequently, given the contemporary era and the imperative to enhance government administrative service systems, the erstwhile conventional certification process has transitioned to electronic execution utilizing the internet. The evolution of internet technology has facilitated the electronic certification of establishment and approval of amendments to the articles of association of a Limited Liability Company. This process is effectuated through the Legal Entity Administration System (*Sisminbakum*), an internet-based legal entity administration system collaboratively managed by the Ministry of Law and Human Rights and the private sector. *Sisminbakum*, administered by the Directorate General of Legal Administration of the Ministry of Justice and Human Rights of the Republic of Indonesia, hereinafter referred to as Directorate General of AHU (General Legal Administration), aligns with societal and business exigencies, particularly the imperative for expeditious and precise certification of legal entities.

Historically, the manual certification or amendment of legal entities engendered protracted timelines. From the vantage point of notaries, the centralized certification process, predominantly situated in Jakarta, engendered spatial constraints and temporal lags. The perspective of Directorate General of AHU employees underscores potential delays in processing myriad pending requests, stemming from the temporal demands and exacting precision requisite for name verification and document scrutiny, exacerbated by an incongruence between incoming documents and workforce capacity. This scenario invariably precipitated human errors, resulting in inaccurate data, and manual implementation, engendering vulnerabilities to corruption and collusion among *Directorate General of* AHU personnel, especially when notaries demanded swift approval of legal entities. To surmount these challenges, technological integration has led to the inception of an online system accessible to notaries nationwide. This system affords direct access to notaries in disparate geographical locales, mitigating both temporal and spatial impediments. The securely stored and accurate entry of company data in the *Sisminbakum* database ensures data integrity.

From the standpoint of Ministry of Justice personnel, the online system augurs an enhancement in extant human resource quality, fostering technologically proficient human resources concomitant with the cultivation of efficacious work dispositions and behaviors. The online system obviates the occurrence of corruption, collusion, and nepotism (KKN) by virtue of its regulatory oversight. In summation, the deployment of technology through Sisminbakum constitutes a pivotal stride toward augmenting the efficiency and integrity of the Limited Liability Company certification process in Indonesia.

The aim of this research is to investigate the system regulations governing the online name checking service in the General Legal Administration (AHU) provided by the Directorate General of Legal Administration (*Dirjen* AHU) under the Ministry of Law and Human Rights (Kemenkumham). Additionally, the study aims to explore the sanctions imposed on Domestic Direct Investment (PMDN) entities employing foreign languages. Furthermore, it seeks to assess whether the implementation of Online General Legal Administration (AHU) can realize public services that are swift, effective, efficient, and devoid of extortion practices, thereby constituting a manifestation of bureaucratic reform.

2. RESEARCH METHODS

The chosen research methodology employed in this study is juridical normative, characterized by a legal literature review commonly referred to as library legal research (Marzuki, 2013). The author's rationale for adopting this approach is rooted in the desire to comprehensively understand, analyze, and explicate the Juridical Analysis of the Limited Liability Company Name Checking System through Online General Legal Administration (AHU). This method involves an in-depth examination of legal materials and literature relevant to the subject matter. The juridical normative research is particularly suited for delving into the legal aspects and regulations surrounding the specified system.

In the context of normative legal research, the author has explicitly adopted a legislative methodology. This decision is based on the acknowledgment that the primary focus of the inquiry is the set of legal regulations that govern the Juridical Analysis of the Limited Liability Company Name Checking System through Online General Legal Administration (AHU). Through the application of this methodological approach, the research seeks to offer a thorough and nuanced examination of the legal aspects connected to the name checking system, thereby contributing insightful perspectives to the ongoing legal discussions in this field.

3. RESULTS AND DISCUSSION

3.1. The System Settings for Checking the Online General Legal Administration (AHU) Name at the Directorate General of General Legal Administration (AHU) Ministry of Law and Human Rights

PP No. 24 of 2018 concerning Integrated Electronic Business Licensing Services emphasizes that the government regulates, among other things, the types, applicants, and issuance of business licenses; the implementation of business licensing, sectoral reforms in business licensing, the OSS system, OSS institutions, OSS funding, incentives or disincentives for business licensing through OSS, problem resolution, and business

obstacles, as well as sanctions. In this study, we will focus on one form of legal entity, namely a Limited Liability Company (PT). Limited Liability Company, as a business entity, is widely sought after by business players because legal regulations regarding PT are essential to know to enter a more open and broader business world in the future.

Regulations in the field of PT have undergone many changes and updates. This is understandable considering that the law must be able to adapt to the needs of the times. The latest PT Law, namely Law No. 40 of 2007 concerning Limited Liability Companies, brings enlightenment to the business world because the existence of PT as a business entity becomes stronger in the midst of increasingly global business competition. One of the Notary's authorities is in the creation of the Deed of Establishment of PT. The making of the Deed of Establishment for PT is one of the requirements and procedures that must be carried out in the establishment of PT, as stipulated in Article 7 Paragraph (1) of the Company Law, which states that PT is established by 2 (two) or more people with a notarial deed made in the Indonesian language. In addition, PT must be established with an authentic deed, in this case, by and in the presence of an authorized official, namely a notary, which includes the articles of association and other information (Christian, 2020).

The procedure for submitting applications and approval of the Deed of Establishment and Approval of Changes to the Articles of Association of a Limited Liability Company is regulated in the Decision of the Director General of General Legal Administration (*Dirjen* AHU) of the Ministry of Justice and Human Rights of the Republic of Indonesia Number: C-01.HT. 01.01 of 2003 concerning the Procedure for Submitting Applications and Approval of the Deed of Establishment and Approval of Changes to the Articles of Association of a Limited Liability Company. According to Article 1 of the 2003 *Dirjen* AHU Decision, the deed of establishment of a Limited Liability Company is a deed made before a notary containing information about the identities and agreements of the parties to establish a Limited Liability Company along with its articles of association. The Deed of Establishment of the Limited Liability Company must be approved by the Minister of Justice and Human Rights, now the Minister of Law and Human Rights of the Republic of Indonesia, through the Director General of General Legal Administration of the Ministry of Justice and Human Rights, now the Minister of Law and Human Rights (H. Z. Asikin & Sh, 2019).

The login menu is the initial step to enter the menus intended for notaries, while the log-out menu is provided for notaries when they have finished or exited the *Sisminbakum* transaction process for the security of data that has been entered, preventing it from being viewed or altered by unauthorized individuals (Arifki, 2019). After the notary logs in, the notary then selects the name check menu. The provisions in the examination or checking of this name must be in accordance with the applicable regulations on the company's name. According to the Government Regulation of the Republic of Indonesia Number 26 of 1998 concerning the use of the name PT, which is basically made to regulate the procedure for submitting requests for approval for the use of the company's name, each use of the PT name can only be used by a business entity established with the aim of forming a PT legal entity. The name check menu can be seen in the attachment on page FIAN for name checking. To check the name of a company whether it has been registered in *Sisminbakum*, the first step is to click on the name check menu on the left side of the *Sisminbakum* page and then type the name of the company to be checked without using the word PT in front and characters rejected by the system such as: " ' ^ # % /. Type the name of the PT in the column provided. After typing the name of the PT to be checked,

click the "Submit" button to save. If the name is already registered, the name will be automatically rejected in the system directly without having to wait long (Z. Asikin, 2016).

In the event that the company name is not yet registered and to ensure the name's acceptance by the Department, it is imperative to promptly initiate the reservation of the company name. Automatically, the system will impose an access fee for the company name reservation amounting to IDR 350,000 (three hundred and fifty thousand Indonesian Rupiah) plus a 10% Value Added Tax (PPN). The subsequent steps involve filling in the company's details for establishment by selecting one of the predefined options (Riyanti, 2019), such as:

a. Company type, selected by clicking on one of the available options, such as: General facility, non-general facility, Foreign Direct Investment (PMA), Domestic Direct Investment (PMDN), State-Owned Enterprises (BUMN), Banking, Non-banking institutions, Special ventures.
b. Company location, chosen by clicking on one of the predetermined cities, such as Jakarta, Bandung, Medan, Surabaya.
c. Company status, which is 'closed' for all companies seeking establishment approval.
d. Typing the group name if the company is part of a legally established group. Otherwise, this question can be disregarded or left blank.
e. Typing the abbreviation of the company name to be proposed; if not applicable, it can be disregarded or left blank.

If the entered data aligns with the intended company details, the next step involves clicking the "Submit" button. Once the submitted data has been sent, the subsequent task is to monitor the examination process of the company name by the Directorate General of General Legal Administration (*Dirjen* AHU), starting from the scrutiny by the Corrector, Section Head, and Sub-Directorate Head (*KasubDit*), culminating in the final legal entity examination by the Director of Civil Registration, accompanied by the date, time of examination, and process details. To monitor the examination process, the user can click on the "Monitoring" menu on the left side of the *Sisminbakum* page.

The Directorate General of General Legal Administration may reject a reserved name if it contravenes the provisions outlined in Article 5, paragraphs (1) and (2) of Government Regulation No. 26 of 1998. Reasons for rejection include if the name (H. Z. Asikin et al., 2016):

a. Has already been legitimately used by another company or is similar to the name of another company.
b. Contravenes public order and morality.
c. Is identical or similar to the name of a company whose name usage approval has been accepted first.
d. Is identical or similar to a well-known trademark.
e. Consists solely of numbers or a series of numbers.
f. Consists solely of letters or a series of letters that do not form a word.
g. Indicates the purpose and objectives of the company.
h. Is not in line with the purpose, objectives, and business activities of the company.
i. Is only a geographical location name.
j. Is supplemented with words and/or abbreviations that denote a limited liability company, legal entity, or civil partnership.

Upon successful reservation acceptance, the next step is to apply for or register the name's usage. The name reservation period is 7 days, extendable to 60 days. If the name reservation is rejected, the user must replace the rejected name following the same steps as when initially reserving the name (Abdulkadir Muhammad, 2013).

The replacement steps include clicking on the "Check Name" menu, entering the new company name, and clicking the "Submit" button. In the name reservation page, select option 4 for replacing the rejected company name, click on it to ensure the control number matches the billing (payment proof) for the respective company name. Then, choose the company name to be replaced, review the company data, make necessary adjustments, and click the "Submit" button.

If the corrected company name is approved, the next step is to proceed with the name application. The name application is a crucial step to continue the company name reservation process within the 60-day validity period. Failure to complete the name application before the expiry date will result in automatic deletion of the data by the system. During the name application stage, it is essential to pay the Non-Tax State Revenue (PNBP) fee of IDR 200,000 (two hundred thousand Indonesian Rupiah) to the Ministry of Law and Human Rights. Afterward, fill in the PNBP payment date using the provided format in the PNBP menu and complete the supporting documents in the Pra Fian-1 menu.

3.2. Sanctions Imposed on Domestic Investment (PMDN) Utilizing Foreign Languages in the Establishment of Limited Liability Companies (PT)

In the establishment of a Limited Liability Company (PT), there is fundamentally no explicit prohibition regarding the utilization of a company name in a foreign language. According to Article 16, paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies (UU PT), names prohibited from use as PT names are those that (Permata & Ghoni, 2019):

a. Have been legitimately used by another company or are essentially identical to the name of another company.
b. Contravene public order and/or morality.
c. Are identical or similar to the names of state institutions, government agencies, or international institutions, unless permission is obtained from the relevant authority.
d. Are inconsistent with the purpose, objectives, and business activities or merely indicate the purpose and objectives of the company without a distinct identity.
e. Consist of numbers or a series of numbers, letters, or a series of letters that do not form a word.
f. Signify a company, legal entity, or civil partnership.

However, subsequent regulations on the usage of PT names are further stipulated in Government Regulation No. 43 of 2011 concerning Procedures for the Submission and Usage of Names for Limited Liability Companies (PP 43/2011). Article 11 of PP 43/2011 expressly mandates that companies with all their shares owned by Indonesian citizens or Indonesian legal entities must use a company name in the Indonesian language.

As elucidated in the article titled "Prohibition on the Use of Foreign Languages for Company Names," if a company persists in using a foreign name, the consequence is that

the name may be rejected by the Minister. Article 6 of PP 43/2011 specifies that the Minister of Law and Human Rights has the authority to reject the submission of such a company name. In addition to prohibiting the use of foreign languages for the names of Indonesian legal entities, PP 43/2011 also does not permit the use of Arabic or Chinese characters for company names. Company names must be written in Latin letters, and the combination of letters and numbers used must form words. Therefore, Notaries have the obligation to caution clients during the name-checking process and assist them in ensuring that the selected name aligns with the provisions stipulated in PP 43/2011.

3.3. Implementation of AHU Online to Realize Fast, Effective, Efficient, and Corruption-Free Public Services as a Form of Bureaucratic Reform

Not long ago, public services provided by the Directorate General of Legal Administration (*Dirjen* AHU) were largely manual or semi-online, meaning that despite using computer network tools, the process still involved human actions such as certificate signing, certificate delivery, document submission, and so on. This scenario underwent a drastic transformation with the issuance of Minister of Finance Regulation No. 130/KMK/2012, which mandated the registration of fiduciary deeds with the Ministry of Law and Human Rights, accompanied by the threat of business license revocation for non-compliance. Since the implementation of Minister of Finance Regulation 130/KMK/2012, there has been a significant surge in fiduciary deed registrations from financing institutions to the fiduciary registration office (Ministry of Law and Human Rights) (Melo et al., 2023). Thousands of files need to be processed monthly. For the Ministry of Law and Human Rights, this influx represents both a blessing and a challenge. While it brings in substantial funds, creating a surplus for routine budgetary needs, the efficient system to manage this was lacking (Permata & Ghoni, 2019).

Consequently, numerous backlogs of unresolved files, along with instances of misplaced or mixed-up documents, emerged. These issues were only effectively addressed with the introduction of an online system for fiduciary deed registration and legal entity establishment, with preparations underway for foundations and similar entities. Through print and electronic media advertisements highlighting the public service revolution by the Directorate of General Legal Administration (AHU), witnessed by millions of Indonesian citizens, a new model of public service, specifically for general legal administration such as fiduciary registration, legal entity establishment (PT), and foundations, was introduced through an online system. The advancement in online services by the Directorate General of Legal Administration, Ministry of Law and Human Rights, harks back to the past era of the stock market in the Capital Market, transitioning from manual trading to online trading, or scripless trading. While the issues are almost similar, they differ in the purpose of the transactions. Online trading purely involves buying and selling securities, the meeting of sellers and buyers in the capital market. In contrast, the online system at the Directorate General of Legal Administration is predominantly oriented towards public service.

Visually, the system developed for fiduciary deed, legal entity (PT), and foundation registrations involves two parties: the registrant (usually an individual, typically a Notary acting as an attorney) and the government entity (in this case, the Ministry of Law and Human Rights, specifically the Directorate General of Legal Administration). Initially, the application process was manual, involving direct interaction between the registrant and the Ministry of Law and Human Rights, including the submission of specific

documents. However, in subsequent developments, the direct linkage between the registrant and the Ministry of Law and Human Rights was replaced by a system, i.e., an electronic computer device. There is no longer direct contact between the registrant and the Ministry of Law and Human Rights. The registrant is connected to a computer application linked to the Ministry of Law and Human Rights, in this case, the Directorate General of Legal Administration. Thus, the initially manual process has been transformed into an electronic system. This implies that the provisions stipulated in Law No. 12 of 2008 concerning Electronic Information and Transactions apply to online registrations for fiduciary deeds, legal entities (PT), foundations, and similar cases. If this online registration issue is considered in light of the Electronic Information and Transactions Law, the registrant (in this case, the Notary) assumes the role of a user, whether an individual or a business entity. The activity of registering online is referred to as an electronic transaction (MUHAMMAD, 2021).

Data entered into the electronic system by the notary during the application process is termed electronic information, i.e., one or a collection of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegrams, telefax, or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed and convey meaning understood by individuals capable of comprehending them. The connection between the computer used by the notary to submit applications online and the computer at the Directorate General of Legal Administration, Ministry of Law and Human Rights, is referred to as an electronic system network, signifying the interconnection of two or more electronic systems, whether closed or open (Susilo, 2014). The Ministry of Law and Human Rights, in this case, the Directorate General of Legal Administration, assumes the position of an electronic system provider, i.e., the utilization of electronic systems by the state, individuals, business entities, and/or the public (Setiawan, 2017).

The issue of fungibility is closely related to the function of documents as substitutes or replacements rather than derivatives. This is because the characteristics, functions, or inherent benefits of the original document will be supplanted by its substitute. Therefore, concerning online registration at the Ministry of Law and Human Rights, specifically the Directorate General of Legal Administration, original fiduciary certificates or original legal entity approval certificates may no longer be issued after everything is processed through the electronic system. This is to ensure that the function, character, and value of certificates for fiduciary deeds and legal entity approval printed from the electronic system are fungible with the originals. The interpretation of fungibility in the context of document function is a specialized development of the term, specifically within legal or legal terminology. Initially intended for the replacement of physical goods with other interchangeable physical goods, as mentioned in the Law Dictionary's definition of fungible as "*a term applied to goods that are interchangeable or capable of substitution by nature or agreement." In the UCC, oil, grain, and coal are examples of naturally fungible goods. When storing fungible goods, warehousemen are exempt from the legal requirement of keeping stored goods from one depositor separate from the goods of another. Securities of the same issue are considered fungible; hence a person obligated to deliver securities may deliver any security of the specified issue*."

4. CONCLUSION

The formal prerequisites for the establishment of a Limited Liability Company (PT) necessitate that the deed be composed in Bahasa Indonesia and involve two or more individuals. Meanwhile, the material requirements dictate that the deed must encompass elements specified in Article 9 of Law Number 40 of 2007 concerning Limited Liability Companies. The procedural steps outlined in Article 39 of Law Number 2 of 2014 regarding Notary Positions for creating the Establishment Deed for a Limited Liability Company involve the parties approaching the notary, name verification, deed signing, registration with the relevant Ministry, and issuance of the Company Law Certificate (*SK Badan Hukum*). Despite technical hindrances faced by notaries, such as inaccessible systems, solutions are sought through communication efforts with Ahu Online. Additionally, non-technical challenges are addressed through proactive efforts for improvement. The responsibility for material accuracy pertains to the validity of proving the deed, ensuring compliance with the provisions of legislation.

Furthermore, adherence to formal prerequisites, including the use of Bahasa Indonesia and the involvement of a minimum of 2 individuals, is crucial in the meticulous process of establishing a Limited Liability Company. On the other hand, compliance with material requirements, specifically the inclusion of stipulated elements, as per Article 9 of Law Number 40 of 2007, ensures the substantive completeness of the deed. The procedural steps guided by Article 39 of Law Number 2 of 2014 offer a structured framework for notaries, involving interactions with clients, name verification, deed signing, registration, and the issuance of the *SK Badan Hukum*. Overcoming technical obstacles, such as system inaccessibility, is met with communication solutions through Ahu Online, while non-technical challenges prompt proactive efforts for improvement. The responsibilities for material and formal accuracy underscore the notary's pivotal role in ensuring both the legal validity and substantive completeness of the establishment process.

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STRATEGY OF ENVIRONMENTAL LEGAL ARRANGEMENT AS AN EFFORT TO PREVENT NATURAL DISASTERS, FLOODS, AND LANDSLIDES IN NORTH SULAWESI

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Abstract

The prevention of violations of Environmental Law is based on Law Number 32 of 2009, which requires all members of society to comply with the law. National guidelines for preventing natural disasters have been established by BNPB, Provincial and Regional Governments as policies for society to follow. Compliance with environmental laws is crucial to ensure that people do not live in prohibited areas designated by the government. Failure to comply with environmental permits has resulted in losses and casualties during floods and landslides in Manado and North Sulawesi. Environmental standards are regulated by laws and institutions such as BNPB, as well as local government regulations. However, despite these regulations, environmental problems still persist. This research aims to address the legal strategies for structuring environmental law that must be followed by the community, as well as the enforcement strategies and sanctions for those who violate environmental laws. The research uses normative research methods focusing on two indicators: the basic strategies for structuring environmental laws and the enforcement strategies and sanctions for violators.

Keywords: *Environmental Law, Prevention, Natural Disaster, Strategy*

1. INTRODUCTION

The legal basis for preventing people from violating Environmental Law is Law Number 32 of 2009, where every element of society must obey and comply with all instructions in the Law. In particular, national regulations on the prevention of natural disasters have been established by BNPB, which is a government policy as a guideline for all members of society to comply with. There are also regulations issued by local governments, such as Governor's Regulations and Mayor's Regulations. These rules must be obeyed to avoid natural disasters, floods, and landslides (Kalalo, 2016).

Environmental sustainability is crucial in life, given the nature and character of the environment (Hardjasoemantri, 2005). The environment is an integral part of everyone's life. Humans breathe and receive light because there is air and sun, and human needs, such as obtaining food, drink, farming, making houses, bathing, and shelter, are fulfilled from the environment. The presence of the environment is crucial and decisive for the presence and continuity of humans, for their culture and civilization. Environmental factors are a part that cannot be absolutely separated from humans during their entire life, from birth to even when in the womb. Therefore, no matter how we perceive environmental objects, they are essential for our survival (Muhjad, 2015).

Every time floods and landslides occur in the city of Manado and throughout North Sulawesi, many people suffer losses and even casualties due to non-observance of environmental regulations by community members who violate environmental laws. The purpose and effort to maintain and protect the environment can take place in an organized manner so that it is followed and obeyed by all parties. These goals and efforts are

outlined in legal regulations. Thus, a type of law was born, specifically created with the main purpose and objective of maintaining and protecting the environment, called environmental law or, briefly, environmental law (Amiq, 2013).

The results of previous research show that North Sulawesi Governor Regulation Number 14 of 2018 concerning the Determination of Types of Business Plans and/or Activities that Have Environmental Management Efforts and Environmental Monitoring Efforts, and Manado City Regional Regulation Number 1 of 2020 concerning Environmental Protection and Management sanctions, have not been carefully implemented. This weakens law enforcement because unclear sanctions cause people not to comply with existing laws and regulations, especially those governing environmental permits. The lack of compliance with environmental permits is a complicated problem because, for example, most people who build houses in areas prone to floods and landslides do not have building permits, leading to natural disasters resulting in material losses and even fatalities. The absence of clear sanctions in the form of demolition of houses in the area is a weakness in environmental law enforcement, especially for governments that are always affected by disasters.

Responsibility for the recovery and prevention of environmental pollution needs to be confirmed against the consequences of pollution that occurs. Local governments can formulate the concept of sustainable development in relation to environmental restoration by providing clear boundaries on environmental responsibility in investment activities, the responsibility of business entities, and individuals, so as to prevent natural disasters (Al Afghani, 2003).

The government needs to intervene in environmental management by organizing the correct legal strategy based on applicable regulations for violators to comply with applicable laws (Hutabarat et al., 2022). This ensures that people clearly realize that if the laws and regulations on the environment are not implemented properly, there will be sanctions obtained from the government and especially from nature itself.

The first objective of this research is to elucidate the fundamental strategy for organizing environmental laws that necessitate compliance from every segment of society. This involves a comprehensive exploration of the essential components and principles that form the basis of these laws. Meanwhile, the second objective aims to investigate the strategies employed for the enforcement of environmental laws and the corresponding sanctions applied to individuals who breach these regulations, deviating from established environmental law standards and procedures. By delving into this aspect, the research intends to shed light on the mechanisms in place for ensuring compliance, examining the effectiveness of enforcement strategies, and assessing the appropriateness and consistency of sanctions imposed on violators.

2. RESEARCH METHODS

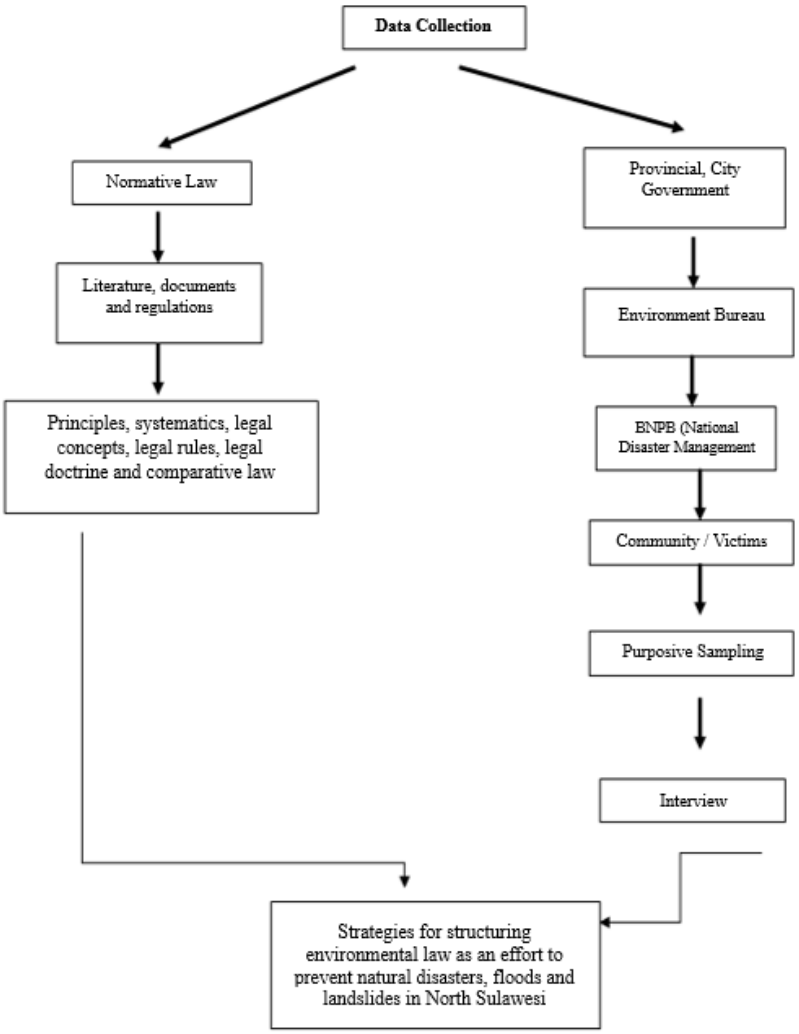

Figure 1. Research model

2.1. Type of Research

The research activities related to data collection encompass normative legal research supported by field surveys. This study employs juridical research methods, specifically normative law, which involves an examination of legal norms, rules, and doctrines present in legislation and jurisprudence (Soekanto & Mamudji, 2003). Additionally, the research involves an analysis of library materials addressing strategies for implementing effective environmental law. This includes a comprehensive review of books, laws and regulations, and theoretical documents. The theoretical research phase delves into discussions on principles, systematics, legal concepts, rules, doctrines, and comparative law concerning strategies for establishing environmental legal frameworks as a preventive measure against natural disasters, floods, and landslides in North Sulawesi. Field research or surveys are conducted to gather factual information by interviewing relevant stakeholders, focusing on predetermined research locations.

2.2. Determination of Data Collection Location

The research location was specifically identified within the North Sulawesi Province, Jakarta. This decision was based on the assumption that the environmental licensing arrangements fall under the jurisdiction of the North Sulawesi Provincial Government.

2.3. Population and Sample

The study's population encompasses entities involved in the flood and landslide natural disaster management strategy, specifically those affiliated with the Bureau responsible for permits. The population includes:

1. North Sulawesi Provincial and Municipal Government
2. National Disaster Management Agency, BNPB
3. Environment Agency
4. Communities residing in areas susceptible to natural disasters, particularly in the city of Manado

The sample selection followed a purposive sampling method, involving the selection of individuals as data sources based on specific considerations. For instance, individuals were chosen based on their presumed knowledge about the researcher's expectations or their role as heads of agencies, facilitating a more insightful exploration of the studied object or social situation (Sugiyono, 2017). The determined sample for this study includes:

a. Provincial and Municipal Heads/Leaders and Staff
b. Head/Leader and Staff of BPBN
c. Head/Leader of the Environment Agency
d. Members of the community residing in the vicinity of disaster-prone areas

2.4. Data Collection Technique

For the acquisition of necessary data, the study employed the following data collection techniques:

1. Interviews:

Utilizing interviews as a method to directly gather data from individuals with expertise, using interview guidelines as a structured approach.

2. Documentation:

Employing documentation as a method to collect data by examining relevant documents, including laws and regulations, essential data from agencies pertinent to the research problems, textbooks, and legal journals. These documents serve as study materials integral to the research.

2.5. Data Analysis

The collected data underwent qualitative analysis, involving a descriptive approach to elucidate the obtained data, encompassing both primary and secondary data. This analysis includes providing interpretations and drawing conclusions. The qualitative nature of this data analysis is selected due to its relevance to understanding the government's attitudes and roles in supporting disaster management and prevention

strategies, particularly in the context of the section responsible for environmental licensing.

3. RESULTS AND DISCUSSION

This research is focused on the Strategy for Structuring Environmental Law as an Effort to Prevent Natural Disasters, Floods, and Landslides in North Sulawesi. The implementation of the right strategy is crucial for establishing effective environmental legal frameworks to preempt future natural disasters. In environmental law, structuring refers to the comprehensive implementation of environmental requirements. It is considered achieved when all environmental prerequisites are fulfilled or executed by the subjects of environmental law (Husin, 2009). Structuring is a process aimed at motivating individuals to voluntarily adhere to the law. This process involves considering the knowledge, understanding, and behavior of the community towards the law, facilitating the fulfillment of law enforcement.

The government adopts various strategic measures to engage the community in disaster risk reduction efforts, specifically in disaster prevention and preparedness. The disaster management stage is executed to diminish and address the risks associated with disasters. Activities in this stage encompass not only the restoration and modification of the physical environment but also the enhancement of awareness and capabilities to respond to disaster risks. According to (Hardi & R Ahmad, 2019), the disaster response stage is conducted through structural and cultural means. Structurally, efforts include the development of diverse physical infrastructures and the application of technological approaches, such as the construction of specialized flood control channels and early warning systems. Structural mitigation also involves engineering designs for disaster-resistant buildings to reduce vulnerability. Conversely, cultural mitigation focuses on reducing vulnerability through policy instruments like the implementation of disaster management laws and regulations. Cultural mitigation endeavors include changing paradigms and expanding knowledge and attitudes to foster a resilient society, including communities committed to environmental care to minimize disaster occurrences. In general, this phase involves:

1. Creating maps and plans for areas particularly at risk of disasters.
2. Issuing disaster warnings.
3. Enhancing building resilience to specific disasters.
4. Providing comprehensive advice and education to residents in disaster-prone areas.

The environmental agency, in its strategy, outlines two programs: First, the Environmental Pollution and Damage Control Program aims to enhance environmental quality, preventing damage, pollution, and restoring the environment affected by excessive natural resource utilization. Notably, the North Sulawesi government, particularly in Manado, has intensified cooperation with the Ministry of Environment and Forestry to address marine debris resulting from floods. The floods in North Sulawesi contribute to sea garbage accumulation due to inadequate waste management by individuals and industries, particularly concerning hard-to-decompose plastic waste.

Second, the Natural Resources Protection and Conservation Program aims to elevate the role and commitment of stakeholders in natural resource management and environmental preservation.

A strategy is a comprehensive approach involving the implementation of ideas, planning, and activity execution within a defined timeframe. The strategy for structuring environmental law is heavily influenced by three dimensions affecting its quality:

1. Involving Lawbreakers:

Lawbreakers directly or indirectly contributing to environmental degradation leading to natural disasters, floods, and landslides are integral to this dimension. Common law violations, such as improper waste disposal, particularly during the rainy season, can cause flooding. Inadequate urban planning is often linked to landslides.

2. Victims (Community):

Victims are those directly impacted by natural disasters, encompassing property damage, loss, suffering, and loss of life. Victims may include those who are deceased, missing, injured, suffering, or displaced.

3. Law Enforcement Officials:

Entities responsible for applying and enforcing the law, such as the police, prosecutors, courts, and Civil Service units, are central to this dimension, particularly in the context of criminal law enforcement.

In addressing issues related to the prevention of environmental damage, Article 71 of the PPLH Law outlines the following:

(1) The minister, governor, or regent/mayor, in line with their respective authorities, are mandated to oversee the compliance of individuals responsible for businesses and/or activities with the provisions specified in laws and regulations pertaining to environmental protection and management.
(2) The Minister, governor, or regent/mayor may delegate their oversight authority to officials or technical agencies responsible for environmental protection and management.
(3) During the oversight process, the Minister, governor, or regent/mayor is required to appoint functional officials as environmental supervisory officers.

Environmental supervisory officials, as specified in Article 71, paragraph (3), are granted the authority to:

a. Conduct monitoring.
b. Request information.
c. Make copies of documents and/or create necessary records.
d. Enter specific locations.
e. Take photographs.
f. Produce audio-visual recordings.
g. Collect samples.
h. Inspect equipment.
i. Examine installations and/or modes of transportation.
j. Halt specific violations.

In the development of environmental law structuring strategies, Environmental Civil Servant Investigators have been established to carry out the responsibilities intended by Article 94 of the PPLH Law. The establishment of Environmental Civil Servant Investigators is one of the government's strategies to protect environmental fighters in

launching legal processes where the burdens and responsibilities carried out are reported directly to the Environmental Service itself where the Civil Servant Investigators are given legal protection for all the consequences of their work.

The responsibilities that must be carried out by PPNS LH, namely:

a. Conducting examinations on the veracity of reports or information concerning criminal offenses in the realm of environmental protection and management.
b. Examining individuals suspected of committing criminal offenses in the field of environmental protection and management.
c. Requesting information and evidence from individuals related to criminal offenses in the environmental protection and management domain.
d. Examining books, records, and other documents relevant to criminal offenses in environmental protection and management.
e. Conducting examinations at specific locations suspected of containing evidence, books, records, and other pertinent documents.
f. Confiscating materials and goods resulting from violations that can serve as evidence in cases of criminal acts in environmental protection and management.
g. Seeking expert assistance in the investigation of criminal offenses related to environmental protection and management.
h. Halting investigations.
i. Entering specific places, capturing photographs, and/or creating audio-visual recordings.
j. Searching the body, clothes, room, and/or other locations suspected of being the site of a committed criminal offense.
k. Arresting and detaining perpetrators of criminal offenses.

PPNS LH exclusively investigates specific criminal cases related to environmental protection and management, as outlined in Law No. 32 of 2009. The cases addressed involve environmental pollution, environmental destruction, and activities related to hazardous and/or toxic waste (B3) conducted by both individuals and business entities, whether incorporated or unincorporated.

Environmental damage, a leading cause of contemporary natural disasters, necessitates strategic legal measures and efforts for proactive anticipation and resolution. This approach is vital to ensuring the perpetual preservation and protection of the environment, considering that the ongoing environmental degradation is intricately linked to human actions and habits. Consequently, fostering a sense of responsibility for environmental preservation within every community is imperative.

Up until 2009, Indonesia had three environmental laws. Initially, Law No. 4 of 1982 concerning Principles of Environmental Management was enacted, later revoked, and replaced by Law No. 23 of 1997 concerning Environmental Management. Eventually, Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) superseded previous legislation. Siti Sundari Rangkuti emphasized that environmental laws and regulations were crafted to support the UUPPLH.

The UUPPLH serves as a platform for formulating environmental policy, offering a potential solution to environmental challenges. Law, functioning as a tool for development and social engineering, assumes the role of an agent of change and becomes the cornerstone for aspiring to achieve sustainable development (Shidarta, 2004). The amalgamation of all the aforementioned laws and regulations contributes to the

Indonesian environmental legal system. The legal norms embedded in the 2009 Environmental Law constitute the primary provisions necessitating the integration of Indonesian environmental law in conservation endeavors.

The UUPPLH grants considerable autonomy to regions to formulate environmental laws tailored to their specific circumstances, as articulated in Article 63, paragraph 2. Each province is authorized to determine Strategic Environmental Assessments, Environmental Protection and Management Plans, and Environmental Impact Assessments in accordance with their unique situations and conditions.

At the operational level, Law No. 24 of 2007 mandated the establishment of the National Disaster Management Agency (BNPB), subsequently affirmed by Presidential Regulation No. 8 of 2008. BNPB is entrusted with various duties, including providing guidance and direction for disaster management efforts, setting standards and requirements for disaster management, disseminating information on disaster management activities, reporting to the President, utilizing national and international assistance, being accountable for budget utilization, and facilitating the establishment of Regional Disaster Management Bodies. Besides the Central Government, Local Government, and the National Agency for Regional Disaster Management (BPBD), Law No. 24 of 2007 recognizes the involvement of other entities, namely business institutions and international organizations.

The North Sulawesi government, as the delegated authority from the central government to formulate legal policies for environmental permits at the provincial level, consistently offers guidance and supervision to districts and cities in the authorization of environmental permits to mitigate the risk of natural disasters. The provincial government allows regional flexibility in regulating environmental laws within their respective territories. Some of these regulations include:

1. Manado City Regional Regulation Number 1 of 2020 concerning Environmental Protection and Management,
2. Bitung City Regional Regulation Number 2 of 2021 amending Regional Regulation Number 16 of 2013 regarding Control of Wastewater Discharge to Water or Water Sources,
3. Tomohon City Regional Regulation (PERDA) Number 1 of 2022 concerning Environmental Protection and Management Plan 2021-2025,
4. Regent Regulation (PERBUP) of Minahasa Regency Number 16A of 2018 concerning Types of Business Plans and/or Activities Must be Equipped with Environmental Management Efforts and Environmental Monitoring Efforts,
5. Regulation of the Regent of North Minahasa Regency Number 15 of 2014 on the Description of Duties and Functions of the Environmental Management Agency of North Minahasa Regency,
6. Regent Regulation (PERBUP) of Southeast Minahasa Regency Number 49 of 2016 on the Position, Organizational Structure, Duties and Functions, and Work Procedures of the Type C Environmental Agency of Southeast Minahasa Regency,
7. Regent Regulation (PERBUP) of Sangihe Islands Regency Number 12 of 2013 amending Regent Regulation Number 51 of 2008 concerning Job Description of the Environmental Agency of Sangihe Islands Regency.

As part of the strategies for structuring environmental law at the regional level, it is evident in Manado City Regional Regulation Number 1 of 2020 concerning Environmental Protection and Management. Article 10 elucidates that every policy must engage and coordinate with stakeholders, both at the central and regional levels, based on the Strategic Environmental Assessment (KLHS). The execution of every policy should be transparent to the public, ensuring everyone's right to a good and healthy environment and providing information on environmental protection and management.

Manado City, situated within North Sulawesi Province and serving as the provincial capital, has experienced rapid regional development, leading to an increased occurrence of natural disasters like floods and landslides compared to other areas in the province. Almost every rainy season witnesses floods and landslides in various parts of Manado city. The primary concern revolves around the urban center of Manado being a focal point for flooding. In response, the government has implemented stringent rules, including direct enforcement against individuals littering, especially along riverbanks. The Manado City Government has instituted an on-the-spot Misdemeanor Court to take decisive action against violations committed by citizens. Penalties include imprisonment for three days or fines of up to Rp. 300,000. The enforcement of these regulations is complemented by improvements in government facilities, particularly waste disposal facilities, which have been increased in each sub-district and neighborhood, overseen directly by the neighborhood head.

Various governmental initiatives have been undertaken to prevent the occurrence of natural disasters. Legal frameworks have been established by both the central and local governments. The PPLH law empowers the government to clearly define sanctions for violations of environmental laws, encompassing both severe and administrative penalties.

Administrative sanctions given are:

a. written warning;
b. government coercion;
c. freezing of environmental permits; or
d. revocation of environmental license.

Severe sanctions that the government can impose for serious violations of environmental permit laws include criminal penalties, where violators may face imprisonment for 1-3 years or fines ranging from 1 billion rupiah to 3 billion rupiah (Rahmadi, 2011).

Each sanction issued will naturally undergo a legal process established on the basis of valid evidence, such as witness testimony, expert opinions, letters, instructions, the defendant's testimony, and other evidence supporting the investigation process in accordance with applicable regulations.

The existence of clear regulations and sanctions for the legal structuring strategy of environmental permits as an effort to prevent natural disasters, floods and landslides must of course be known by the wider community so that it can be understood and obeyed (Ninik, 1992). Some of the ways the government implements the strategy of legal structuring of environmental permits, namely:

1. Socialization to the local community conducted by environmental stakeholders such as the Head of the Environment or the head of RT/RW,
2. Guidance on the socialization that has been carried out so that it can be understood and obeyed,

3. Providing technical assistance to the community directly,
4. Supervision with continuous guidance on the rules that have been enacted.

A sound strategy for managing environmental regulations is the primary effort to prevent regulatory violations and/or environmental pollution. The implementation of the right strategy results in effective environmental legal frameworks to prevent future natural disasters. Real prevention is evident in the proactive actions of the government, enforcing applicable rules to create a deterrent effect for rule violators.

The decrease in the intensity of natural disasters, floods, and landslides serves as proof that the strategy of structuring environmental law has been appropriately implemented. However, as long as natural disasters persist due to the negligence of the community and the government, the strategy for environmental law structuring must continue to evolve and adapt to the ongoing situations and conditions. This ongoing development is essential because every individual has an equal right to a good and healthy environment.

4. CONCLUSION

The formulation and implementation of a strategic environmental law framework, aimed at preventing natural disasters, floods, and landslides, are enshrined in Law Number 32 of 2009. This legal foundation establishes the imperative for every societal element to adhere to and comply with the stipulations set forth. Oversight and regulations by institutions such as BNPB, in conjunction with local government directives like Governor Regulations and Mayor/Regent Regulations, further reinforce the necessity for strict compliance. The effective management of environmental regulations stands as the cornerstone in preventing violations and environmental pollution, thereby mitigating the occurrence of natural disasters.

The enforcement of a judicious legal strategy is pivotal in ensuring robust compliance with environmental laws to forestall natural disasters. However, shortcomings in government measures, particularly in supervision and guidance, create loopholes allowing for community infractions. The government's perceived leniency in applying sanctions diminishes their deterrent impact, perpetuating the recurrence of natural disasters, floods, and landslides.

In light of the aforementioned findings, certain recommendations emerge to strengthen environmental law management and foster greater community adherence: Firstly, the government should enhance environmental law management by implementing legal sanctions in alignment with existing regulations, compelling violators to conform to applicable laws. Hence, there is a need for comprehensive community guidance, emphasizing the direct correlation between improper adherence to environmental laws and the resultant sanctions imposed by both the government and nature itself. Furthermore, socialization, technical guidance, and supervision must be intensified to directly engage communities. A comprehensive understanding of environmental regulations is crucial, as lack of knowledge perpetuates violations. Therefore, an emphasis on community-focused education and awareness initiatives is paramount to curbing environmental transgressions effectively.

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STRATEGIES FOR OPTIMIZING THE "EKSUS SMART" APPLICATION FOR THE COMMUNITY TO INCREASE TRANSPARENCY IN THE PERFORMANCE OF INVESTIGATORS IN HANDLING CRIMINAL ACTS

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Abstract

The Indonesian National Police (POLRI) confront a myriad of challenges in criminal investigations, contending with dynamic crime scenes and the need for prompt decision-making. Police Chief Listyo Sigit Prabowo leads the charge in operational transformation through the 6th program, the POLRI Transformation Road Map, focusing on elevating law enforcement performance. At the core of this initiative is the "EKSUS SMART" application, developed to streamline investigations. While holding promise for enhancing POLRI investigators' performance, practical obstacles necessitating optimization have emerged. This study aims to evaluate the utilization of "EKSUS SMART" in criminal investigations by POLRI investigators, proposing strategies to boost public participation in reporting crimes. Optimization goals encompass efficiency, effectiveness, and transparency in crime handling, coupled with fostering public trust in law enforcement. Employing qualitative research and drawing on theories like Diffusion of Innovation (DOI) and the Technology Acceptance Model (TAM), the study underscores the intricate nature of criminal case management, requiring high levels of expertise and professionalism. While "EKSUS SMART" contributes positively to efficiency and transparency, resolving technical, legal, and social challenges is crucial for its optimal application in upholding public safety. Specific optimization strategies, including heightened public awareness, user-friendly design, and instilling trust in reporting processes, are deemed essential. Improvements in investigator services, training, and communication skills are identified, along with the need for enhanced coordination and collaboration among investigators, government, and the public, achievable through improved information infrastructure and increased public interest in transparency and investigations.

Keywords: *Community Participation, Eksus Smart, Investigator Performance, Optimization*

1. INTRODUCTION

The Indonesian National Police (POLRI) encounters multifaceted challenges in the course of criminal investigations. These challenges encompass diverse dimensions, ranging from the crime scene (*Tempat Kejadian Perkara* or TKP) to the exigency of prompt and critical decision-making, often entailing matters of life and death. Such decisions are made based on restricted information within the dynamic context of active and evolving events. Moreover, investigators grapple with the imperative to preserve the TKP, amass evidentiary materials, and formulate investigative plans conducive to establishing rational grounds (motives) for identifying perpetrators and effecting the apprehension of criminal suspects (Gehl & Plecas, 2017).

Confronting these multifaceted challenges in the realm of law enforcement, Police Chief Listyo Sigit Prabowo, under the framework of the Precision Police Transformation Road Map, has instituted a key policy involving operational transformation. This

initiative is actualized within the sixth program, denoted as the Enhancement of Law Enforcement Performance. This program, encapsulated in point 23, focuses on law enforcement processes that align with societal notions of justice. The tangible activities within this program are articulated in actions 89 and 90, designed to ensure legal certainty, preclude protracted investigations, and expedite the resolution of cases, particularly those that attract public attention. The present implementation of these actions is reinforced by the deployment of the "EKSUS SMART" application, an internal tool within the POLRI Headquarters for routine activities in specific divisions. This application serves to assist investigators and their counterparts in the administrative documentation of investigations, commencing from police reports up to case P-21 and extending into phase 2 through an integrated big data system (Prabowo, 2021).

According to Cynthia Lum et al. (2018), "EKSUS SMART" contributes significantly to curtailing investigation time. The application functions as a supervisory tool for monitoring investigator performance in a more structured investigative process. Formal interactions facilitated by this application between investigators and leadership contribute to a reduction in investigation duration. Furthermore, "EKSUS SMART" is specifically designed to ensure transparency in investigative performance, incorporating features for the generation of investigative documents (Strom, 2017). Abdallah et al. (2016) posit that technological innovation, including the utilization of applications such as "EKSUS SMART," exhibits a positive and significant relationship with cost, delivery, flexibility, and innovative performance.

Nevertheless, Widha (2017) offers a divergent perspective on the utilization of technological innovation in law enforcement, particularly within the police institution. Widha contends that digital technology primarily serves as a managerial tool employed by leaders in the oversight of investigators, particularly in the context of Police Reports. The lack of transparency in POLRI investigations is underscored in the report by ICW (2015), evident in the non-responsiveness to public information requests related to case details, budgets, and the progress of corruption cases, as mandated by Law No. 14 of 2008 on Public Information Disclosure.

Fuad's (2019) analysis, based on an Ombudsman survey, reveals deficiencies in compliance with technical administrative elements across 15 investigation documents, impacting the technical compliance of various administrative elements within the investigation process. Sulistyorini & Indriati (2020) highlight challenges such as resistance, evasion, and a lack of compliance and commitment in the face of technological innovation. Raslin et al. (2021) research indicates a low acceptance of technology implementation within investigations among police personnel.

In addition, Pornomo & Hayati (2021) assert that despite the implementation of various technological applications in investigations, effective communication between the community and the police regarding investigation information is lacking. From the information presented, indications arise that the implementation of technology in investigations, exemplified by the "EKSUS SMART" application, has not reached its optimal level. Despite being designed as a mobile-based tool to facilitate coordination and monitoring in criminal investigations, allowing real-time reporting and online development tracking, the application's usage has not fully realized its potential in evaluating investigator performance. The goal of this technology implementation is to create efficiency and effectiveness in addressing criminal acts and improving investigation quality (Perkasa & Pakpahan, 2023). However, challenges such as low

acceptance, limited understanding among investigators, technical constraints, and the application's broadened use in all investigation aspects remain obstacles (Mansur, 2005).

Confronted with these challenges, substantiated by the presented evidence, there is a compelling need to optimize the utilization of the "EKSUS SMART" application to enhance public participation in reporting criminal acts and ameliorate the transparency of the justice system for greater accountability. The optimization of the "EKSUS SMART" application for public utilization is anticipated to enhance transparency and accountability in handling criminal acts, fostering increased community participation in the fight against crime. Active community involvement is indispensable in preserving security and order within the community.

This research aims to explore the significance of optimizing the "EKSUS SMART" application to enhance transparency in the performance of Indonesian National Police (POLRI) investigators in handling criminal cases. The primary focus is to address transparency issues in crime handling, with the expectation that increased transparency will build public trust and support law enforcement efforts. Additionally, the study aims to analyze the current usage conditions of the application by POLRI investigators and detail strategies for optimizing its use to boost public participation in reporting crimes. Thus, the research provides an in-depth understanding of challenges and opportunities, offering concrete steps to maximize the application's benefits. The goal is to improve the efficiency and effectiveness of criminal case handling while encouraging more active community participation in crime reporting.

2. THEORETICAL FRAMEWORK

2.1. Diffusion of Innovation (DOI) Theory

The Diffusion of Innovation (DOI) theory explain a comprehensive framework elucidating the process by which innovations disseminate within a societal or group context. The theory investigates the extent of an innovation's acceptance and adoption among the populace, along with the multifarious factors exerting influence upon its dissemination dynamics (Andreeva, 2021). Xu et al. (2020) articulate DOI through the delineation of five principal groups integral to the diffusion process:

a. Innovators: Pioneering individuals characterized by their early embracement of an innovation and proclivity for risk-taking in experimentation.
b. Early Adopters: Entities adopting the innovation subsequent to the innovators, wielding substantial influence over the broader community.
c. Early Majority: Constituting individuals adopting the innovation subsequent to the early adopters, possessing considerable sway over their peers.
d. Late Majority: Encompassing those adopting the innovation subsequent to the early majority, frequently beset by uncertainty and trepidation in the adoption endeavor.
e. Laggards: Comprising individuals markedly tardy in the adoption of innovation, evincing a tendency to neglect transformative advancements.

Meanwhile, Zainol et al. (2017) expounds on five pivotal dimensions within the DOI framework:

a. Characteristics of Innovation: Encompassing factors that shape the public perception of the innovation, including relative advantage, compatibility, complexity, trialability, and observability.
b. Communication: Entailing the manner and sources through which information regarding the innovation is disseminated, incorporating considerations of information sources, communication channels, and the nuanced nature of conveyed messages.
c. Social System: Encompassing the influence wielded by social groups on the adoption of innovation, encapsulating social norms, reference group influence, and leadership opinions.
d. Time: Encompassing factors affecting the velocity and patterns of innovation adoption, such as antecedent rates of adoption, market penetration levels, and product life cycles.
e. User Characteristics: Encompassing factors delineating how individual idiosyncrasies impact innovation adoption, including demographic factors, personality attributes, and attitudes towards technology or innovation.

In practical application, a judicious integration of these dimensions aids organizations in formulating marketing and promotional strategies conducive to efficacious innovation diffusion. DOI serves as a conceptual framework to comprehend the reception and adoption of innovation by diverse stakeholders, enabling enterprises to harness factors influencing the diffusion process for the expeditious adoption and market expansion (Albis et al., 2021).

The elucidation thus far elucidates the pertinence of the DOI theory in explicating the dissemination of the "EKSUS SMART" application innovation within the societal milieu. The model encapsulates five salient factors exerting influence on innovation diffusion, namely relative advantage, compatibility, complexity, trialability, and observability. Analytical scrutiny through the DOI lens facilitates the identification of factors influencing the adoption and utilization of the "EKSUS SMART" application by the populace.

2.2. Technology Acceptance Model (TAM)

The Technology Acceptance Model (TAM) constitutes a theoretical framework deployed to discern the determinants impacting the acceptance and utilization of technology within diverse contexts (Linh & Tuyen, 2020). Conceived by Fred Davis in 1986, TAM has burgeoned into a preeminent theoretical framework within the ambit of technological usage behavior research. TAM postulates that user acceptance of technology is contingent upon their perceptions concerning the benefits and user-friendliness of said technology. The construct of benefits refers to the gain users anticipate from the utilization of technology, while user-friendliness pertains to the simplicity inherent in the operation of the technology (Venkatesh et al., 2016)

Zhang et al. (2021) expound upon two primary dimensions inherent in TAM:

a. Perceived Usefulness: Connoting the degree to which users believe that the utilization of technology will augment their performance or productivity. Greater conviction in the accrual of benefits or advantages from technological employment enhances the likelihood of user acceptance.

b. Perceived Ease of Use: Signifying the extent to which users perceive technology as facile to operate and learn. The ease with which technology can be navigated directly correlates with the propensity of users to accept and employ it.

In light of the aforementioned factors, organizations are empowered to engineer technology that is inherently predisposed to user acceptance and utilization, thereby augmenting overall technological adoption (Venkatesh et al., 2003). TAM, as a theoretical framework, proffers invaluable insights for the comprehension and prognostication of technological usage behavior. In the specific context of the "EKSUS SMART" application, a TAM-centric analysis facilitates the identification of factors shaping user acceptance of the application.

2.3. Concept of Investigative Supervision

Supervision, within the organizational framework, constitutes a conceptual apparatus elucidating principles and practices pertinent to oversight or supervision. This construct encompasses manifold strategies employed by managerial figures to supervise and regulate the performance of subordinates. Integral to this concept is the exploration of mechanisms through which managers can motivate employees towards effective and efficient work, concurrently identifying and resolving organizational issues (Syafiie, 2003).

Central to this conceptualization is the depiction of supervision as a systematic process, comprising delineated stages guiding managers in the execution of their duties. Its paramount significance within the management and organizational milieu is underscored by its potential to ensure the efficacious and effective attainment of organizational objectives. Concurrently, deficient supervision may precipitate suboptimal performance, goal non-attainment, and other organizational vicissitudes. Santoso and Haryanto (2022) delineate several investigative supervision typologies:

a. Active and Passive Supervision:
    1) Active supervision denotes on-site oversight of pertinent activities.
    2) Passive supervision entails remote oversight via scrutiny and examination of accountability documents substantiated by evidence of financial transactions.
b. Internal and External Supervision:
    1) Internal supervision transpires within the confines of the organizational unit.
    2) External supervision manifests as an examination conducted by entities external to the supervised organizational unit.
c. Preventive and Repressive Supervision:
    1) Preventive supervision is oriented toward pre-emptive oversight of activities to forestall deviations.
    2) Repressive supervision occurs subsequent to activity execution, typically at the fiscal year-end.

The conceptual framework of supervision extends beyond the organizational ambit to encompass societal dimensions, particularly within the realms of technology and digital media. This inquiry scrutinizes the socio-political and economic ramifications of

surveillance, delving into its implications for individual privacy, civil liberties, and societal control. In essence, surveillance theory posits that the capacity to monitor and accumulate information holds profound social and cultural implications.

Surveillance theory further engages with ethical dimensions, probing issues germane to privacy, power dynamics, and trust. Interrogations surrounding data access, collection methodologies, and individual rights vis-à-vis personal information control are central to this discourse. In sum, surveillance theory provides a critical vantage point for appraising the societal deployment of surveillance, fostering sagacious considerations of its merits, demerits, and impact on civil liberties and democratic values.

Firmansyah & Mahardhika (2018) delineation of the supervision process encompasses five stages:

a. Setting Standards Stage: Establishing performance targets and standards as decision-making benchmarks.
b. Determination of Activity Measurement Stage: Defining the metrics for the proper execution of activities.
c. Activity Measurement Stage: Encompassing iterative processes such as report scrutiny, methodological assessments, testing, and sampling.
d. Comparison of Activity with Standards and Deviation Analysis Stage: Identifying and analyzing the causes of deviations, instrumental in decision-making.
e. Correction Taking Stage: Implementing corrective measures in response to identified deviations.

Investigative supervision denotes the monitoring and oversight executed by designated institutions to ascertain the adherence of case investigations to extant legal procedures, safeguarding against violations of human rights and individual entitlements enshrined in law. Typically orchestrated by independent bodies, these oversight activities serve to scrutinize the endeavors of investigators and law enforcement officials. Examples of such institutions in Indonesia include the National Commission on Human Rights (Komnas HAM), Ombudsman, and the Investigator and Prosecutor Honor Council (DKPP) (Kusuma & Suprap, 2021). The overarching objective of investigative supervision is to ensure the professional, transparent, and equitable conduct of investigations, safeguarding against legal rights violations, thereby fortifying public confidence in the judicial system and ensuring individual rights protection throughout legal proceedings.

2.4. Concept of "EKSUS SMART" Application

The "EKSUS SMART" application, proprietary to the Indonesian National Police Headquarters (MABES POLRI), specifically within the Criminal Investigation Agency (BARESKRIM POLRI), encapsulates a digital tool exclusively accessible to internal Mabes POLRI personnel. This application functions as a facilitator of routine operations within the BARESKRIM POLRI division.

Encompassing features such as case file access and management, a communication platform, case progress tracking, and provision of diverse resources including legal databases and training materials, "EKSUS SMART" emerges as an instrumental asset for MABES POLRI. This application augments operational efficiency, intercommunication, and affords users access to indispensable resources, thereby enhancing their efficacy. "EKSUS SMART" enables investigators and field operatives to access execution-related

information ubiquitously and at any time through electronic devices such as smartphones or laptops (Purnama and Santoso, 2022).

Developed by Ronadigitech and unveiled in May 2022, the application is accessible via the Google Play Store. It holds a content rating of "Everyone," while security ratings are currently unavailable (Yuliana and Fitrianto, 2023). This widespread availability through the Google Play Store ensures that users across diverse platforms and devices can easily integrate the application into their digital ecosystems, emphasizing Ronadigitech's commitment to delivering a seamless and inclusive user experience.

3. RESEARCH METHODS

The research on the Optimization Strategy of the "EKSUS SMART" Application for the Public to Enhance Transparency in Investigators' Performance in Handling Criminal Acts employs a qualitative, descriptive research methodology. This approach involves data collection through interviews, observations, and document analysis. The subsequent analysis encompasses data reduction, presentation, and verification techniques to unravel the intricacies of the application's development strategies and shed light on its potential impact on transparency in criminal investigations.

Qualitative methods allow for a nuanced exploration of the application's optimization dynamics, delving into stakeholders' perspectives and experiences. By engaging in direct observation and document analysis, the study seeks to provide a comprehensive understanding of the challenges and opportunities associated with the "Eksus Smart" application's deployment for law enforcement purposes. This research not only presents findings but also offers valuable insights into the complexities of the application's development strategy, emphasizing its potential to enhance the effectiveness and accountability of investigators in addressing criminal activities.

4. DISCUSSION

4.1. The Usage Conditions of the 'EKSUS SMART' Application in Handling Criminal Cases by Indonesian National Police Investigators

The handling of criminal acts by Indonesian National Police investigators is one of the primary functions of the Republic of Indonesia National Police. This function aims to conduct investigations and criminal investigations professionally, transparently, and accountably. The handling of criminal acts by Indonesian National Police investigators is based on the provisions of the Criminal Procedure Code (KUHAP). According to KUHAP, investigation is a series of investigator actions, in the manner and according to the procedures stipulated in this law, to search for and collect evidence that, with that evidence, clarifies the criminal act that occurred and identifies the suspect.

Indonesian National Police investigators are officials authorized by law to conduct investigations. They have the authority to perform various investigative actions, including:

a. Receiving reports or complaints from the public.
b. Conducting investigations.
c. Ordering a stop, examining, and bringing in a suspected person.
d. Conducting searches and seizures.

e. Ordering the creation of a receipt for seized items.
f. Making arrests, detentions, and custodies.
g. Examining witnesses, experts, and suspects.
h. Conducting case conferences.
i. Compiling investigation reports.

The handling of criminal acts by Indonesian National Police investigators begins with the receipt of a police report from the public. After receiving the police report, Indonesian National Police investigators will conduct an investigation to search for and collect evidence that can substantiate the suspicion of a criminal act. If sufficient evidence is found during the investigation, the investigators will issue an investigation order.

During the investigation stage, Indonesian National Police investigators will take various investigative actions to search for and collect evidence that can prove the criminal act that occurred. These investigative actions can be taken against suspects, witnesses, and others involved in the criminal act. After the investigation is completed, Indonesian National Police investigators will compile the investigation report. This report will be submitted to the public prosecutor for referral to the court.

The handling of criminal acts by Indonesian National Police investigators is a complex process that requires high expertise, integrity, and professionalism. Investigators must be able to work professionally, transparently, and accountably to ensure the effective and just handling of criminal acts. By improving the quality of the handling of criminal acts by Indonesian National Police investigators, it is hoped that legal enforcement will be fair and provide a sense of security to the public.

The use of the "EKSUS SMART" application in handling criminal acts by Indonesian National Police investigators can be said to still be in the development stage. This is because the application is relatively new, and there are still some features that are not optimal. However, in general, the application has provided significant benefits to Indonesian National Police investigators in the process of handling criminal acts. The benefits perceived by investigators include:

a. Increased efficiency and effectiveness of investigators in handling criminal acts.
b. Increased transparency and accountability of investigators in handling criminal acts.
c. Improved coordination and cooperation among Indonesian National Police investigators.

This application can assist investigators in searching for and collecting information related to the handled criminal acts. It also helps investigators in planning and executing investigations, as well as in creating investigation reports. Despite being in the development stage, the "EKSUS SMART" application has had a positive impact on the process of handling criminal acts by Indonesian National Police investigators. The application is expected to continue to be developed and improved to provide greater benefits to investigators and the public.

The "EKSUS SMART" application is used by Indonesian National Police investigators in handling criminal acts. This application provides various features and conveniences for investigators in carrying out their duties. Investigators can use the "EKSUS SMART" application to register ongoing criminal acts. This application allows investigators to record important information about criminal acts, including the type of

criminal act, time of occurrence, and location. This application enables investigators to collect evidence related to the ongoing criminal acts. Investigators can use this application to upload photos, videos, or documents that serve as evidence in the case. The application also allows investigators to monitor the progress of the case, including the status of the case, investigation notes, and other relevant information.

The "EKSUS SMART" application facilitates collaboration between investigators and relevant parties in handling criminal acts. Investigators can communicate and share information with other agencies, such as the prosecutor's office, the court, or other institutions involved in handling the case. The application also allows investigators to create reports and monitor the progress of case handling. By using the "EKSUS SMART" application, Indonesian National Police investigators are expected to be more effective and efficient in handling criminal acts. This application helps investigators manage information, collect evidence, and collaborate with relevant parties. While it has the potential to enhance transparency in the performance of investigators in handling criminal acts, its use may also encounter various obstacles and challenges. Some of these obstacles encompass technical, ethical, legal, and social aspects. Some possible challenges that may arise include:

a. Data Security Issues
   This application will collect and store highly sensitive data. Data security issues and the potential for cyber-attacks are major obstacles. Inadequate data protection can lead to unauthorized access, data alteration, or the theft of crucial information.
b. Technical Incompetence
   Limitations in technical understanding or inadequate training of law enforcement personnel can be obstacles. Complex systems may be difficult for technically unskilled personnel to use.
c. Privacy Concerns
   The collection and use of personal data related to criminal acts can raise privacy concerns. Clear policies and mechanisms are needed to protect individual privacy and prevent the misuse of information.
d. Public Response
   The public may be concerned about privacy and the use of data by law enforcement. Effective communication is needed to educate the public about the benefits and purposes of using the application.
e. Technological Access Inequality
   Not all regions or law enforcement units may have equal access to technology. This inequality can create disparities in the implementation of the application and transparency in different areas.
f. Legal Challenges
   There is potential for legal issues related to the use of this application, including questions about the admissibility of evidence obtained through this technology. A clear legal framework is needed to support the use of such applications.
g. Internal Resistance
   Some law enforcement members may resist change and the adoption of new technology. Training programs and management support are needed to address this resistance.
h. Implementation Costs

The development, implementation, and maintenance of such applications can involve significant costs. Limited finances can be a barrier to adoption and long-term maintenance.

i. Poor Data Quality
The performance of the application depends heavily on the quality of the data entered into it. If the data entered is inaccurate or incomplete, it can reduce the effectiveness of the application.

Addressing each of these obstacles requires serious attention from those involved in the development, implementation, and use of such applications. Thoughtful design, effective risk management, and active involvement of all stakeholders can help overcome most of these obstacles.

4.2. Optimization Strategy for Enhancing Public Engagement in Reporting Criminal Activities through the "EKSUS SMART" Application

The "EKSUS SMART" application, developed by the Information and Communication Technology Division (Div TIK) of the Indonesian National Police (POLRI), constitutes a technological initiative aimed at supporting the investigative processes related to criminal cases. Its purpose is to streamline the reporting of criminal activities by the public, both through online and offline modalities.

The genesis of the imperative to optimize the utilization of the "EKSUS SMART" application among the public, thereby fostering increased participation in reporting criminal activities, lies in the ambition to ameliorate and augment the investigative services available to citizens. This involves enhancing information technology proficiency, fostering coordination and collaboration among investigators, governmental entities, and the public, cultivating public interest in transparency and investigative proceedings, and facilitating broader access to information technology for the citizenry.

The concept of public participation in reporting criminal activities is pivotal within the framework of law enforcement, signifying the active involvement of citizens in providing information or reporting criminal activities to the competent authorities. In numerous instances, public participation stands as a linchpin for establishing a more secure environment and promoting transparency in law enforcement, especially in the context of reporting corruption.

To optimize the use of the "EKSUS SMART" application among the public, a multifaceted strategic approach is requisite. These strategies should encompass the enhancement of information technology competencies, the reinforcement of coordination and collaboration structures among investigators, governmental bodies, and the public, the elevation of public interest in transparency and investigative procedures, and the facilitation of accessible information technology for the citizenry. To enhance transparency in investigative performance and augment public participation in reporting criminal activities, several optimization strategies for the "EKSUS SMART" application can be implemented:

a. Enhanced Socialization and Education: Systematic dissemination of information about the "EKSUS SMART" application to the public through diverse channels, including mass media, social platforms, and legal education forums. This initiative aims to instill a comprehensive understanding among the public

regarding the utility and operational aspects of the "EKSUS SMART" application, thereby fostering heightened interest and utilization.

b. User-Friendly Design: Streamlining the "EKSUS SMART" application's interface to ensure ease of use for the public. Simplification of the registration process and incorporation of features such as online reporting and tracking functionalities are essential components to enhance user experience and efficacy.
c. Trust-building Measures: Instilling confidence among the public that reports submitted through the "EKSUS SMART" application will be treated with due seriousness by POLRI. This necessitates an elevation of transparency and accountability standards in the investigative processes conducted by POLRI.
d. Service Augmentation: Improving the suite of services provided by investigators to the public, including comprehensive case reporting, note provision, and direct interaction avenues via the application.
e. Effective Training Protocols: Development and implementation of rigorous training programs for investigators, focusing on refining investigative skills and upholding transparency throughout the criminal proceedings.
f. Communication Skills Enhancement: Enhancing the communication proficiency of investigators to articulate information effectively and transparently regarding ongoing or concluded cases.
g. Coordinated Collaboration: Intensifying coordination and collaboration mechanisms among investigators, governmental entities, and the public to actualize the overarching goal of transparency in handling criminal activities.
h. Infrastructure Upgradation: Elevating the quality of information infrastructure, encompassing internet networks and information technology access. This is crucial to bolster the utilization of the "EKSUS SMART" application and foster seamless collaboration between governmental entities and investigators.

The implementation of these strategic measures holds the promise of enhancing transparency in investigative endeavors and galvanizing increased public involvement in reporting criminal activities.

5. CONCLUSION

The investigative authority of the Indonesian National Police (POLRI) encompasses various actions, such as receiving public reports, conducting investigations, and making arrests when necessary. The intricate process of managing criminal cases begins with the reception of police reports from the community, followed by investigations aimed at gathering evidence to substantiate allegations of criminal activities. The adept management of criminal cases by POLRI investigators necessitates a high level of expertise and professionalism. The "EKSUS SMART" application contributes positively by augmenting the effectiveness and transparency in handling criminal cases. However, there exist technical, legal, and social challenges that must be addressed for the optimal utilization of the application in maintaining public safety and order.

While the application harbors substantial potential, its optimization demands the implementation of specific strategies. Some of these optimization strategies involve

augmenting public awareness and education regarding the "EKSUS SMART" application, streamlining the application design for user-friendly navigation, and bolstering public trust in the reporting process. Essential facets of improvement encompass enhancing investigator services, developing investigator training, and refining communication skills to foster transparency and increased community participation. Furthermore, there is a pressing need for improved coordination and cooperation among investigators, the government, and the community through advancements in information infrastructure and heightened public interest in matters pertaining to transparency and investigation. The successful implementation of these strategies is anticipated to render the "EKSUS SMART" application more effective in supporting the handling of criminal cases and fostering active community participation in crime prevention initiatives.

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IMPLEMENTATION OF VISIONARY LEADERSHIP IN FORMING THE EXCELLENT POSITION OF THE INDONESIAN NATIONAL POLICE (POLRI) IN THE METROPOLITAN POLICE REGION

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Abstract

The visionary leadership style focuses on school principals' ability to create a forward-thinking vision for the school, driving change and setting the organization's direction. This scientific article proposes implementing visionary leadership to shape the Indonesian National Police (Polri) excellence in the Jakarta Metropolitan Police. The study uses a qualitative approach with analytical descriptive to provide a detailed overview. Primary and secondary data, collected through observation, interviews, and document studies, are used. The author validates the data using triangulation techniques. The research findings reveal that visionary leadership is performance-oriented, with a focus on designing a future vision. It encompasses three characteristics: (1) "Leading by example in front"; (2) "Creating opportunities for initiative in the middle"; and (3) "Providing support from behind." The current leadership style in the Jakarta Metropolitan Police has several weaknesses, including a military influence, an unclear vision, a lack of organizational orientation, weak managerial skills, a gap between top and low-level managers, a lavish lifestyle, and disregard for the environment. One indicator is the high number of violations by officers in 2022, including 26 disciplinary violations and 215 ethical code violations. Strategies for implementing visionary leadership in the Jakarta Metropolitan Police include defining the organizational vision, translating it into a mission, creating strategies, conducting evaluations, developing work plans, demonstrating commitment and integrity, upholding leadership ethics, and making prompt and accurate decisions.

Keywords: *Community Police Officers, Community Policing, Social Conflict, Optimization*

1. INTRODUCTION

In the midst of the rapid changes brought about by globalization, democratization, and technological advancements in the era of the fourth industrial revolution, the Indonesian National Police (Polri) is facing increasing expectations from the public. This is particularly evident in the current VUCA era, characterized by volatility, uncertainty, complexity, and ambiguity, where society finds itself grappling with unpredictable changes and numerous uncontrollable factors (Kotter, 1996). Globalization has not only intensified competition but has also given rise to various threats and challenges in areas such as ideology, law, economics, and socio-cultural aspects. Consequently, there is a significant demand for Polri to perform professionally, ensuring public order, enforcing the law, and maintaining peace. Additionally, Polri is expected to nurture and develop the potential and strength of the community in countering, preventing, and addressing all forms of legal violations and disturbances that may disrupt society (Yusra, 1993).

The high crime rate, low resolution rate of criminal cases, public unrest regarding security and tranquility, and the prevalence of misconduct by certain members of Polri across different regions in the country are clear indicators that Polri must continuously strive for improvement. The reform of Polri's bureaucracy, encompassing structural,

instrumental, and cultural aspects, remains an unresolved internal issue. Despite simultaneous efforts to reform these three aspects, it is evident that the cultural aspect is the most prominent weakness within Polri. This is manifested in the lack of motivation among Polri personnel to confront the various challenges inherent in their duties, ultimately resulting in a lack of public trust in the institution of Polri.

The cultural transformation that is integrated and adaptive in every member of Bhayangkara is crucial in achieving excellence, professionalism, and strong capabilities in the human resources of the Indonesian National Police (Polri), thereby gaining the trust and support of the community (Hutabarat et al., 2022). This endeavor can only be accomplished through the unwavering commitment and integrity of every individual within Polri, particularly the leaders. Therefore, it is imperative to undertake comprehensive efforts to internalize the Professional Ethics of Polri into the core of every Bhayangkara member, rooted in the embodiment of the values of Pancasila as outlined in Tribrata and Catur Prasetya.

The success or failure of an organization hinges on the quality of its human resources. This notion emphasizes that, regardless of the availability of other resources to support the existence and functioning of an organization, it will lack significance if the individuals managing it lack motivation, dedication, and integrity that align with the organizational vision. Therefore, the researcher posits that the implementation of Visionary Leadership within the ranks of Polri will be effective in cultivating and nurturing the human resources of Polri, who serve as the operational backbone of the institution at both the central and regional levels. Consequently, this can propel the Polri institution towards the realization of its established vision. Thus, this study delves deeper into the "Implementation of Visionary Leadership in Shaping the Posture of Polri Excellence in the Jakarta Metropolitan Police."

2. LITERATURE REVIEW

2.1. Visionary Leadership

A visionary leader possesses a set of qualities that distinguish them as a hero, particularly in terms of their courage and willingness to make sacrifices for the greater good (Southern & Bradley, 2021). This willingness to sacrifice stems from their ability to envision something valuable at the culmination of their endeavors. Moreover, a visionary leader is unafraid to take risks in order to realize their vision. Ki Hajar Dewantara, an esteemed Indonesian National Hero and widely recognized as the Father of National Education, successfully revitalized the concept of visionary leadership and dispelled misconceptions surrounding other leadership ideologies. He achieved this by emphasizing teachings rooted in Pancasila, specifically the principles of "Ing ngarso sung tulodo, Ing madyo bangun karso, Tut wuri handayani" (Ariyanti & Himsyah, 2021). Notably, the Indonesian National Police (Polri) boasts individuals who have exemplified visionary leadership, such as former Chief of Police General Pol. Hoegeng Imam Santoso.

A visionary leader is characterized by a range of traits and qualities, including a commitment to continuous learning, a mindset focused on serving others, the ability to radiate positive energy, a propensity to trust others, a perspective that views life as a challenge and adventure, the alignment of words with actions, and an unwavering dedication to pursuing higher achievements.

2.2. Human Resources

Human Resources (HR) plays a vital role within an organization, as it has the potential to greatly enhance the effectiveness and efficiency of the entire entity (Simmamora, 2016). HR encompasses the cognitive and physical abilities possessed by individuals, which are influenced by both genetics and the environment. Motivated by their desire for personal satisfaction, these human resources work towards achieving their goals.

Unlike other resources, human resources possess intellect, emotions, skills, knowledge, and creativity. Each individual's role within their environment is closely tied to their personal development and potential to contribute to the growth, nurturing, and sustainable improvement of society. The primary function of human resources is to increase productivity, thereby supporting the organization in its quest for competitiveness and goal attainment.

Given the significance of human resources, it is imperative for the management of Polri's workforce to be efficient and effective. As stated by Hasibuan (2016), human resources management involves the science and art of organizing the relationships and roles of employees in a manner that effectively and efficiently helps the company, its employees, and the community achieve their respective goals. The functions of HRM encompass various aspects such as planning, organizing, directing, controlling, acquiring, developing, compensating, integrating, maintaining, disciplining, and terminating.

2.3. Code of Ethics of the Polri Profession

The utilization of visionary leadership techniques by a leader to influence subordinates towards the organization's accomplishments encompasses various aspects (Jannah et al., 2021). These include the leader's adherence to professional ethics and etiquette, understanding and addressing the needs and motivations of individuals, comprehending group dynamics, effective communication, proficient decision-making abilities, and adept discussion skills. By examining these categories, a noteworthy correlation between leadership techniques and the Code of Professional Ethics of the organization where the leader operates becomes apparent. Ethical codes essentially serve as guidelines and regulations derived from aspirations and endeavors aimed at realizing those aspirations.

The Code of Ethics of the Polri Profession comprises norms and rules that establish the ethical and philosophical foundation concerning the conduct and speech of Polri members in relation to what is required, prohibited, appropriate, or inappropriate in the execution of their duties, authorities, and responsibilities (Mustika & Suwandi, 2022). If the Polri Code of Professional Ethics is effectively and correctly implemented, it will assist Polri in resolving its daily challenges. The police will be able to accurately determine the rightness or wrongness of their actions while carrying out their duties. Whether they should accept or reject payment for their work is explicitly stated in their oath of office. With the presence of a code of ethics, professional attitudes and exemplary behavior will be readily apparent and evident when decisions are made. Similarly, the performance of police duties will be more focused, coordinated, and yield maximum benefits and support from the community.

3. RESEARCH METHODS

The research was conducted using a descriptive analysis method, which involved the author observing and documenting the phenomena and facts related to the existing issues in the field. Following this, the author proceeded to discuss and analyze these facts using appropriate concepts and theories in order to address the problems at hand.

4. RESULTS AND DISCUSSION

4.1. Human Resources (HR) Condition of the Jakarta Metropolitan Regional Police (Polda Metro Jaya)

The Jakarta Metropolitan Regional Police, also known as Polda Metro Jaya, holds a significant position within the Indonesian National Police, as it oversees the capital city area of DKI Jakarta and its surrounding regions, including Tangerang City, South Tangerang City, Depok City, Bekasi City, and Bekasi Regency. This unique jurisdiction grants Polda Metro Jaya a special A+ classification, distinguishing it from other Regional Police forces. With a responsibility to ensure the safety and security of over 25,634,934 residents within its jurisdiction, Polda Metro Jaya faces numerous challenges that necessitate exceptional performance from its personnel. These challenges not only require a sufficient quantity of personnel but also demand a high level of quality in their execution of duties.

Table 1. Data on the Number of Personnel of the Jakarta Metropolitan Regional Police in 2022

No	Position	DSP (List of Personnel Composition)	RIIL	Gap
1	PATI: *Perwira Tinggi* (High-ranking officer)	2	2	0
2	PAMEN: *Perwira Menengah* (Middle-ranking officer)	476	474	-2
3	PAMA: *Perwira Menengah Atas* (Senior Middle-ranking officer)	1081	1257	176
4	BA: *Bintara* (Non-commissioned officer)	10242	11848	1606
5	PNS: *Pegawai Negeri Sipil* (Civil Servant)	930	580	-350
	Total	12731	14161	1430

Source: HR Bureau of Polda Metro Jaya in 2022

In regards to quantity, the personnel count of Polda Metro Jaya has been met, with an additional 1,430 individuals (11.2%) exceeding the required number. The total number of DSP stands at 12,731 people, while the Rill count reaches 14,161 people. However, when it comes to quality, Polda Metro Jaya still falls short in terms of meeting the superior posture, as evidenced by the significant number of irregularities or violations committed by its members.

Table 2. Data on Violations of Members of Polda Metro Jaya

No	Type of Violation	Years		
		2020	2021	2022
1	Disciplinary Violations	233	165	248
2	Code of Ethics Violations	420	604	687
3	Criminal Offenses	1	11	0
Total		654	780	935

Source: Bidpropam Polda Metro Jaya Year 2022

The Jakarta Metropolitan Police (Polda Metro Jaya) has witnessed a steady rise in violations committed by its members over the years. The year 2022 marked the highest occurrence of such violations, with a staggering 935 cases reported. This represents a significant increase of approximately 19.8% compared to the previous year, 2021. Similarly, in 2021, there was a notable surge in violations compared to 2020, with an additional 126 cases reported, reflecting a rise of 19.2%.

Table 3. Data on Discipline Violations of Polda Metro Jaya Members

No	Position	Years		
		2020	2021	2022
1	PAMEN: *Perwira Menengah* (Middle-ranking officer)	1	5	3
2	PAMA: *Perwira Menengah Atas* (Senior Middle-ranking officer)	14	23	23
3	BINTARA (Non-commissioned officer)	214	137	220
4	TAMTAMA: Enlisted personnel	4	-	2
5	PNS: *Pegawai Negeri Sipil* (Civil Servant)	-	-	-
Total		233	165	248

Source: Bidpropam Polda Metro Jaya Year 2022

The Bintara class of the Metro Jaya Regional Police dominates the occurrence of disciplinary violations, as evidenced by an 83-case increase or approximately 50.3% in 2022 compared to the previous year. Conversely, there was a decrease of 68 cases (29.1%) in 2021 compared to 2020. This situation suggests that one of the factors hindering the establishment of a superior image for the Metro Jaya Regional Police or the realization of their esteemed position is the irregularities or violations committed by personnel at the Bintara level.

Table 4. Data on Code of Ethics Violations of Members of Polda Metro Jaya

No	Position	Years		
		2020	2021	2022
1	PAMEN: *Perwira Menengah* (Middle-ranking officer)	15	23	39
2	PAMA: *Perwira Menengah Atas* (Senior Middle-ranking officer)	71	128	176
3	BINTARA (Non-commissioned officer)	333	451	469
4	TAMTAMA (Enlisted personnel)	1	1	2
5	PNS: *Pegawai Negeri Sipil* (Civil Servant)	-	1	1
Total		420	604	687

Source: Bidpropam Polda Metro Jaya Year 2022

There was a similar occurrence with regards to breaches of the code of ethics among members of Polda Metro Jaya. Specifically, within the non-commissioned officer rank category, there was a consistent rise in the number of cases each year. In 2021, there was a surge of 184 cases, which accounted for approximately 43.8% increase compared to the previous year, 2020. Subsequently, in 2022, there was a further escalation of 83 cases, representing a 13.7% rise.

Table 5. Data on Criminal Offenses of Polda Metro Jaya Members

No	Position	Years		
		2020	2021	2022
1	PAMEN: *Perwira Menengah* (Middle-ranking officer)	-	1	-
2	PAMA: *Perwira Menengah Atas* (Senior Middle-ranking officer)	-	3	-
3	BINTARA (Non-commissioned officer)	1	7	-
4	TAMTAMA (Enlisted personnel)	-	-	-
5	PNS: *Pegawai Negeri Sipil* (Civil Servant)	-	-	-
Total		1	11	0

Source: Bidpropam Polda Metro Jaya Year 2022

The data presented reveals that the number of violations of the law committed by personnel from Polda Metro Jaya has experienced a significant increase in 2021, with a rise of either 10 or 100% in cases. However, in 2022, these violations decreased to zero. It is noteworthy that the non-commissioned officer rank group continues to dominate in these offenses.

Based on this information, it can be concluded that the majority of violators in disciplinary, code of ethics, and criminal offenses at Polda Metro Jaya belong to the Non-Commissioned Officer rank group on an annual basis. Non-Commissioned Officers are individuals who actively engage with the community, working closely with them to

address and communicate various security issues. Consequently, if a Non-Commissioned Officer fails to demonstrate good attitudes, ethics, and morals while carrying out their primary duties, it will significantly impact the level of public trust in the Police. This aspect serves as an evaluation criterion to cultivate a superior Polri posture, which includes the recruitment of prospective Polri members who prioritize the principles of Clean, Transparent, Accountable, and Humanist (BETAH).

Regarding sanctions, Polda Metro Jaya consistently implements the strictest penalties, such as PTDH (Dismissals with Disgraceful Discharge), to address these violations.

Table 6. Dismissals with Disgraceful Discharge Data for Indonesian National Police (Polri) / Civil Servants (PNS) Members in the Jakarta Metropolitan Regional Police (Polda Metro Jaya) Based on Rank for the Year 2022

No	Dismissal with Disgraceful Discharge (PTDH) Cases	Positions				Total	Information's
		PA	BA	TA	PNS		
1.	CRIMIE						1. Traffic Police Department: 2 2. Criminal Investigation Department: 1 3. Vital Object Security Department: 1 4. Mobile Brigade: 4 5. North Jakarta Metropolitan Police: 6 6. East Jakarta Metropolitan Police: 3 7. South Jakarta Metropolitan Police: 1 8. Tangerang City Metropolitan Police: 2 9. Bekasi City Metropolitan Police: 4 10. Bekasi Metropolitan Police: 2 11. Depok Metropolitan Police: 3 12. Soekarno-Hatta Airport Metropolitan Police: 1 13. North Tanjung Priok Police Resort: 6 14. Thousand Islands Police Resort: 2 15. South Tangerang Police Resort: 2
	a. Drug Abuse		4			4	
	b. Theft						
	c. Fraud/Embezzlement	1	1			2	
	d. Adultery/Rape		1			1	
	e. Corruption						
	f. Counterfeiting Money						
	g. Murder						
	h. Domestic Violence (KDRT) / marrying without the permission of the first wife and without the permission of the leader		1			1	
	i. Kidnapping		1			1	
2.	Leaving duty/Dissertion		29	2		31	
	Total	**1**	**37**	**2**		**40**	

Source: Bidpropam Polda Metro Jaya Year 2022

In the year 2022, a total of forty individuals belonging to the National Police force have been subjected to the disciplinary measure known as Dismissal with Disgraceful Discharge or "PTDH", primarily affecting the Non-Commissioned Officers within their ranks. This particular sanction serves as a demonstration of the leadership's unwavering commitment to taking decisive action against any member of the Police or the Civil Servant (PNS) who has been proven to have committed an offense. Its purpose is to serve as a deterrent not only for the offender but also for other members of the Police, discouraging them from engaging in similar misconduct.

The aforementioned data highlights a range of irregularities committed by members of the Indonesian National Police (Polri), particularly those serving in the Jakarta Metropolitan Police (Polda Metro Jaya). These irregularities indicate that the conduct of Polri members in fulfilling their primary responsibilities has failed to exhibit the expected level of professionalism and adherence to the principles of the Police force. Consequently, various violations, including disciplinary breaches, breaches of the code of ethics, and even criminal offenses, have occurred. Such actions clearly contradict the moral and ethical standards that should be upheld, thereby falling short of public expectations and the requirements outlined in Law No. 2 of 2002.

4.2. Weaknesses of Police Leadership in Polda Metro Jaya

Napoleon Bonaparte, a renowned French military and political figure during the revolution, once articulated a metaphorical statement asserting that "There are no bad soldiers, only bad officers" (Scott, 1858). This metaphorical expression implies that the triumph of a collective or organization is contingent upon its leadership and those who lead it. Conversely, subordinates serve as an "extension" of the leader's vision, strategies, and policies, thereby implementing them.

The dearth of visionary leaders we currently face can be largely attributed to ineffective ideologies ingrained in the nation's endeavors to cultivate leadership qualities among the younger generation. Numerous ineffective or misguided notions persist, such as the belief that leaders must unconditionally conform to the desires of their constituents, that leadership is solely confined to holding formal leadership positions, and the notion that a leader must be widely recognized as such. In reality, visionary leaders may at times need to take measures that appear undemocratic. Furthermore, they are not preoccupied with occupying a leadership position or being acknowledged as leaders by the public.

The author's observation highlights the existence of various weaknesses in the leadership patterns within the Jakarta Metropolitan Police (Polda Metro Jaya) presently. These weaknesses encompass a military-style approach to leadership, a lack of a clearly defined and measurable vision for the future, a deficiency in organizational orientation, inadequate managerial capabilities, ego-centric leadership tendencies, a disparity between top managers and low managers, an over-ambitious mindset, inclinations towards a 'power syndrome' or an insatiable thirst for power, a penchant for a luxurious lifestyle, non-compliance with established systems, indifference towards the environment, and the presence of leaders with 'abnormal' traits such as feelings of inferiority, a tendency to excessively flatter superiors for personal gain, and insincerity (Terry et al., 2010).

The diverse leadership styles, despite their individual weaknesses, can significantly influence the occurrence of behavioral and psychological deviations, as well as social deviations, among subordinate members (Kartono, 2010). Furthermore, the presence of interest-driven patterns within Polri, such as the appointment of individuals to strategic positions without considering their competency, can disrupt the overall functioning of the organization. These weaknesses serve as clear indications of the leader's lack of commitment, ethical leadership, and even visionary qualities.

4.3. Implementation of Visionary Leadership in Creating a Superior Police Posture

Visionary leadership can serve as a role model for the type of leadership implemented in the Jakarta Metropolitan Police (Polda Metro Jaya). The basic principles of visionary leadership are as follows:

1. *Ing ngarso sungtulodo* (Leading by example in front)

A leader must be an example for their followers. Therefore, a visionary leader must be willing to compel their people through temporary sacrifices to achieve better results. In this sacrifice, the leader must demonstrate that they are also willing to make sacrifices. As expressed by Mr. Hoegeng, "complete tasks with honesty, because we can still eat rice with salt." For example, a Police Chief who possesses visionary leadership does not only demand sacrifices from the members under their command but also sets an example by willingly forgoing their usual income for the sake of unity and exemplariness. By setting a good example, visionary leaders can motivate their followers to make sacrifices for a higher good.

2. *Ing Madyo Mangun Karso* (Creating opportunities for initiative in the middle)

Visionary leaders do not necessarily have to hold a leadership position. The term "leader" has its roots in the word "lead," meaning those who lead and guide others toward a goal. An exemplary demonstration of this is seen in the heroes who reject positions of authority to stay closer to their people. Prince Diponegoro's refusal to ascend to the throne, as desired by his father (Sri Sultan Hamengku Buwono III), is an illustration. This decision allowed him to connect more freely with his people and ultimately garnered support in his fight against the Dutch.

In the professional setting, every member of the Indonesian National Police (Polri) may not always have the opportunity to become a leader as expected. However, as individuals with a visionary leadership spirit, even if not in a leadership position, they remain enthusiastic in their work and contributions, providing inspiration to colleagues in their work environment. For instance, a dedicated staff member who works tirelessly day and night, investing energy, time, and thought to support the operations of a regional police station, upholding the principles of a visionary leader, even if they do not eventually become the Police Chief in that location, contributes initiative and sacrifice for the organization's benefit.

3. *Tut wuri handayani*, (Providing support from behind)

Visionary leaders must understand that sometimes not leading at all is an act of leadership. As explained above, leadership means guiding toward a goal. An example illustrating this concept is the delegation of tasks from a Police Chief to a designated staff member responsible for organizing an event at the police station. This delegation demonstrates that the wheels of leadership are turning, from top to bottom. A unit leader directing their members toward an agreed-upon vision serves as a mentor to their subordinates. If all leaders care for their subordinates, provide advice and guidance in daily life sincerely, and do not obstruct the younger generation from gaining the knowledge they should acquire, then the Indonesian National Police (Polri) will become an exemplary institution and, in turn, regain the trust of the public.

To summarize, visionary leadership encompasses various qualities such as risk-taking, accountability, optimism, perseverance, assertiveness, effective communication, organizational abilities, inspiration, open-mindedness, and innovation. As a result, individuals aspiring to become visionary leaders must exhibit consistency, enhance their

communication skills, foster empathy, and actively apply or evaluate the vision they have formulated.

The concept of visionary leadership aligns closely with the crystallization of values found in the Professional Ethics of the Indonesian National Police (Wijayanti et al., 2022). These ethics serve as a set of norms or guidelines that assist officers in determining the ethicality of their personal conduct. By embracing visionary leadership, police officers gain a profound understanding of the fundamental principles of Police Ethics, which act as an ideal framework for their behavior in service. This understanding strengthens their convictions, enabling them to make sound decisions in every situation. Leadership and ethics are rooted in the deep integrity of an individual's soul and conscience, forming the bedrock of the genuine morality upheld by the Professional Ethics of the Indonesian National Police (Alamsyah & Putra, 2023).

The visionary leadership style assists an organization in developing a vision for organizational change, ensuring a set of relevant perspectives on the future (Fransiska et al., 2020). Therefore, in the researcher's view, visionary leadership can be implemented in the Jakarta Metropolitan Police by taking the following steps:

1. Determine the organizational vision based on observations of task challenges, regional characteristics, member aspirations, and developments in the strategic environment, then detail and socialize the vision to all members so that it can be understood, comprehended, and practiced.
2. Elaborate the organizational vision into a flexible (not rigid) and simple organizational mission, making it easy to implement in achieving goals.
3. Develop effective and efficient strategies for short, medium, and long-term goals to achieve the established vision and mission.
4. Evaluate the successes and failures as a determination for the next feedback.
5. Create monthly, semester, and annual work plans focused on the established vision and mission.
6. Possess strong commitment and integrity in carrying out leadership responsibilities.
7. Adhere to leadership ethics (contained in the Professional Ethics of the Indonesian National Police).
8. Be able to make quick and accurate decisions when the organization faces critical issues.

5. CONCLUSION

Based on the research conducted by the above researcher, the following conclusions can be drawn:

Visionary leadership is leadership whose main focus is on establishing a vision designed for the future, characterized by: (1) *Ing ngarso sung tulodo* (Leading by example in front); (2) *Ing Madyo Mangun Karso* (Creating opportunities for initiative in the middle); and (3) *Tut wuri handayani* (Providing support from behind). The leadership style applied in the Jakarta Metropolitan Police (Polda Metro Jaya) still has many weaknesses, starting from the military impression, an immeasurable vision, lack of organizational orientation, weak managerial skills, a gap between Top Managers and Low Managers, a luxurious lifestyle, and environmental indifference. One reinforcing

indicator is the high number of violations by middle and first-level officers in 2022, such as 26 personnel disciplinary violations and 215 personnel ethical code violations.

Strategies that can be implemented in applying visionary leadership in the Jakarta Metropolitan Police include defining the organizational vision, elaborating the vision into a mission, developing strategies, conducting evaluations, creating work plans, having commitment and integrity, possessing leadership ethics, and being able to make quick and accurate decisions.

As for recommendations based on findings, including implementing Visionary leadership style rooted in Pancasila and local wisdom through education, development, and training, instilling commitment and leadership ethics contained in the professional ethics of the Indonesian National Police (Polri) to all leaders in the Jakarta Metropolitan Police, from first-level officers to middle-level officers. Implementing visionary leadership in the Jakarta Metropolitan Police through the declaration of vision, mission, strategies, and organizational work programs for each unit leader according to the characteristics of task challenges and the strategic environment.

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THE READINESS OF THE SEMARANG CITY POLICE IN FACING SECURITY CHALLENGES ARISING FROM SOCIAL DYNAMICS AHEAD OF THE 2024 ELECTIONS

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Abstract

Indonesia's diverse culture and society, with its many islands, ethnic groups, and languages, present unique challenges for elections. Exploiting social differences in political competition can create tensions and conflicts. Sensitive issues like ethnicity, religion, race, and social groups, along with the spread of false information through social media, increase the risks. Past conflicts in Central Java and Semarang after elections highlight the danger of misunderstandings between groups. The Semarang Police must prepare for the 2024 elections by training personnel, collaborating with relevant organizations, using technology, raising community awareness, managing false information, and planning secure campaign events. The readiness of the Semarang Police is crucial in maintaining stability and preventing conflicts during the upcoming elections. This study aims to elucidate how the Semarang Police Station is prepared to face security challenges arising from social dynamics leading up to the 2024 elections. This research employs a qualitative method, drawing on national security theory, community policing theory, and the concept of readiness as theoretical frameworks. The 2024 elections in Indonesia raise concerns about security due to social dynamics. The Semarang Police Station plays a vital role in preparing for these challenges. This involves monitoring social dynamics, training personnel, collaborating with stakeholders, and enhancing conflict and security management. Despite the challenges of managing a diverse society, Indonesia's values of tolerance, inter-religious harmony, and gotong royong are sources of national strength.

Keywords: *Community Policing, 2024 Election, National Security, Social Dynamics*

1. INTRODUCTION

Indonesia is known as a country with rich cultural diversity and a pluralistic society consisting of various tribes, religions, languages, and customs. Indonesia is a country that has many differences in terms of race, religion, and culture. The country consists of thousands of islands, hundreds of ethnic groups, and many different languages, located in 38 provinces and various ethnic groups, having more than 300 different ethnic communities or tribes, totaling 1,340 ethnic groups. These diverse groups inhabit various islands, including Betawi, Baduy, Minangkabau, Bugis, Malay, Banten, Banjar, Bali, Sasak, Dayak, Makassar, Cirebon, Arab, Chinese, and others (Noor & Sugito, 2019). From a horizontal point of view, the diversity of this nation is reflected in differences in religion, ethnicity, regional language, geography, clothing, food, and culture, while from a vertical point of view, the pluralism of our nation is seen through variations in education, economic status, residential location, occupation, and socio-cultural level. Therefore, Indonesia has developed into a multi-ethnic, multi-cultural, and multi-religious country (Noor & Sugito, 2019).

In electoral politics, inter-group misunderstandings, tensions and disagreements can pose a serious risk of conflict. Intense political competition often capitalizes on differences in multicultural societies, whether based on ethnicity, religion, culture, or other identities, to achieve specific political goals. Racial issues become an easy tool for irresponsible politicians to use to divide society for personal gain. The advent of the digital age, characterized by the proliferation of social media, also plays an important role in elections, with messages that damage inter-group relations able to spread quickly and fuel tensions. The protection of cultural or religious identity can be a sensitive issue, which if not elaborated wisely, can lead to confrontation (Shofan, 2011).

The existence of various conflicts that arose during elections in various parts of the world above, shows how important it is to manage differences in politics. Cases such as the conflicts in Bosnia, Rwanda, Kosovo, and other places teach us that using these differences in politics intelligently is very important. This can be seen in some examples of conflicts and social tensions that have occurred in Indonesia's electoral history, such as the 1999 Post-Election Conflict, which saw Indonesia experience a series of conflicts, especially in ethnically and religiously diverse areas. Examples are the riots in Maluku and Poso, which were triggered by tensions between different religious groups. Subsequent post-election 2004 conflicts occurred in regions with significant ethnic and religious differences, such as the riots on Sulawesi Island, which included Poso and Palu. The conflict in Aceh, which took place before and after the 1999 elections, led to an increase in violence in Aceh, which was followed by peace negotiations that resulted in a peace agreement in 2005. The next conflict was post-election 2014, which was followed by a number of conflicts, including demonstrations and political tensions in several regions. A case in point is the post-election riots in several cities in Central Java.

The people of Central Java, as a region rich in history, culture and diversity, have also experienced the impact of post-election conflicts in several periods. Ethnic, religious and cultural diversity in Central Java is an integral part of its identity. However, in some post-election moments, the region witnessed political tensions that led to demonstrations and social turmoil. Although Central Java is known for its harmonious religious life, political conflicts during the post-election period in several cities in the region showed how political dynamics can create friction among communities that previously lived together. The people of Central Java remain steadfast in their values of togetherness and mutual cooperation, but efforts to maintain political stability and prevent potential conflicts need to be strengthened so that diversity remains a strength, not a source of tension (Harefa & Fatolosa Hulu, 2020).

These problems are exemplified by several local conflicts in the Semarang area, such as the finding of fraud in the form of alleged vote inflation at polling station X, Badarharjo Village, North Semarang Subdistrict during the elections (Fathiyah, 2015). In addition, similar conflicts were also recorded in the Semarang region, as revealed by Ibnu Kuncoro from Kesbangpol Central Java, who mentioned that the city of Semarang is one of the areas prone to conflict during elections (Riyanto, 2023). Election-related conflicts in Semarang are often triggered by potential disruptions to public security and order (*Kamtibmas*) at all polling stations (TPS) (Muhammad, 2013) during the implementation of the Regional Head General Election (*Pemilukada*) in Central Java. According to Sigit (2023), based on data released by Bawaslu, Semarang City is also the number 1 region in Central Java Province that is included in the Election Vulnerability Index (IKP), and is

included in the ranking of 12 election-prone areas in all provinces in Indonesia. This condition is also supported by the problem of data on the findings of alleged election violations by the Election Supervisory Body of Semarang City and Panwaslu Sub-districts in Semarang City with a total of 35 cases of findings of election violations and have been followed up (Bawaslu, 2019).

These issues emphasize the importance of Semarang Police's readiness as part of the police institution at the regional level to face the challenges that arise ahead of elections, which are often characterized by complicated politics. This kind of political situation is often filled with conflict and high pressure and competition, so the readiness of the Police in their role as law enforcers and maintainers of *Kamtibmas* is very important, so that any potential conflicts can be resolved as early as possible.

The role of Semarang Police Station as an integral part of the National Police, especially in facing the challenges that often arise before and after the election period, is the main foundation in maintaining the stability of *Kamtibmas*. Effective policing involves prevention, fair law enforcement, and close partnerships with the community (Margaret, 2020). Collaboration between Polri and the community is key in ensuring that any potentially destabilizing situation is managed quickly and wisely. Semarang Police Station, like other parts of the National Police, has an important role to play in ensuring that complicated political situations do not disrupt the peace and security that every citizen is entitled to.

The role of the police in dealing with complex political dynamics ahead of the election period is crucial. Semarang Police Station, as an important part of the National Police, must be ready to face the challenges that develop quickly and responsively. Law enforcement and security maintenance are the main focus, but more than that, the police also act as a liaison between the government and the community in ensuring that the democratic process runs smoothly without being disrupted by threats or conflicts that could arise (Kocak, 2018). Readiness in maintaining neutrality, tactical intelligence, and the ability to act quickly and precisely are the main assets for Semarang Police in maintaining social and political stability in the midst of elections. Collaboration with various parties and the application of smart strategies are key in maintaining security and public order, as well as preventing potential conflicts that can disrupt the democratic process (Ismail, et al., 2022).

One of the Police strategies implemented in mitigating multicultural conflict ahead of the 2024 Election is through the Community Policing Program (Widodo & Baharudin, 2022). In the Indonesian National Police Regulation No. 1 of 2021 concerning Community Policing, it is explained that the Community Policing Program is an activity to invite the community through partnerships between members of the National Police and the community, so that they are able to detect and identify problems of security and public order in the environment and find solutions to problems.

Chrysnanda (2014) in his book entitled "*Polisine Rakyat Iku Jujur Ora Ngapusi*," particularly in the Policing and Humanitarian Vision section, explains that the Police do not work alone, therefore, they need to collaborate with other stakeholders to address social order issues in law enforcement (Dwilaksana, 2014). For this reason, the performance of the Police in this regard requires a deep understanding of human nature and humanitarian aspects, and requires an understanding of diverse cultures and societies. In supporting the performance of the Police, it is also necessary to utilize local wisdom, which is very important, because the need for security and security can vary. In an effort

to humanize individuals, it does not only refer to the written law (law in books), but also pays attention to the reality that occurs in the field (law in action). In this case, the role of the police includes law enforcement as well as upholding the principles of justice. The police have the authority to take discretionary action, alternative dispute resolution, and restoration of justice.

The prioritization of community support in conflict resolution is also expressed by Jana Krause (2020), in her research which explains that community policing is part of communal conflict prevention efforts which should involve supporting women's groups at the local level and building their capacity to support their activism against ethnic and religious polarization, as well as masculinity norms that aggravate communal conflicts. Resolving conflicts in the waters and coastal areas of the West Java Police jurisdiction, he used a community policing approach, such as dialogic patrols, *sambang* community (community visitation), *sambang* community leaders, and other activities that involve positive interactions with local communities (Simatupang, 2019).

The community policing approach is applied by involving the police and positive interactions with the community, building good relationships, providing guidance, and providing support in various aspects of community life. In this way, community policing can play a role in preventing conflict or addressing potential conflict by building positive relationships between the police and local communities. Rizal and Ihsan (2014), also emphasize the importance of resolving religious conflicts through partnerships between the police and the community in handling these conflicts. Mohammad (2023), also explained that community policing efforts applied in the approach of communication, mediation, security, order enforcement, and peaceful resolution implemented by active police involvement in mediating, encouraging dialog, and reducing tension in order to prevent conflict escalation, became the police strategy in resolving the *Tumpang Pitu* conflict in Banyuwangi (Alkautsar, 2023).

Chrysnanda also explained that community policing is a style applied by the police in solving social problems that occur in the community. He also explained that community policing is a suitable approach to carry out police tasks, where its strength rests on the strength of the community that supports police performance (Chrysnanda, 2012). Based on the various explanations above, the existence of the Community Policing Program is expected to appropriately address the social dynamics of a multicultural society ahead of the 2024 elections.

The Community Policing pattern implemented in Semarang Police Station is an important foundation in facing social challenges ahead of the 2024 General Election. In the context of a multicultural society, this approach emphasizes collaboration between the police and the community to solve social problems. By building trust and strong cooperation, the police act as facilitators, mobilize community resources, and encourage their active participation in maintaining security and order. Community Policing programs not only aim to address potential conflicts, but also strengthen inter-ethnic, religious, and group relations within the community. Semarang Police's readiness for the 2024 General Election is reflected in its commitment to effectively implement this approach. With a focus on prevention, mobilizing community support, and collaborative efforts, it is hoped that this program will be a strong foundation in maintaining social and political stability in the midst of crucial election dynamics for Indonesia.

This study aims to address existing issues by examining the readiness of the Semarang Police Station to confront security challenges stemming from social dynamics leading up to the 2024 General Election. Additionally, it seeks to formulate security strategies within the framework of police science to navigate the complexities of social dynamics in a multicultural society as the 2024 General Election approaches. This research also seeks to provide valuable insights into how the Semarang Police Station can proactively prepare and devise effective strategies to navigate social dynamics in anticipation of the 2024 Election in a multicultural setting.

2. LITERATURE REVIEW

2.1. National Security Theory

National security theory in Indonesia explores various important aspects. In the past decade, efforts to design a national security system that is more responsive to conventional and non-military threats have been ongoing. Factors such as globalization, democratization and interdependence between states have influenced views on national security. Barry Buzan identifies five areas of security that include military, political, environmental, economic and social aspects. The comprehensive security approach emphasizes that security is not only a state issue, but also involves society and various social aspects. Security sector reforms have broadened the view of national security, involving the participation of citizens and communities. The concept of people-centered security highlights the importance of cooperation between actors and institutions in ensuring comprehensive national security. Overall, the theory of national security in Indonesia covers broad aspects and involves various elements to protect national interests and society (Damayanti, et al, 2013).

Meanwhile, according to Dewi, et al. (2020), national security theory is explained to refer to the concepts and frameworks used to understand how a country creates and maintains security and resilience within its territory. The concept of security comes from the Latin "*securus*," which means freedom from danger, fear, and threat. In the context of national security theory, there are two main approaches that shape the understanding of security. The first approach is traditional security, which is defined as an effort to protect a state's security from threats that can be intervened by the military power of another state. In this approach, the state is considered both the subject and object of creating security. Factors such as sovereignty, territory and military threats are the main focus in understanding traditional security. The second approach is non-traditional security, which focuses more on the security needs of individuals, groups and elements outside the state. Non-traditional security recognizes that threats to security can come from a variety of sources, including poverty, social instability, ethnic conflict, terrorism and natural disasters.

The importance of defense in creating national security is clear. Defense is the main instrument used by the state to maintain national security. Defense includes efforts to protect the state and citizens from military and non-military threats. Along with the development of the concept of national security, defense has also evolved to include aspects such as economic policy, health, and socio-cultural aspects that contribute to national resilience. Meanwhile, the concept of national resilience includes a number of dimensions that include aspects of geography, demography, natural resources, ideology, politics, economy, socio-culture, defense and security. National resilience is a description

of how a nation integrates various dimensions of national life to face threats, challenges, disturbances and obstacles. In this concept, it is important to maintain defense and security stability and understand that security involves not only military aspects, but also social and economic factors that affect human security (Sarjito, et al, 2023).

In further development, there is a newer approach known as human security. This approach places individuals and communities at the center of security efforts. It involves protecting individuals from threats and challenges as diverse as poverty, personal insecurity, social and environmental disruption. In other words, human security emphasizes the protection and empowerment of individuals and communities in order to achieve more comprehensive national security (Dewi, et al., 2020).

In accordance with the various explanations above, in Indonesia, the passage of the National Security Bill reflects an effort to integrate the view of human security in legislation, with the aim of protecting and ensuring the security of every citizen. As such, the theory of national security encompasses a broad understanding of threats, challenges and ways to create security that involves various dimensions of national and community life. Therefore, based on the above explanation, this national security theory is used to focus on explaining state security and how institutions such as the Semarang Police Station can maintain national stability. This theory can also be used to analyze the extent to which the Police have an effective national security plan to address the challenges that arise during elections.

2.2. Community Policing Theory

Community Policing, abbreviated as *Polmas*, is an activity that involves a partnership between members of the National Police and the community. The aim is to detect and identify security and public order problems in the neighborhood and find solutions. There are several roles and levels in Community Policing, including Community Policing Carriers (police officers of various ranks who implement Community Policing), Community Policing Strategists (police officers designated to implement Community Policing), and Community Policing Officers (police officers with the rank of Non-Commissioned Officers or Officers assigned to specific areas). The *Polmas* strategy is a way to involve the community, government, and other stakeholders in efforts to prevent, mitigate, and handle threats and disturbances to community security and order. The aim of community policing is to form a partnership between the police and the community, create security and order, and increase legal awareness and public concern for security and order issues around them (Perpol No. 1 of 2021 on Community Policing).

Community policing is an approach to law enforcement that emphasizes cooperation between the police and the communities they serve. It changes the dynamics of the traditional police-community relationship to a more collaborative and proactive one. In this theory, communities are actively involved in maintaining order and security, as well as in identifying security and crime problems in their communities. Crime prevention is the main focus, with efforts to address the root causes of security problems (Monika, 2021).

The police seek to build positive relationships and strong partnerships with communities. They give more autonomy to officers in the field and encourage transparency, accountability and community-based activities. The concept of community

policing brings social control closer to the community and supports positive police and community interactions (Monika, 2021).

There are various definitions and views on community policing, but in general, this approach seeks to shift the role of the police from being solely law enforcers to active partners in maintaining community order and security. It encourages the role of the community in identifying and solving crime problems and working with the police to achieve the common goal of keeping neighborhoods safe. Although community policing has a number of advantages, such as increasing the effectiveness of order maintenance, crime prevention, and community participation, it also faces criticism regarding the potential politicization of the program and the complexity of police-community relations (Sawir, et al., 2023).

Community policing theory creates a more inclusive, collaborative, and prevention-focused approach to keeping communities safe. In accordance with this explanation, the existence of community policing theory is then used as an approach to answer the problem of security strategies implemented by Semarang Police Station in the development of police science to overcome the social dynamics of multicultural communities ahead of the 2024 General Election.

2.3. The Concept of Readiness

Readiness is an inevitable concept in various aspects of life. It refers to the level of readiness of a person or entity in facing challenges, changes, or opportunities that may arise in the future. Readiness is a key factor in achieving success and reliability (DeJanasz et al, 2013).

In the business world, readiness often means having a strong strategy, sufficient resources, and adaptability to deal with market changes. Prepared companies, for example, tend to be better able to withstand volatile market conditions and compete better in a competitive business environment. Readiness also encompasses aspects of risk management, which enables companies to deal with potential losses in a controlled manner. On a personal level, readiness involves skill development, time management and a mentality that is ready to face challenges. A person who is prepared in their personal life is more likely to achieve their personal and professional goals. In addition, preparedness also plays an important role in responses to emergency situations, crises, or unexpected changes (Goleman, 2005).

Readiness not only means having a backup plan or physical preparation, but also includes mental and emotional preparation. The ability to remain calm in the face of pressure and uncertainty is invaluable. It means having a good understanding of personal goals and values, which will help in making the right decisions in difficult situations (Luthans & Youssef, 2017).

According to Luthans and Youssef (2017), there are several important aspects in the concept of readiness:

a) Mental preparation

Readiness involves mental preparation which includes an understanding of the task or situation to be faced. It involves the knowledge, skills, and mental attitudes needed to face challenges effectively.

b) Physical preparation

In addition to mental preparation, readiness also involves physical preparation. This includes the physical fitness, health and strength required to perform the task or face the situation well.

c) Knowledge and skills

Readiness also involves understanding and mastering the relevant knowledge and skills for the task or situation at hand. It involves the learning, training, and experience necessary to be ready in a given context.

d) Planning and preparation

Readiness also involves planning and preparation in advance. It involves identifying risks, developing strategies and organizing the necessary resources to face challenges successfully.

Readiness is a key factor that influences success and reliability in various aspects of life. It includes physical, mental, and emotional preparation, as well as adaptability to face challenges and changes.

3. RESEARCH METHODS

The study of Semarang Police Readiness in Facing Security Challenges Arising from Social Dynamics Ahead of the 2024 Election, was carried out using a qualitative method with a descriptive research approach applied through data collection by means of interviews, observations, and document studies, which were then analyzed using data reduction techniques, data presentation, and data verification.

4. RESULTS AND DISCUSSION

4.1. The Readiness of Semarang Police to Face Security Challenges Arising from Social Dynamics Ahead of the 2024 Election

The 2024 elections are fast approaching, and social dynamics in Indonesia are beginning to heat up. This raises concerns about potential security disturbances. Semarang Police, as the guardian of security in the Semarang area, needs to ensure its readiness to face the challenges that may arise. Preparedness in dealing with security challenges arising from social dynamics ahead of an election is the efforts and measures taken to secure the electoral process and address potential conflicts or security disturbances that may arise during the period. The social dynamics leading up to elections often involve political polarization, tensions between candidate supporters, and potential conflicts that can threaten stability (Vertovec & Wessendorf, 2010).

Indonesia's multicultural society is the diversity of cultures, tribes, religions and ethnicities that exist within the territory of Indonesia. Indonesia is known as a country with very rich diversity, where various groups of people coexist in one state entity. Indonesia has more than 300 ethnic groups and hundreds of regional languages. Each tribe has its own unique traditions, customs and cultural arts. This diversity is reflected in dance, music, fine arts and other cultural heritage. Indonesia is a predominantly Muslim country, but also has communities of Christians, Hindus, Buddhists and traditional beliefs. All religions are recognized and respected, creating interfaith harmony.

Indonesian is the official and national language understood and spoken throughout Indonesia. In addition, there are many regional languages that are also spoken on a daily basis. Indonesia also has diverse ethnic groups such as Javanese, Sundanese, Minangkabau, Batak, Dayak, Aceh, and many more. Each ethnic group has its own distinctive culture and traditions. Each ethnic group has different customs, including traditional ceremonies, celebrations and traditions that are passed down from generation to generation. These customs reflect the identity and uniqueness of each group. Indonesia's culinary diversity also reflects cultural diversity. Each region has its own distinctive cuisine, with different ingredients and flavors (Putra, et al, 2023).

Despite the differences, Indonesian society is generally known for its tolerance and inter-religious harmony. The tradition of gotong royong and a sense of togetherness also characterize daily life. Indonesia's multicultural society creates a uniqueness and richness that is one of the strengths of this nation. Although there are challenges in managing this diversity, understanding and cooperation between community groups can strengthen the integrity of Indonesia as a multicultural country.

Security challenges arising from the social dynamics leading up to elections can be diverse and complex. Some common challenges that may arise involve aspects such as:

1) Political Polarization

Increased political polarization can fuel tensions between supporters of candidates or parties. Intense competition can create an atmosphere prone to conflict and security disturbances.

2) Disinformation and Hoaxes

The spread of disinformation, hoaxes or fake news can damage people's perception of elections and create instability. False information that harms a particular candidate or party can trigger protests or acts of violence.

3) Ethnic and Religious Conflict

Elections often reinforce ethnic and religious identities, and this can be used by irresponsible parties to manipulate the feelings of certain groups. Ethnic and religious conflicts can arise as a result of identity politics being reinforced during campaigns.

4) Distrust of the Electoral System

Mistrust in the integrity and transparency of the electoral system can create tensions. If people feel that an election is unfair or that there is fraud, this can lead to demonstrations and protest actions.

5) Personal or Group Rivalry

Personal or group political rivalries can create an atmosphere prone to inter-group violence or conflict.

6) Threat of Terrorism

Terrorist or extremist groups may try to capitalize on tensions arising during elections to spread fear and create instability.

7) Electronic Disruptions and Cybersecurity

Threats to cybersecurity, such as hacking attacks or manipulation of electronic election data, can undermine the integrity of the electoral process and create distrust.

8) Inequality of Voter Access

Inequality of voter access or attempts to restrict the voting rights of certain groups can trigger protests and tensions.

In the face of these challenges, it is important for authorities and civil society to work together to identify, prevent and respond to potential security risks during election periods. Public education, transparency and inter-party dialog can be important instruments to manage complex social dynamics during electoral processes.

The social dynamics leading up to the 2024 elections are predicted to intensify, with the potential for security challenges to emerge. Semarang Police needs to take strategic steps to anticipate and deal with these possibilities, such as mapping potential vulnerabilities in the jurisdiction of Semarang Police, including SARA issues, identity politics, hate speech, and hoaxes. Monitoring the development of political and social situations through social media and field intelligence (Owen, 2017)

Semarang Police needs to conduct training and improve personnel's ability to handle various security situations, including mass security, riot control, and cybercrime, as well as increase personnel's vigilance and alertness in anticipating potential security disturbances. Semarang Police also build synergy and cooperation with various related parties, such as the TNI, local government, religious leaders, community leaders, and community organizations as well as carry out socialization and education activities to the public to create a conducive situation ahead of the 2024 Election.

Semarang Police Station needs to carry out routine and targeted police operations to prevent and take action against potential security disturbances, and increase patrols and guards in vital places and tourist attractions. Polrestabes Semarang should also develop a comprehensive campaign and polling station security plan, and alert security personnel at each campaign location and polling station. Utilizing information and communication technology (ICT) to support security activities, such as CCTV, drones, and early warning systems and cooperating with the community in maintaining security and order in the environment, forming security awareness groups and joint patrols.

Semarang Police Station, as part of the security apparatus in Indonesia, needs to make careful preparations to deal with security challenges that may arise ahead of the 2024 General Election. Some of the preparations that can be made by Polrestabes Semarang include:

1) Eliminate the Practice of Identity Politics

Semarang Police needs to ensure that the practice of identity politics is eliminated in elections. This is important to maintain equal rights, community unity, and democratic principles.

2) Securing the Election Stages

Semarang Police must ensure that all stages of the election, from the campaign period to the voting, run smoothly and safely. They need to work closely with relevant agencies, such as Bawaslu and KPU, to maintain security and prevent security disturbances that may occur.

3) Anticipating Potential Polarity

Semarang Police needs to anticipate the potential polarization that may occur ahead of the election. They should be prepared to deal with situations that may trigger conflict between community groups and take the necessary steps to maintain security and order.

4) Confronting Untrue Issues

Semarang Police needs to deal with untrue or unaccountable issues that may circulate in the community ahead of the election. They should work with relevant parties to disseminate accurate information and combat misinformation and disinformation.

5) Securing VIPs

Semarang Police needs to prepare itself to secure VIPs (Very Important Person) during the election phase. They should conduct drills and simulations of high-intensity security disturbance countermeasures against VIPs.

6) Securing election logistics

Semarang Police needs to cooperate with relevant agencies to secure election logistics. They must ensure that election logistics, such as ballots and ballot boxes, are safe from acts of sabotage or other crimes.

7) Securing Voter Participation

Semarang Police needs to ensure that voter participation in the election runs smoothly and safely. They should work closely with the KPU and other relevant agencies to ensure that voters can cast their votes without pressure or threats.

By making careful preparations and cooperating with related agencies, Semarang Police can face security challenges that may arise ahead of the 2024 Election and maintain security and order during the democratic party.

5. CONCLUSION

The heightened social dynamics leading up to the 2024 General Election have raised concerns over potential security disturbances in Indonesia. Polrestabes Semarang, as the guardian of security in its region, is faced with the crucial task of ensuring its readiness to deal with complex challenges that may arise during the election period. This preparation includes monitoring social dynamics, personnel training, cooperation with various related parties, and capacity building in handling potential conflicts or security disturbances.

On the other hand, Indonesia's multicultural society, with its diverse cultures, tribes, religions and ethnicities, creates a uniqueness and richness that is the strength of this nation. Although there are challenges in managing this diversity, tolerance, inter-religious harmony and the tradition of gotong royong characterize Indonesian society. Understanding and cooperation between community groups can strengthen the integrity of Indonesia as a multicultural country (Mappaenre, et al. 2023). In the face of social dynamics ahead of the General Election, it is important for Semarang Police and the community to work together to create a safe, conducive environment and strengthen democratic values, especially in the contestation of the 2024 General Election.

To prepare Polrestabes Semarang for the security challenges ahead of the 2024 elections, the following steps are suggested. First, conduct intensive training for personnel, focusing on communication skills, crowd management, conflict handling, and understanding election-related social dynamics. Second, increase cooperation with the TNI, local governments, Bawaslu, KPU and other relevant institutions to strengthen responses to developing situations. Third, utilize information and communication technology such as CCTV, drones, and security information systems for monitoring and rapid response. Fourth, hold socialization campaigns and educate the public about the importance of security during elections, inviting them to play a role in maintaining order. Fifth, form a special team to identify and respond to false information that can create social tension. Sixth, intensify monitoring of social and traditional media to detect potential conflicts or movements detrimental to security. Finally, conduct periodic

security simulations and exercises to improve personnel readiness to deal with possible election scenarios.

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THE LAW ENFORCEMENT BY THE INDONESIAN NATIONAL POLICE (POLRI) TO ADDRESS THE TRIGGERS OF SOCIAL CONFLICT DURING THE 2019 ELECTIONS IN BANDAR LAMPUNG

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Abstract

To address the social conflict triggers during the 2019 elections in Bandar Lampung, it is necessary to implement effective law enforcement. Simply relying on repressive penal measures is insufficient to deter potential perpetrators of election crimes, hoaxes, and hate speech. Likewise, preventive non-punitive approaches are unable to effectively curb the growth of social conflict triggers. Political actors take advantage of Bandar Lampung's history of social conflict, utilizing emotional manipulation as a primary tool in fueling conflicts. Therefore, the Bandar Lampung Police, through their law enforcement authority, must take action to prevent the escalation of these conflict triggers. This paper utilizes a descriptive qualitative approach to conduct research. It focuses on studying the optimization of law enforcement by the Police to minimize social conflicts during the 2019 Election. The research gathers primary data directly from respondents and secondary data from literature studies. The discovery reveals that enforcing the law to minimize social conflicts during the 2019 elections in Bandar Lampung is a challenging task for the police. Both repressive and preventive measures face difficulties. The enforcement of penal law lacks the necessary competence and resources, resulting in limited effectiveness in reducing social conflicts through criminal sanctions. On the preventive side, cooperation between institutions is lacking, polmas policies are not implemented properly, candidate socialization is not optimal, and the SPIS function is not maximized. As a result, hoaxes, hatespeech, and money politics easily spread, causing emotional distress among affected community groups.

Keywords: *2019 Election, Law Enforcement, Social Conflict*

1. INTRODUCTION

In the perspective of globalization, a country will be able to exist in competition with other countries if it has strong, sturdy and solid internal security (*Kamdagri*). To realize a strong, solid and solid Kamdagri, each region must be able to guarantee the Security and Order of its people, especially in the city of Bandar Lampung which has a long history of social conflict. The history of social conflict is easier to trigger conflict in the 2019 elections.

Weber in Collins (1990) explains the complexity of conflict theory, the sources of conflict of interest are many and include supervision of organizations. Another area is the struggle to control "emotion production goods", for legitimacy and domination efforts. Emotion production mechanisms are the main tools used in conflict. Through "rituals of emotion" can be used as domination of an organization, their awareness leads to group alliances (social solidarity) to oppose other groups and undermine the hierarchy of status achievements. Weber organized all aspects of domination through the manipulation of

emotional solidarity, thus encompassing many forms of community stratification based on culture.

Based on this theory, the struggle to control "emotion production goods" by the Bandar Lampung Police is explained by the author that, "emotion production goods" in this case the 2019 Election, considering that the emotion production mechanism is the main tool used in conflict, every election always produces emotions. Therefore, in this theory, there are words of struggle to control, and in this case the Bandar Lampung Police based on statutory regulations have the authority to control the limited implementation of elections so that they can be orderly and in accordance with regulations. The control is in the form of law enforcement both in terms of prevention and repression. However, such control is very difficult so that elections do not produce conflicts considering that social conflicts must occur because society wants change as explained by Ralph in conflict theory (Dahrendorf, 1986). Means of providing criminal sanctions and also prevention efforts are very difficult in creating conducive public order in the 2019 Election (Luter et al., 2022).

Marx and Ralph Dahrendrorf (in (Güçlü, 2014)) explain that, change is a product of class conflict (social conflict and social change are innate in the structure of society. Change occurs because of conflict. Based on the opinion of Marx and Ralph Dahrendrorf, change occurs because of conflict, it can mean that conflict cannot be prevented because society wants change. Law enforcement that is non-penal (prevention) and is an obligation for the Police is unlikely to succeed, considering that change is expected by society. However, preventive law enforcement must still be carried out, even though Polri already knows that preventive efforts are very difficult to prevent social conflict. Thus, legislation governing the prevention of social conflicts for the National Police is a problem in itself. Furthermore, in overcoming social conflict, penal law enforcement is ultimately a priority. This repressive law enforcement will cause a lot of accumulation of cases and in special law enforcement, special competence is also needed in the investigation and investigation process. This condition has not been fully owned by investigators so that there are still allegations of unresolved special criminal acts, especially in handling social conflicts in the 2019 elections, and these problems are expected not to occur again in the upcoming 2024 elections.

Juri Ardiantoro (2017) argues that elections are actually a means of managing conflict so that political competition takes place in a civilized manner. Thus, the implementation of elections and elections is always characterized by conflicts that ultimately require security from the Police. In the Bandar Lampung Police Lapsat, it is explained that the development of the political situation at the national level indirectly affects the implementation of the government system in the region/region, this is often exploited by intellectual actors who have political interests to create certain situations by involving other parties (mass organizations, NGOs and Pok Preman); the presence of community organizations as a base or as an underbow of political parties provides an opportunity for the presence of the potential power of the community, this condition is the forerunner of the formation of threats and vulnerabilities to a conducive kamtibmas situation by utilizing mass power and proximity to political elites as interest holders and policy makers. Even in the Anev Potential Social Conflict of Bandar Lampung Police in 2018, it is known that there is a potential conflict originating from IPOLEKSOSBUDHANKAM (Ideology, Politics, Economy, Social Culture and Security Defense) and SARA (racial issues).

Based on the election vulnerability score, Lampung Province is categorized as 'Yellow Lampung' in terms of vulnerability to election violations. Of the 34 provinces in Indonesia, Lampung is ranked 13th most prone to election violations (Christiyaningsih, 2019). The potential for black campaigns can be carried out for political purposes. Black campaigns aim to bring down political opponents through unsubstantiated issues. Article 86 paragraph (1) letter d of Law Number 7 of 2017 concerning General Elections explains that things that are prohibited in the implementation of the legislative election campaign are inciting and pitting individuals or the community against each other. Meanwhile, black campaigns carried out during the presidential election are regulated in Article 214 jo Article 41 paragraph (1) of Law Number 42 of 2008 concerning Presidential Elections. The article regulates the sanctions for every implementer, participant and officer of the presidential election campaign who incites and pits individuals or the community against each other is imprisonment for a minimum of six months to 24 months and a fine of at least six million rupiah and a maximum of twenty-four million rupiah.

In order to create peaceful elections, Bandar Lampung Police needs to ensure that in 2018 no potential conflicts arise that can develop into social conflicts. This condition has not been prevented considering the spread of hatred, hoaxes, and fake news which is a form of black campaign has occurred. Therefore, efforts are needed to prevent social conflicts in the 2019 elections by paying attention to the conception of democratic policing, which according to Tito Karnavian (2017) is that the police as holders of the mandate of the community, should be professional, refer to the law, and uphold ethical values and norms that apply in society and institutions.

2. RESEARCH METHODS

The type of research in writing this paper uses a descriptive qualitative method (Soekanto, 2007). Through this method, the process of optimizing law enforcement by the Police to reduce the potential for social conflict in the 2019 Election is studied. The data used are primary data obtained from respondents directly and secondary data by conducting research from literature studies.

3. RESULTS AND DISCUSSION

3.1. Law Enforcement by the Police to Overcome Triggers of Social Conflict in the 2019 Elections in Bandar Lampung

The triggers of social conflicts based on the history of social conflicts that have occurred in Bandar Lampung according to data from Satintelkam Polresta Bandar Lampung are conflicts between *pokbal* (conventional motorcycle taxi) and gojek (online-based transportation), Church Construction in Tanjung Senang, Rejection of RT 02 and RT 03 Lingsuh community members of Rajabasa Jaya Village, Rajabasa subdistrict for the worship activities of Christians and the construction of the Kemah David Church, the protests of the people of Bandar Lampung city due to money politics in the 2018 simultaneous regional elections.

The history of social conflict is still remembered by the community and can trigger people's emotions. People who have been involved in emotions are easily influenced by hoaxes that are deliberately spread through social media and electronic media. Hoaxes,

which are "emotional production goods" based on Weber's theory of conflict, are actually used to produce emotions, in this case used by political actors who are fighting for power in the upcoming 2024 elections.

The weaknesses of law enforcement in overcoming social conflicts in the 2019 elections can be used as valuable lessons and experiences by Bandar Lampung Police in order to create security and public order in the upcoming 2024 elections. These weaknesses are as follows:

1. Law enforcement is repressive (Penal)
    a. In conducting investigations related to criminal acts that can trigger social conflict in the 2019 Election, it is not easy to do, especially in cybercrime. Cyber abuse that leads to cyber crime is a crime that utilizes information technology with all kinds of computer network use for criminal purposes and or high-tech crimes using the convenience of digital technology. The perpetrators of cyber crime commit their crimes with various modus operandi to realize their actions that utilize the facilities and infrastructure of information and communication technology and can be done by anyone without recognizing regional boundaries. In addition to not recognizing regional boundaries, these crimes also have special characteristics, so that in the cyber world, offenders are often difficult to catch. Although Law number 11 of 2008 concerning Electronic Information and Transactions (ITE) has been issued, its application by police investigators, especially at the Bandar Lampung Police Criminal Investigation Unit, is still not optimally perceived.

        In the investigation process, according to the Head of Criminal Investigation Unit of Bandar Lampung Police, there is still a lack of communication between investigators and elements of the Criminal Justice System both formally and non-formally to equalize perceptions of handling cybercrime cases, the impact is that there are frequent returns and resubmissions of case files from public prosecutors to police investigators in cybercrime cases, indicating the absence of understanding and integration in handling cybercrime cases. According to Luhut. M.P in H.M. Prasetyo H.M. (2017) in the perception of prosecutors, the police do not understand that special criminal investigations are much more difficult than general crimes and require extensive knowledge. Often files that have been P21 are returned by the prosecutor because they consider that there is no *Mens rea* or incomplete (*Mens rea* refers to criminal intent). In addition, there are often differences of opinion between research prosecutors and investigators regarding the determination of whether or not *Mens rea* requires expert testimony. For investigators, the existence of evidence in the form of electronic documents and log files can fulfill the existence of *Mens rea* elements or not.

        In handling cybercrime cases with reference to the application of the formal principles of Law No. 11 of 2008, there are 2 (two) very important things that must be fulfilled by investigators who apply the law, namely: Article 43 paragraph 3, which states that the search and/or seizure of electronic systems related to alleged criminal offenses must be carried out with the permission of the head of the local district court; and Article 43 paragraph 6, which states that in the event of arrest and detention, the investigator through the public prosecutor must request a stipulation from the head of the local district court within one

time twenty-four hours. These two formal requirements are often an obstacle in the disclosure or settlement of cyber crimes by investigators. So that in the filing of cybercrime cases often do not apply the ITE Law article but only the general criminal article as referred to in the Criminal Code.

Furthermore, in the disclosure of suspects, it often cannot be determined exactly who the perpetrator is because cybercrime perpetrators can commit their crimes through computers anywhere without witnesses knowing it directly. The most distant tracking results can only find the IP Address of the perpetrator and the computer used.

In addition, the handling of complex cybercrime cases is one of the reasons why the police are busy (Meliala, 2017). Bandar Lampung is no exception, with the accelerating globalization, various forms of community activities are supported through the internet, including cyber crime. The speed of information flow through cyber makes all activities effective and efficient. The use of social media for drug trafficking, hoaxes, hate speech and so on is an important note for the police and prosecutors to synergize in enforcing the law professionally.

In the investigation of money politics cases, it is very difficult to find *Mens rea*. Witnesses examined by investigators are not sure whether the act of giving money is money politics or not. There is even a witness statement who testified that there were candidates who often gave money, but it was done since before the campaign period. And according to the witness, this was usually done because even before becoming a candidate, the reported party often helped residents either by giving money or food. Therefore, investigators have difficulty finding *Mens rea* because the reported party has been known by the wider community as a generous person for a long time. This may mean that helping by giving money or food has become a habit without any specific intention for residents to vote for the reported party as a legislative candidate.

Therefore, the opinion of Muladi & Arief (1984)) is correct, which says that the policy of determining what type of criminal sanction is considered the best to achieve the goal, or at least close to the goal, cannot be separated from the issue of selecting various alternatives. The problem of selecting various alternatives to obtain which punishment is considered the best, most appropriate, most appropriate, most successful or effective, is clearly a problem that is not easy.

b. Case title according to Article 1 (17) of Perkaba No. 4/2014 on supervision is an activity of delivering an explanation of the process or results of investigations and investigations by investigators to title participants in the form of group discussions to obtain responses/input/corrections in order to produce recommendations to determine the follow-up of the investigation process.

At the planning stage, only budgeted for case titles in special cases such as corruption, online fraud, drugs. Case titles are not carried out in cases of hoaxes, hatespeech and money politics. This makes it natural that investigations into hoaxes, hatespeech and money politics are not maximized, and according to the Head of Criminal Investigation Unit of Bandar Lampung Police, this does not have a deterrent effect considering that hoaxes, hatespeech and money politics are still carried out by the community. Not conducting a case title causes

supervision in the investigation to be weak and can lead to corruption, collusion and nepotism.

Based on an interview with the Head of Criminal Investigation Unit of Bandar Lampung Police, there are no investigators who understand the criminal act of money politics. Therefore, allegations of money politics crimes that have been handled only reach the investigation stage. In addition, assistance to improve the quality of case titles is rarely carried out, so there is no guidance for investigators with criminal investigation management material and Standard Operation Procedure (SOP) for case titles, considering that some investigators know and learn the stages of investigation by self-taught and asking senior investigators they know, not through the learning process at dikjur / training and socialization. This can mean that personnel do not know Perkap No. 14 of 2012 concerning Management of Criminal Investigations which regulates the things that are needed / must be done in the investigation stages and the objectives of each stage. This condition causes investigators to hesitate in upgrading investigations to investigations in cases of alleged criminal acts of money politics.

In addition, investigators still have limited knowledge of the laws governing cyber crimes and criminal sanctions as well as limited knowledge of software in the form of technical guidelines in the technical disclosure of cyber criminals by studying the anatomy and modus operandi of the criminals.

Furthermore, according to the Head of Criminal Investigation Unit of Bandar Lampung Police, there is still limited understanding of investigators about evidence that can be used in cyber crime cases. Evidence that has been understood by police personnel is physical evidence that can be seen with the naked eye and tangible form so that this makes it difficult for the disclosure of cyber crimes whose evidence is all electronic and digital.

Assistance to improve the quality of case titles is rarely carried out, so there is no guidance for investigators with criminal investigation management material and case title SOPs, considering that some investigators know and learn the stages of investigation by self-taught and ask senior investigators they know not through the learning process in dikjur / training and socialization. This can mean that personnel do not know Perkap 14 of 2012 which regulates the things that are needed / must be done in the investigation stages and the objectives of each stage.

c. In general, during the implementation of the 2019 Elections, Bawaslu has received 2,724 reports or findings of election crimes, much less than the 2009 Legislative Elections which occurred 6,017 cases of criminal violations throughout Indonesia (Ramdansyah in (Sudi, 2019)). Of the 2,724 reports or findings, 582 cases proceeded to the investigation stage, 132 cases stopped at the investigation stage, and 41 cases stopped at the prosecution stage. Meanwhile, the total number of cases that continued to the examination stage in court until a legally binding decision was issued (*inkracht van gewisjde*) was only 320 cases. Although the stalling of cases at the investigation and prosecution stages was caused by many reasons, the most dominant was due to the absence of a common perception between Bawaslu, the police and the prosecutor's office simultaneously in handling election criminal cases.

Examining Article 477 of Law Number 7 of 2017 concerning General Elections, which does not mention which institution is authorized to carry out the investigation process after Bawaslu and / or its ranks up to the District Panwaslu forward reports of alleged election crimes to the Indonesian National Police, it can be ascertained that the institution authorized to investigate criminal acts in the 2019 Elections is the Indonesian National Police, based on Article 1 point 4 of Law No. 8 of 1981 which explains that, "Investigators are officials of the Indonesian National Police authorized by this law to conduct investigations."

In Article 476 of Law Number 7 of 2017 concerning General Elections, it is explained that reports of alleged election crimes are forwarded by Bawaslu, Provincial Bawaslu, Regency / City Bawaslu, and / or Sub-district Panwaslu to the Indonesian National Police no later than 1 x 24 (one time twenty-four) hours after Bawaslu, Provincial Bawaslu, Regency / City Bawaslu, and / or Sub-district Panwaslu state that the alleged act or action is an election crime. By paying attention to Article 476 (1) of the Election Law, it is clear that Bawaslu's function is to forward reports of alleged election crimes to the National Police.

Furthermore, Article 476 (2) explains that acts or actions suspected of being an election crime as referred to in paragraph (1) are declared by Bawaslu, Provincial Bawaslu, Regency / City Bawaslu, and / or Sub-district Panwaslu after coordinating with the Indonesian National Police, and the Attorney General's Office of the Republic of Indonesia in Gakkumdu. Thus, to determine acts or actions that are suspected of being an election crime, it is mandatory to coordinate with the National Police.

In the case of money politics handled by the Bandar Lampung Police Criminal Investigation Unit, after Bawaslu forwarded the alleged money politics crime to the Police investigator at the Bandar Lampung Police Criminal Investigation Unit, the report was not forwarded to the investigation stage. This is because the investigator has not attended special training on the investigation and investigation of election crimes as required by Article 478 (a) of the Election Law, because if it is continued, maladministration will occur. The absence of rules that provide opportunities for Bawaslu members to become investigators together with Police investigators is a problem for Police investigators to conduct investigations professionally.

2. Law Enforcement is Preventive (Non Penal)
   a. Less than optimal cooperation of prevention function units (Satbinmas, Satintelkam, Satsabhara, Bag Public Relations, Bag Ops) with stakeholders (TNI, Information Media and Electronic Media, Kesbanglinmas) in preventing social conflict in the 2019 Election. The condition of cooperation with stakeholders is analyzed through the concept of problem impact-based policing According to Waluyo (2018), problem impact-based policing is policing to deal with various impacts that are not actually part of the police element. However, when they become a problem, the impact will disrupt, threaten and damage productivity. Its handling requires integration (integration) from stakeholders or between functional units), non-penal law enforcement theory (non-penal law enforcement according to Soerjono Soekanto (1986), this non-penal law

enforcement effort focuses more on prevention before crime occurs and is indirectly carried out without using criminal means or criminal law). Based on these concepts and theories, the prevention of social conflict is not the authority of the Police, but because election crimes can trigger social conflict, each prevention function unit can synergize with stakeholders.

b. The personnel were not disciplined in conducting door to door patrols and village visits to the citizens of Bandar Lampung in accordance with Article 11 c (1) and (2) of Perkap 3 of 2015 on Community Policing so that the community was not given the understanding to be able to reject black campaigns and money politics. In addition, it is known that *Bhabinkamtibmas* personnel scattered throughout the villages in the Bandar Lampung area still do not have sensitivity to the development of the situation in their area. Then due to geographical factors and a considerable distance from the Police Station resulting in a low sense of responsibility in conducting mobilization, personnel also still do not have the awareness to be able to join the community so that early detection and mobilization and information gathering are considered still low.
c. Lack of responsibility of personnel in supervising the socialization and campaign of candidates and volunteer teams. This condition can be utilized by candidates to influence the masses to get involved in social conflict.
d. There are still personnel who do not seriously inform the news to counter hoaxes through the websites of Bandar Lampung Police and Serve and Protection Integration System (SPIS), so that the site still does not contain any information that is useful for the community to prevent social conflict. In addition, there is no program to manage media management to prevent the causes of social conflict from developing into conflict. The task of conflict prevention in the 2019 General Election is impossible to achieve by relying on the role of Satbinmas, Satintelkam and Satsabhara alone, considering that the spread of hoaxes carried out through social media and electronic media can trigger conflict. The lack of delegation of the task of preventing conflict in the 2019 elections through social media to the right function has caused the implementation of conflict prevention to be less than optimal.
e. Lack of creativity and motivation from personnel in developing, upgrading and improving the function of the Serve and Protection Integration System (SPIS) so that the application until then was still monotonous and had not been used to prevent social conflicts in the 2019 Election.

Based on the weaknesses above, law enforcement in reducing social conflict triggers in the 2024 elections should be more optimal. The current conditions of hoaxes, hate speech, money politics should have been overcome by understanding the weaknesses of handling social conflict triggers in the 2019 elections.

4. CONCLUSION

Law enforcement by the police to reduce social conflicts in the 2019 elections in Bandar Lampung both from the repressive and preventive sides is not easy to do. In terms of penal law enforcement, it is not supported by competence in accordance with statutory regulations, case titles that are faced due to limited budgets so that it is not optimal in reducing social conflict by prioritizing the provision of criminal sanctions. Law enforcement on the preventive side is also unable to reduce potential conflicts so that they do not develop, considering that cooperation in reducing conflicts is not well established between institutions, community policing (*polmas*) policies that are not running, escorting the socialization of candidates is not carried out optimally, the SPIS function has not been maximized so that hoaxes, hatespeech, and money politics are easily carried out and generate emotions for community groups that feel disturbed.

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CONSUMER PROTECTION FOR LOSSES ARISING FROM THE USE OF AUTO PILOT-BASED TECHNOLOGY IN INDONESIA

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Abstract

This study aims to examine the legal safeguards provided to consumers in Indonesia in relation to losses incurred from the use of autopilot-based technology. The research methodology employed in this study is normative legal research, utilizing a legislative approach and legal material analysis. The findings of this study reveal that autopilot technology or artificial intelligence (AI) can be considered as legal entities, as there is human involvement in regulating and operating the technology. However, consumer protection in the utilization of such technology encounters challenges within the Indonesian legal system. This is primarily due to the requirement of reversing the burden of proof for losses under Law Number 8 of 1999 on Consumer Protection. Consequently, this presents a significant hurdle in achieving consumer protection against the adverse effects of this technology, as there exists an imbalance of knowledge and bargaining power between the producer (AI) and the consumer in substantiating the losses incurred from its use.

Keywords: *Artificial Intelligence, Autopilot Technology, Consumer Protection*

1. INTRODUCTION

The rapid development of technology poses a challenge in various sectors of life, especially in the legal field. One of them is in creating efforts to protect the public from the use of technology. This can be achieved by formulating regulations that create order in society to cope with the rapid development of technology (Adha, L. A. (2020)). One example of the latest technological advancement occurs in the Autopilot technology sector. This technology allows vehicles or other moving machines to rely on computer systems to control steering or specific commands. This situation utilizes machine learning and artificial intelligence support. Autopilot features, in general, have advanced in vehicle technology, such as autopilot cars that can control vehicles automatically based on AI capabilities (Mikelsten et al., 2022). On the other hand, the use of technology in tools or vehicles equipped with Autopilot facilities, as a form of technological sophistication, may still lead to negligence, violations, or accidents. Therefore, by examining the functioning system of technology-driven vehicles, it becomes interesting to discuss aspects of consumer protection regarding regulations in Indonesia in the event of violations or negligence leading to accidents or losses for users of such technology.

Consumer protection is an effort to preserve the dignity and rights of consumers, supported by increased awareness, knowledge, concern, capability, and independence of consumers to protect themselves and foster responsible behavior of businesses (Tampubolon, 2016). Indonesia itself has regulations safeguarding consumer rights outlined in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK). UUPK covers various essential aspects of consumer protection in various fields, including product purchases, service utilization, and consumer interactions with producers or sellers (Saragih & Bagaskara, 2023). Furthermore, the law has detailed

provisions regarding the rights held by consumers. Article 4 states, "consumer rights include: a. The right to comfort, security, and safety in consuming goods and/or services; b. The right to choose goods and/or services and receive those goods and/or services in accordance with the agreed-upon value, conditions, and guarantees; c. The right to accurate, clear, and honest information about the condition and guarantees of goods and/or services; d. The right to express opinions and complaints about the goods and/or services used; e. The right to receive advocacy, protection, and fair dispute resolution efforts for consumer protection; f. The right to receive consumer treatment and education; g. The right to be treated or served fairly and honestly without discrimination; h. The right to receive compensation, reimbursement, and/or replacement if the goods and/or services received do not match the agreement or as they should be; and i. Rights regulated in other legal provisions.

The UUPK also regulates the responsibility of business operators. Stated in Article 19, paragraph (1), it is further explained that "Business operators are responsible for providing compensation for damage, pollution, and/or losses to consumers resulting from the consumption of goods and/or services produced or traded." In paragraph (2), it is elaborated that "Compensation as referred to in paragraph (1) may take the form of a refund or replacement of goods and/or services of the same kind or equivalent value, or healthcare and/or the provision of compensation in accordance with the provisions of applicable laws and regulations." This law has given significance, indicating that in the Indonesian legal system, the use of products, goods, or services is granted legal protection (Susanto et al., 2022).

Considering the legal protection for consumers stipulated in the UUPK, it brings a broader understanding that this regulation also safeguards consumers in the use of products, goods, and services generated by AI technology (Novita & Santoso, 2021). AI technology products, such as autopilot features, fall under the scope of goods and/or services recognized in this regulation. Recognizing that there is a potential harm to consumers caused by autopilot technology features, consumers have the right to demand compensation from the relevant provider or manufacturer to fulfill their obligation in indemnifying the losses. The issue of compensation by business operators to consumers in the UUPK has been addressed in the previous explanation. Furthermore, in the process of fulfilling compensation in Article 19, the subsequent paragraphs elaborate that:

> "(3) Compensation payment shall be made within a period of 7 (seven) days from the transaction date."
>
> "(4) The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence of the existence of culpable elements."
>
> "(5) The provisions as mentioned in paragraph (1) and paragraph (2) do not apply if the business operator can prove that the error in question is the consumer's fault."

The further explanation requires that the accountability process outlined in the UUPK is based on the principle of responsibility for wrongdoing. This fundamental principle of accountability implies that an individual is accountable because they have committed an error that harms others. If consumers claim compensation using the qualification of an unlawful act (*onrechtmatige daad*), the elements of an unlawful act must be fulfilled, and the business operator's error must be proven (Yudha, 2023). This becomes an issue concerning the accountability process for errors committed by AI

autopilot features. The problem arises because the burden of proof is reversed, resulting in a weak position for consumers, especially those who understand that the AI system's creator is the business operator or creator (Yudha, 2023).

If malfunctions occur due to system errors, the business operator or creator is undoubtedly responsible for the losses suffered by consumers, in accordance with Article 19, paragraph (1) of the UUPK. The weakness of this article lies in the burden of proof, as those who understand the AI system are typically the creators or business operators. This indicates a legal loophole in Indonesia's legal system, where there is no detailed regulation addressing consumer protection issues related to the use of autopilot or AI systems. The issue of reversed burden of proof in the UUPK cannot guarantee that the law can serve as a legal instrument to provide protection for consumers using autopilot technology in AI.

This article aims to address two important questions regarding the legal landscape of artificial intelligence (AI) in Indonesian law. Firstly, it explores the legal status of AI within the Indonesian legal framework. Secondly, it examines the legal protection provided to consumers in Indonesia in relation to potential losses caused by advancements in autopilot technology driven by AI. With these questions in mind, the objectives of this article are to uncover the fundamental principles of consumer protection in the changing landscape of autopilot technology. It also aims to analyze the existing consumer protection laws and the legal safeguards available to consumers. Through this exploration, we hope to contribute valuable perspectives to the ongoing discussion on the intersection of law and AI in Indonesia.

2. RESEARCH METHODS

The type of legal research method employed as the fundamental framework for this writing is the normative research method. This method examines the law textually within legislative regulations by analyzing legal principles and the reasoning of human relationships (Purwati, 2020). The approach begins by identifying and thoroughly examining the primary issues, followed by an exploration and analysis using various legal theories that support the case, and subsequently, tracing their connections with the applicable legal regulations. Furthermore, the use of primary, secondary, and tertiary legal sources is essential in this research. The outcomes of the thought process, grounded in the research method and gathered legal sources, are structured, leading to formulated conclusions directly related to the case under investigation.

3. RESULTS AND DISCUSSION

3.1. The Position of Artificial Intelligence (AI) as a Legal Subject in Indonesian Positive Law

Artificial intelligence, known by the English term "Artificial Intelligence" or abbreviated as AI, combines the meanings of "artificial," meaning man-made, and "intelligence," referring to cognitive abilities. AI is created with the goal of being intelligent and clever, capable of performing tasks precisely and more efficiently, similar to human capabilities. This is achieved by simulating functions of the human brain,

including reasoning, thinking, knowledge, language comprehension, decision-making, and problem-solving (Pasaribu & Widjaja, 2022).

By receiving input from humans, AI has the ability to acquire knowledge and through simulated reasoning processes, can use its knowledge to think like humans in solving various problems. Although it cannot experience research, experience, and knowledge like humans, AI can improve its knowledge through the efforts provided by humans (Jaya & Goh, 2021).

Therefore, artificial intelligence capable of legal actions cannot be categorized as a legal object but can be considered a legal subject equivalent to other legal subjects. Legally, one of the legal sources regulating technology, in particular, is Law Number 19 of 2016 (UU 19/2016). UU 19/2016 was enacted with considerations outlined in the preamble of UU 19/2016, emphasizing its design to respond to technological developments and advancements. Although it is believed that UU 19/2016 can address various issues related to technology, the law does not significantly elaborate on the meaning or definition of Artificial Intelligence. According to UU 19/2016, Artificial Intelligence will only be classified as Electronic Information, as explained in "Article 1 Number 1 of UU 19/2016."

In theory, the legal subjects capable of performing legal actions or legal acts, as recognized in Indonesian positive law, are "individuals (*natuurlijke persoon*)" and "legal entities (*rechts persoon*)." According to L. J. van Apeldoorn, specific conditions are required for a legal subject to engage in legal acts, namely, the legal subject must have the capacity to hold rights. He distinguishes the capacity to hold rights based on one's legal capacity in legal acts. For instance, minors and individuals under guardianship are considered legal subjects because they possess rights. However, from a legal perspective, these individuals are deemed legally incapacitated. In this context, the determinant of whether a legal subject is considered capable or not lies within the legal framework itself (Holijah, 2021).

From the explanation above, it can be understood that whether something can be considered a legal subject or not is determined by the applicable law. This also applies to Artificial Intelligence (AI). Like other legal subjects, AI has rights and obligations, and its actions must be regulated by legal norms. Although AI cannot be considered exactly like a human being in its entirety due to the lack of human qualities, AI can be equated with the legal status of a legal entity, which is also recognized as a legal subject according to legal provisions (Baihaiqi, 2022).

3.2. Legal Protection for Consumers for Losses Arising from Autopilot-Based Technology (Artificial Intelligence) in Indonesia

Auto-pilot technology is artificial intelligence or artificial intelligence that enables a vehicle to move without the driver's control. The functioning of auto-pilot technology involves the use of a system that allows the vehicle to move automatically. Auto-pilot technology enables drivers to not have to control the vehicle, allowing the vehicle to move autonomously following a predetermined path.

The emergence of auto-pilot technology in Indonesia poses new challenges. In the context of consumer protection, businesses have a responsibility to "ensure the quality of goods and/or services produced and/or traded in accordance with the prevailing standards of quality for goods and/or services" (Article 7 letter d of Law Number 8 of 1999 concerning Consumer Protection) (Geovanie & Dana, 2021). However, obstacles arise

because there are no provisions governing quality standards for vehicles with auto-pilot technology. Consequently, Article 7 letter d of the Consumer Protection Law becomes irrelevant and unattainable. Consumer rights are also affected because businesses cannot fulfill their obligations related to the right to comfort, security, and safety in consuming goods and/or services (Article 4 letter a of Law Number 8 of 1999 concerning Consumer Protection).

The legal challenges in consumer protection in Indonesia become increasingly complex when it comes to proving losses caused by auto-pilot technology. This issue becomes more intricate because, in the Consumer Protection Law, the burden of proof is placed on the consumer, yet consumers often lack the competence to provide such evidence. Article 28 of the Consumer Protection Law establishes a reverse burden of proof, resulting in a weak bargaining position for consumers since those who understand the AI system are typically the business operators or creators. If malfunctions occur due to errors in the system, the business operator or creator is undoubtedly responsible for the losses suffered by consumers, in accordance with Article 19, paragraph (1) of the Consumer Protection Law. The weakness of this article lies in the proof process because those who understand the AI system are usually the creators or business operators.

Reverse burden of proof is a legal concept recognized in the Consumer Protection Law in Indonesia. However, its understanding and implementation become increasingly significant when dealing with cases of losses caused by auto-pilot technology. Reverse burden of proof, which is supposed to provide extra protection for consumers, can itself become a challenge. According to this system, the burden of proof is not solely on the consumer but also on the business operator. This means that the party providing goods or services must prove that they have complied with quality standards and have implemented adequate preventive measures (Hutagalung et al., 2021).

However, the implementation of reverse burden of proof can pose several challenges. One of the main challenges is the competence gap between consumers and technology companies. Auto-pilot technology is often complex, and consumers may not have sufficient technical understanding to prove losses or technological failures. The success of reverse burden of proof also relies on transparency and the availability of information from business operators. Consumers must have access to adequate information to demonstrate the existence of losses or defects in auto-pilot technology.

4. CONCLUSION

The reverse burden of proof in Indonesia's Consumer Protection Law provides additional protection for consumers in cases of harm caused by auto-pilot technology. Despite its positive intent, its implementation faces challenges, particularly in addressing the competency gap between consumers and technology companies. The significance of transparency and the availability of information on the part of service providers is a crucial factor in the success of reverse burden of proof. Therefore, additional measures are needed to ensure consumers have access to sufficient information and can effectively exercise their rights. Continuous evaluation of the legal framework is also essential to keep it relevant and effective in light of ongoing technological advancements.

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FULFILLMENT OF RESTITUTION RIGHTS TO VICTIMS OF TRAFFICKING OFFENSES

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Abstract

Crime is a significant issue in Indonesia, with human trafficking being a major concern. The crime is based on Article 28, paragraph (2) of the Republic of Indonesia Constitution of 1945, which states that human rights are inalienable. The original regulation for the crime was in Article 297, which outlined the punishment for trafficking women and men who are not yet adults. However, the current rules do not provide clear protection for victims, and offenders do not face commensurate penalties. The Criminal Code provides compensation through a judge's decree, but implementation is challenging due to limitations in determining compensation and the lack of specialized legal protection for victims. This study uses normative legal research to analyze Indonesia's legal protection and compensation for victims of human trafficking, utilizing current legal materials and written works. The Criminal Code and PTPPO Law provide limited protection for victims of human trafficking, but they lack comprehensive restitution. Indonesia only approves two restitution requests, demonstrating the fundamental right to recompense. The process is lengthy and lacks evidence of expenditure, leading to uncertainty in court decisions.

Keywords: *Human Trafficking, Restitution, Victim.*

1. INTRODUCTION

Crime is one of the most disturbing issues for the surrounding community and must be addressed quickly and appropriately. Criminal acts can be stated to be unlawful if they are committed due to violating what is controlled in the Law or rules that the Government has set, and the offenders of these criminal acts can face punishments as regulated therein.

Human trafficking is a crime that has a detrimental impact on the victims. Regarding this criminal offense, it has a legal foundation based on Article 28, paragraph (2) of the Republic of Indonesia Constitution of 1945, which states:

"*The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, and the right not to be prosecuted based on relevant law are all inalienable human rights".*

The original regulation regarding the crime, prior to its abolition and replacement by Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons (from now on referred to as the PTPPO Law), is in Article 297, with the formulation of a crime in the form of: "Trafficking women and men who are not yet adults is punishable by imprisonment for a maximum of four years".

According to the article's interpretation, human trafficking done by offenders is a violation of human rights. Then, it is controlled in Article 555-Article 570 of the RKUHP, which analyzes the scope of the Trafficking in Persons Act more widely by looking at the evolution of the technique used to deceive victims. Similarly, Article 324 of the Criminal Code states that anybody who operates a slave trade or performs a slave trade at his or her own expense or at the expense of others shall be punished. Based on the debate in the article, it can be inferred that the illegal act of trafficking in persons includes not only

trafficking women as enslaved people or sex workers but also trafficking kids to be exploited as beggars and so on.

In his presentation, the director of the anti-trafficking task force stated that vulnerable groups in trafficking, notably women and children, were the biggest victims of trafficking. According to data from the Indonesian National Police, between 2020 and 2022, there were 509 trafficking instances. The bulk of the 213 cases included labor exploitation, 205 involved sexual exploitation, 31 involved employment that was not in conformity with the planned task, and five involved newborns who were purchased and sold. According to the data, adult women were the most common victims, accounting for 418 persons in total, plus 218 girls. There were 115 adults and three boys among the male casualties.

Concerning the substance of the legislation, the issue is that present rules do not offer clarity to victims of trafficking crimes, but they do govern the perpetrators of these crimes. Similarly, criminology emerges before victimology, which appears only a few years later. Based on current facts, offenders of human trafficking crimes do not face commensurate penalties.

Although the Criminal Code includes aspects of victim protection in the form of providing compensation through a judge's decree in imposing a conditional crime or as a substitute for the principal crime, this provision is not without obstacles in its implementation, namely: (1). A judge cannot determine compensation as a separate penalty in addition to the primary offense but only as a "special condition" for the execution or execution of the principal crime imposed on the convict. (2). Only if the court imposes a maximum sentence of one year or jail can exceptional requirements in the form of compensation be determined. (3). According to the Criminal Code, the specific requirements in the form of compensation are purely facultative, not mandatory.

With numerous implementation challenges, the provision of restitution is still regarded as a legal protection that is merely a provision contained in Indonesia's favorable legislation. However, the form of protection is far from successful in its execution for victims. Based on existing rules in Indonesia on human trafficking, legal protection in the form of compensation for victims is still insufficient to be executed in line with victims' expectations.

For example, the Criminal Procedure Code only provides legal protection to victims through compensation through case consolidation and does not govern alternative types of legal protection. The lack of specialized legal protection for victims of crime, particularly victims of human trafficking, has resulted in unfairness because public prosecutors representing victims sometimes only prosecute or sentence criminals to comparatively short penalties.

Based on the explanation of the problem's background above, the formulation of the problem in this study is the form of legal protection for victims of trafficking crimes, how to implement restitution for victims of trafficking crimes, and the obstacles to restitution under trafficking law.

2. RESEARCH METHODS

This study is a normative legal research employing a literature review, i.e., legal research that uses the law to establish a norm system. The search for resources is based on current legal materials such as laws and regulations, as well as written works such as

books or other articles found on websites relevant to the subject of this study. This normative legal study is being utilized to understand better the type of legal protection for victims of human trafficking and the execution of compensation for victims of human trafficking in Indonesia (Baihaiqi, 2022).

3. RESULTS AND DISCUSSION

3.1. Legal Protection for Victims of Trafficking in Persons

The goal of the law is to provide justice, convenience, and legal clarity. It also, of course, delivers legal justice to victims of crimes. The necessity for legal protection for crime victims is a national as well as a worldwide problem.

So far, the suffering experienced by victims of crime has only been used as an instrument for determining verdicts and criminal sentences for the perpetrator, even though the suffering experienced by criminal perpetrators is unrelated to the suffering experienced by victims of crime; instead, victims will experience more suffering than they have previously experienced. In terms of psychology, victims of crime will often experience stress and depression as a result of what they have witnessed. Victims will also frequently isolate themselves from their surroundings, which can be exacerbated by victims who distance themselves from their own families. Victims will also frequently miss out on opportunities to participate in social, moral, and spiritual changes. As a result, victims require legal protection for the atrocities they are subjected to.

The legal protection afforded to victims of criminal activities is mainly governed by Law Number 13 of 2006 and Law Number 31 of 2014 on the Protection of Witnesses and Victims. Several legal professionals have proposed theories of legal protection in addition to legislation and regulations.

Legal protection can be divided into two, namely:

a. Preventive Legal Protection
   The government protects to prevent infractions before they occur. This is included in laws and regulations to avoid violations and to provide signs or constraints in carrying out a responsibility.
b. Repressive legal protection
   Repressive legal protection is the ultimate line of defense for victims, consisting of punishments such as fines, jail, and other penalties imposed if a disagreement has arisen or the perpetrator has committed a violation. The victim gains peace of mind due to the punishment meted out to the criminal.

The differentiated protection is legal protection in each component that offers completeness. Preventive legal protection is a type of protection that is the foundation for law enforcers to safeguard victims of criminal activities, as well as creating legal agreements with penalties as a form of prevention so that prospective victims of trafficking crimes are not brought up. Meanwhile, victims are supplied with oppressive legal protection by enforcing punishments specified in existing laws, such as imprisonment, fines, and compensation offered to victims by criminals .

Victim protection might be abstract (indirect) or tangible (direct) protection. Abstract protection is a type of protection that can only be felt emotionally, such as the happiness that comes from obtaining what the victim desires. In contrast, concrete protection is a type of protection that can be enjoyed physically, such as material and non-

material giving. Material donations might be restitution, recompense, or exemption from living costs or schooling. Immaterial protection might take the shape of liberty from dangers or news that lowers human dignity.

The compensation granted to the person who experienced the loss is proportionate to the harm caused. The distinction between compensation and restitution is that compensation arises from the victim's request and is paid by the community or is a form of community or state responsibility (the responsibility of society). In contrast, restitution is more criminal, arising from a criminal court decision and paid by the convicted person or is a form of convict responsibility. As previously said, providing compensation to victims of trafficking crimes may not only give them peace of mind but also reduce the pain that victims experience as a result of the perpetrator's acts because restitution is a crime adjudicated by a judge in a trial.

Protection of victims of criminal acts, as a form of human rights protection that has been inherent in everyone since the beginning, is expected to protect every citizen of society, with the implementation of preventive and repressive legal protection, where the state makes the form of protection based on human rights.

The relationship between victims and criminal justice is a legal system in which any citizen who believes his or her rights have been violated or harmed by a criminal act can seek justice. Regarding the regulation of rights and provisions regarding victims, several existing laws have begun to provide them; however, applying and implementing them requires a process that is not only carried out in the same direction but also with various supports, smoothing the process of legal protection in criminal justice requires seriousness from the parties, namely:

a. Victims
   Victims and all citizens must be aware of their rights and the processes for achieving such rights. Socialization by parties involved in the victim protection process is one of the efforts that may be made.
b. Witness and Victim Protection Agency (LPSK)
   The LPSK is an entity charged and allowed to defend additional rights of witnesses and/or victims, such as those outlined in Article 1 point 6 of Government Regulation Number 44 of 2008.
c. Law Enforcement
   Law enforcement officers have a crucial role in ensuring the safety of all community members, and each officer plays a unique function. Police Investigators, Public Prosecutors, Attorney Generals, Prosecutors, Judges, and Courts are all essential players in criminal justice, and it is anticipated that the parties would assist the newspaper in obtaining its rights.
d. Community
   The community has a responsibility to play honestly and openly monitor the fulfillment of rights and legal protection for victims of trafficking crimes, mainly exploited women.

In the abstract, legal protection for victims of crime refers to victim protection under Indonesian positive law. In contrast, legal protection in concreto directly refers to the perpetrator's responsibility to the victim, such as providing compensation (restitution) for the perpetrator's actions. The execution of this protection is still deemed problematic since various laws need to be modified and introduced to execute legal protection for victims

of crime adequately.

Victims of crimes have legal protection in the form of If a judge cannot grant restitution, the victim/family's rights are outlined in civil law Article 1365 of the Civil Code, Book III of the Civil Code, in the section on "Engages born for the sake of the Law," which states: "Every unlawful act, which causes harm to another person, requires the person who by mistake publishes the loss, indemnifying." According to Rosa Agustina in her book Unlawful Acts, four elements must be met in order for an act to be classified as unlawful:

a. In violation of the perpetrator's legal responsibilities;
b. In violation of others' subjective rights;
c. In violation of decency; and
d. In violation of provisions, thoroughness, and prudence.

It is mentioned above regarding unlawful acts based on Civil Law to assist victims of criminal acts who want to make other efforts to obtain assistance regarding rights not granted by the Criminal Law because the Civil Law also regulates the right to restitution for victims so that it can be filed through civil channels.

3.2. Implementation of Restitution for Victims of Human Trafficking

Regulations concerning victim restitution contained in several favorable Indonesian laws have been regulated in several laws and regulations, namely the Criminal Code, Criminal Procedure Code, Law Number 13 of 2006 jo, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, Government Regulation Number 7 of 2018 concerning the Granting of Compensation, Restitution, and Assistance to Victim Witnesses, and the PTPPO Law, and there are still several regulations.

Regulations concerning victim restitution contained in several favorable Indonesian laws have been regulated in several laws and regulations, namely the Criminal Code, Criminal Procedure Code, Law Number 13 of 2006 jo, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, Government Regulation Number 7 of 2018 concerning the Granting of Compensation, Restitution, and Assistance to Victim Witnesses, and the PTPPO Law, and there are still several regulations.

This rule is inextricably linked to Herbert Packer and Muladi's criminal law philosophy, which states that criminal law concerns involve banned activities or crimes (offense), persons who perform prohibited acts and have characteristics of guilt, and criminal threats (punishment).

According to the doctrine advanced by Herbert Packer and Muladi, the scope of criminal law is three (three) things and does not mention the victims who arise from prohibited acts; basically, the victims who arise as a result of the crime are the parties who have the most significant losses, but for the regulation is still not considered, so that the provision of restitution for victims is not contained in the Criminal Code. The Criminal Code corresponds to the neoclassical school of thought, which recognizes, among other things, the creation of mitigating circumstances for offenders of physical, environmental, and urgent crimes.

The provisions of the Criminal Procedure Code are employed in exercising reparation rights under the Criminal Code. In the Criminal Procedure Code, the method for providing compensation can be done in two ways: (1). After the criminal matter is resolved, file a civil complaint. (2) Combine the application for compensation with the

subject matter.

According to Article 7 of Law Number 31 of 2014 about Amendments to Law Number 13 of 2006 About the Protection of Witnesses and Victims, victims have the right to:

(1). Through the LPSK, victims have the right to file an application with the court in the form of:
   a. the right to compensation in circumstances of grave human rights breaches;
   b. the right to reparation or compensation in cases when the perpetrator of the criminal act is held accountable.

(2). The court will make compensation and restitution decisions.

(3). Government Regulations will govern further issues concerning compensation and restitution.

A thing that makes the judge grant the victim's restitution claim can be seen from the process of filing the claim, whether from the investigation stage by the police to the continuing stage, namely the demand for restitution in the judge process can see whether the restitution can be granted or not with solid evidence. If the judge denies the reparation claim, the evidence offered was insufficient.

The process of submitting restitution may not be carried out from the beginning or at the stage of a case complaint for legal proceedings, so the procedure is not by existing rules, lack of knowledge that the victim/family has about the victim's right to restitution, if the victim submits a claim for restitution and follows all procedures.

a. Public Prosecutor
   Implement the Restitution provision of the court judgment by providing a copy of the court decision to the LPSK no later than 7 (seven) days after receipt of the copy of the court decision.

b. LPSK
   Notify the victim, their family or legal representatives, and the offenders of criminal actions and/or third parties no later than 7 (seven) days after receiving a copy of the court ruling. The following is stated in Article 32, paragraph (1) of PP Number 7 of 2018 About the Granting of Compensation, Restitution, and Assistance to Victim Witnesses:
   "The perpetrator of the criminal act and/or a third party must carry out the decision or court resolution mentioned within 30 (thirty) days of receiving a copy of the court decision or determination".

Claims for restitution in the judicial process are complex even though they are backed by specific legislation on human trafficking; nevertheless, this does not ensure that victims will be granted restitution claims through their legal representation or the Public Prosecutor.

Then, in terms of providing restitution to victims if it is related to forms of trafficking, it does not affect the judge's ability to determine the size or size of compensation received by victims, whether from victims of migrant workers, child labor, child trafficking through adoption, marriage and order brides, or organ implantation, because the losses suffered by each victim have their amounts, as evidenced by evidence in the form of a memorandum of expenditure.

3.3. Obstacles to The Implementation of Restitution Under the Trafficking Law

The implementation of reparation rights for victims of trafficking has been slow. It requires more attention from the government, so victims in this growing number of instances are not receiving what they should. According to the case established to investigate human trafficking in Indonesia, the resolution of cases is based on the Articles in the PTPPO Law by protecting victims, in addition to punishment for criminals, and also by satisfying the rights of victims.

According to Articles 48-50 of the PTPPO Law, which protects the rights of victims of human trafficking in the form of compensation, there are several legal flaws, including:

a. The mechanism for submitting restitution is implemented since the victim reports the case to the local State Police of the Republic of Indonesia and is handled by investigators in conjunction with the handling of criminal acts committed, according to the explanation of Article 48 paragraph (1) of the PTPPO Law. The public prosecutor advised the victim of her right to seek reparation. Although the Public Prosecutor is authorized to apply for restitution, the implementation mechanism has not been regulated by laws and regulations, such as how to determine the size of the restitution money submitted, whether it is permissible if the public prosecutor has submitted it, and whether victims can apply for restitution themselves. The provisions of the Article controlling the restitution mechanism are only found in the explanatory Article rather than in the text of the Article. This Article should be contained in the Article's substance rather than as an explanation. Consequently, officers, prosecutors, and judges can quickly comprehend and apply the requirements of this Article.

b. According to Article 48, paragraph (5), reparation can be placed first in the court where the matter is determined. This indicates that sections in the PTPPO Law do not support the spirit of the Law's guarantee of victim protection, notably clauses involving voluntary reparation detention. At the same time, the Article's explanation specifies that restitution in the form of money is held in court in line with rules and regulations. This provision is analogous to dealing with civil matters in consignment. From the inquiry stage, the time of possession of reparation money is carried out. The term "may" in the Article indicates no phrase "mandatory" for reparation to be placed in court first. Ideally, the term should be replaced with required. The definition of firmness is that the instructions of the Law must be followed without exception by everyone.

c. According to Article 50, paragraph (4) of the PTPPO Law, the culprit faces substitution imprisonment for up to one year if the offender cannot make reparation. The substitute criminal legislation is suitable, but the substitute detention penalty of one year is deemed too mild. This clause should be updated based on the victim's financial losses. This is aimed to discourage the perpetrator's predisposition to prefer incarceration to having to make restitution because the jail term is perceived milder. It is conceivable that the restitution levied to the culprit is exceedingly high, in which case dependents automatically become void.

d. The PTPPO Law does not specify the prosecutor's participation amount or the prosecutor-victim connection's nature. Furthermore, the prosecutor's authority as the executor of the restitution decision is not expressly regulated because Article 50 paragraph (3) only gives the prosecutor the authority to confiscate the perpetrator's property after an order from the Chief Justice if the perpetrator fails to pay restitution.

The PTPPO Law does not provide a time limit for filing reparations. In contrast, in certain nations with restitution schemes, the country determines the time limit for submitting reparation. In the Netherlands, for example, the period for filing reparation with the police is three (three) years from the date of the offense. Unlike in other nations, such as the United Kingdom, police reports are filed as soon as feasible after the crime occurs, and applications are filed as soon as possible after the offense occurs. Colombia provides 1 (one) year from the date of the offense and can be applied for 1 (one) to 2 (two) years from the date of the crime. The Philippines, like Australia, must first report to the police; the submission in the Philippines is 6 (six) months from the time the victim incurred loss or harm, but the submission in Australia is 2 (two) to 3 (three) years after the crime happened.

4. CONCLUSION

Based on the preceding discussion, it is clear that the regulation regarding human trafficking is indeed contained in the Criminal Code, which only discusses the general understanding, which is deemed insufficient to provide comprehensive protection for victims, and the creation and passage of the PTPPO Law in order to protect abstracto for victims by looking at the evolution of the mode carried out. However, the law does not address restitution as a whole, which can create harm to victims and uncertainty for courts when deciding whether or not to award reparation claims with no foundation in positive law.

The state protects the form of restitution for victims in Concreto. However, the protection still needs improvement in its application, which is inversely proportionate to current restrictions. According to the information provided, just two (two) restitution requests have been approved in Indonesia. This demonstrates the victim's fundamental right to recompense cannot be exercised.

It is challenging to execute the right to reparation for victims. Most victims do not want to follow a procedure that takes an extended period, where taking care of the process takes three months. There are still unresolved issues in establishing the amount for restitution rights since the applicable statute does not control movable/immovable property confiscated for assured fulfillment/payment of restitution. The request for restitution is not supported by evidence of expenditure, and this is bolstered by a substitute sentence of 1 (one) year imprisonment for perpetrators who cannot provide restitution because the convicted person is a field perpetrator rather than the main perpetrator or corporation.

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CONTRADICTIONS IN THE LEGAL STATUS OF STATE-OWNED ENTERPRISE (BUMN) SUBSIDIARIES IN THE PARENT HOLDING COMPANY

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Abstract

The creation of a cluster-based holding company in a State-Owned Enterprise (BUMN) related to core business fields requires careful attention and precise implementation. One must be cautious because issues regarding legal procedures and the legal status of BUMN can still arise. This writing discusses the legal relationship between BUMN Persero and its subsidiaries based on the theory and doctrine of limited liability companies, as well as the contradictory legal status of BUMN subsidiaries within the parent holding company. The research method used in this writing is normative legal research. The findings demonstrate that the piercing the corporate veil doctrine can be employed in terms of evidence, where control of subsidiaries must be exercised by the holding company. Legal responsibility is applicable not only to companies, but also to shareholders as specified in Article 3 paragraph (2) of Law Number 40 of 2007 on Limited Liability Companies (UUPT). Once BUMNs become subsidiaries in a holding company, their status as BUMNs, whether BUMN Perum or Persero, changes since their shares are now sourced from the holding company instead of the state. Therefore, BUMNs that become subsidiaries no longer possess legal standing or status as BUMNs, and the state assumes authority over aspects of control concerning BUMNs that have become subsidiaries of the holding company. This authority is indirectly held by the state via the parent/holding company, which represents the government in terms of share ownership, with the majority of shares originating from subsidiaries.

Keywords: *Contradiction, Legal Status, Subsidiaries, Parent Holding Company*

1. INTRODUCTION

Business currently plays a crucial role in driving the country's economy. The existence of State-Owned Enterprises (BUMN) serves as a foundation for Indonesia's economy based on Article 33 paragraph (2) of the 1945 Constitution. BUMN is a Limited Liability Company (PT) established under Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Referring to Article 9 of Law Number 19 of 2003 concerning State-Owned Enterprises (UU BUMN), BUMN can take the form of Public Corporations (Perum) and Limited Liability Companies (Persero). It is clear that there is a significant difference between Perum and Persero, especially in terms of share ownership.

Perum itself is a State-Owned Enterprise with 100% of its shares owned by the government or state, while Persero is a State-Owned Enterprise with 51% of its shares owned by the government or state. If BUMN significantly differs in its establishment from regular Limited Liability Companies (PT), the establishment of PT is limited to the articles of incorporation, provided it is registered and meets the requirements set by the Ministry of Law and Human Rights. The legal basis for Perum is outlined in Government Regulations (PP), where the legal status of the BUMN entity comes into effect after the issuance of such PP (Natun, 2018).

To maintain its status, position, and existence in today's competitive corporate landscape, it is crucial for State-Owned Enterprises (BUMN) as a public institution to conduct its activities within the framework of establishing its subsidiaries (Guntik & Yustiawan, 2022). As stipulated in Article 1 paragraph (2) of Minister of State-Owned Enterprises Regulation No. 3 of 2012 regarding Guidelines for the Appointment of Directors and Managers of State-Owned Enterprise Subsidiaries.

A subsidiary is a legal entity in the form of a limited liability company, the majority of whose shares are controlled by the State-Owned Enterprise (BUMN). It is evident that BUMN possesses a unique characteristic as an economic entity partially or wholly owned by the state through direct capital injection originating from state-owned private assets. State-Owned Enterprise companies are subject to regulations and principles applicable to regular Limited Liability Companies (PT), as specified in Article 1 paragraph (1) and Article 11 of the Company Law, in conjunction with Article 3 of the State-Owned Enterprises Law.

SOE subsidiaries are not regulated in the SOE Law. As stated in Article 1 paragraph (2) of PER-04/MBU/06/2020 concerning Amendments to the Regulation of the Minister of Public Service. Guidelines for the appointment of directors and auditors of SOE subsidiaries starting April 2020 are regulated in detail in PER-03/MBU/2012 (Waskito, 2016). If the members of the PT are not personally responsible for contracts or agreements made on behalf of the company or the company and are not responsible for the loss or risk of the company, then based on the rules of UUPT, the responsibility of the PT becomes inevitable in relation to holding companies and subsidiaries. It is interesting when a PT becomes an SOE. If a SOE implements a capital policy in the form of equity participation in a PT, then the legal status of the PT which is a subsidiary of the SOE raises the question of whether it can be classified as a PT (Limited Company).

The issue of the legal status of subsidiaries of SOEs, whether SOEs or not, has often been controversial and has attracted debate since the enactment of the SOE Law. This is because the SOEs that invest in these subsidiaries all or most of the shares are government/state assets. Disputes arise when legal issues arise. Even in the judicial realm, the opinions of judges on this issue still vary or there is a dissenting opinion. A concrete example can be seen in Supreme Court Decision No. 21 P/HUM/2017. The decision of BUMN is a subsidiary of BUMN holding company has changed to PT as a continuation of state/government ownership. The holding company gets special rights provisions to ensure that the state continues to exercise control or supervision over BUMN subsidiaries through BUMN holding companies.

Legal disputes over subsidiaries of SOEs have not been clearly resolved and are still subject to multiple interpretations. Permeneg BUMN No. 03/MBU/2012 states that subsidiaries of SOEs are PTs whose shares are mostly owned by SOEs, or PTs whose management and supervision are carried out by SOEs. However, the existence of SOE subsidiaries is still under discussion as stated in Constitutional Court Decision No. 01/HPU-PRES/XVII/2019. In the minutes of the decision, the legal status of SOE subsidiaries is the same as SOE subsidiaries, because the SOE subsidiaries can be classified as one of the partners working with SOEs, namely as one of the SOE subsidiaries supporting SOEs. With other partners and/or companies that are described as different/separate from other parties.

The interesting thing about the two decisions above is that, considering the Supreme Court Decision Number 21P/2017, the Supreme Court stated "the form of BUMN which

is a subsidiary of BUMN is still BUMN". In this case, the Court has a different opinion and view by stating that although a subsidiary of a BUMN cannot be designated as a BUMN, it still has the status of a subsidiary of a BUMN (usually in the form of a PT) because it was established by investing shares owned by the BUMN. On the other hand, the establishment of an SOE holding may cause problems and criticism among some circles. Some SOEs are well managed, but others still apply traditional management practices. Ideally, SOEs should not be merged. Basically, SOEs have good and healthy performance and SOEs that have poor performance. SOEs that become subsidiaries should not be a burden to the holding company (Widjayanti, 2011).

The implementation of the establishment of a cluster-based holding company (BUMN) related to the same core business field requires great care and its implementation must be carried out carefully. This is because legal issues may still arise in carrying out the ownership procedures, one of which is regarding the legal position or status of SOEs. This problem may be caused by the definition of SOEs stipulated in the SOE Law (Anggraeny, 2016).

Referring to Article 1 paragraph (1) of the BUMN Law, where only BUMNs that are part of a holding company and have met the criteria to be included as BUMNs. What is meant by "direct capital participation from individual state assets". Where the BUMN Law indirectly states that BUMNs are part of a subsidiary of a holding company that does not meet the criteria for BUMN. On the other hand, there are also potential problems related to the government's authority and supervision (if the government) of SOEs as subsidiaries in the share ownership program (Utomo, 2014).

Based on the explanation in the background above, the issues faced are: What is the legal relationship between State-Owned Enterprise (BUMN) Persero and its subsidiaries based on the theories and doctrines of limited liability company law? And what contradictions exist in the legal status of subsidiaries of State-Owned Enterprises (BUMN) within the parent holding company?

2. RESEARCH METHODS

2.1. Type of Research

The type of research is normative juridical, which studies legal rules, legal principles, and legal doctrines in order to answer legal questions that arise and seek solutions or solutions. This is the essence of legal perspective. In contrast to descriptive scientific research that investigates whether existing facts are caused by certain factors, legal research always investigates new arguments, theories, or concepts as problem solving that can reveal the exact truth and convey facts as data (Mahmud, 2016).

This type of research is conducted through the analysis of legal norms (existing regulations) so that it is normative research. In addition, this research is also an educational research, as it systematically discusses and analyzes the relationship between parts of the text, takes into account obstacles, and estimates future development opportunities.

The topic of this research is legal concepts, norms, principles and doctrines. Therefore, this research contains norms used in decision-making. In addition, it is also a literature study, meaning further investigation and analysis of secondary materials obtained from the research.

2.2. Research Specifications

The research specification is descriptive and the data is analyzed qualitatively in the form of interviews and words (descriptive text) obtained from official documents such as laws and regulations.

2.3. Data Collection Types and Techniques

The type of data is secondary data. The data sources are:

Primary legal materials are binding legal materials and laws that are normative in nature and have authority from public sources such as legal regulations, official records, or protocols in determining legal regulations (Mahmud, 2016). The provisions of the regulations or regulations are: 1) 1945 Constitution. 2) Law No. 40 of 2007 concerning PT. 3) Law No. 19 of 2003 concerning SOEs. 4) Government Regulation No. 72 of 2016 concerning Amendments to Government Regulation No. 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies. 5) Supreme Court Decision No. 21 P/HUM/2017 6) Constitutional Court Decision No. 01/PHPU-PRES/XVII/2019.

Secondary legal materials are legal materials that are not legal / official documents, namely legal documents that contain comments on primary legal sources. In this case, it will be published in the form of books, articles, and legal journals with the reference topic of writing the problem, namely the conflict of legal status of BUMN subsidiaries in the holding company parent.

Tertiary legal materials are legal materials whose purpose is to gain an understanding of the point of view of the object under study, such as legal dictionaries and others.

The data collection technique is to collect data on the problem at hand. The collection of legal materials is a literature study. In other words, collecting materials by reading and researching secondary data (library study), including library references and primary, secondary and tertiary legal materials. Interviews play a role in clarifying the secondary data obtained and searching for primary data.

2.4. Research Approach

Basically, this research uses an approach to obtain accurate, reliable and credible information on information from various sources and information related to legal issues faced and solutions sought (Mahmud, 2016). The approach uses a conceptual and legal approach. The approach is a legal approach and a conceptual approach. Based on the problem of various legal provisions that apply in relation to the problem studied from a regulatory point of view. In this research, of course, when developing concepts, it must stay away from legal regulations and principles developed in legal science.

2.5. Data Analysis Technique

After being analyzed qualitatively, data was collected during the research, which is descriptive in nature, and presented descriptively in an illustrative manner. The results of this research are able to distinguish the legal status of SOE subsidiaries in holding companies.

3. RESULTS AND DISCUSSION

3.1. Legal Relationship Between SOE Persero and its Subsidiaries Based on the Theory and Doctrine of Limited Liability Company Law

The Piercing the Corporate Veil principle prevents fraud arising from unlawful acts on behalf of the company, whether caused by third-party transactions or from misleading acts. This principle has been adopted in the UUPT for the purpose of providing some recognition of the application of the principle of piercing the veil as a legal provision that applies and is binding for companies in Indonesia. UUPT can be used as a legal umbrella for the business world. Its use as a legal umbrella depends on the legal regulation itself regarding the level, scope, and binding nature contained therein. This situation is included in the concept of justice and legality. The concepts of legality and justice are applied in the UUPT as an implementation of the principle of peeling the corporate veil in several companies in Indonesia.

As is known, the UUPT and its proposed amendments do not specifically regulate the provisions regarding holding companies and their subsidiaries, so the UUPT still treats subsidiaries as separate legal entities from the holding company. However, there are exceptions in relation to the principle of separation of legal entities as stated in Article 3 paragraph (1) of the Company Law. Based on Article 3 paragraph (2) of the Company Law, the rules of Article 3 paragraph (1) of the Company Law do not apply, namely:

1. Not fulfilling the company's requirements to become a legal entity.
2. The existence of direct or indirect impacts on shareholders.
3. The existence of impacts when shareholders are involved in illegal or unlawful activities.
4. There is an impact on shareholders who directly or indirectly use the company's assets illegally and the company is insufficient to pay the company's debts.

The formulation of this article is based on the principle of piercing the corporate veil, meaning that if the conditions in Article 3 paragraph (2) of the Company Law are fulfilled, then not only the company but also its shareholders can be asked to bear the legal burden. Furthermore, this practice has shown that in the case of a holding company and its subsidiaries, the principle of piercing the corporate veil even when the subsidiary only acts as an instrument or instruments for the holding company to pursue the personal interests of its shareholders.

Other factors that cause the implementation of the Piercing the Corporate Veil principle in holding companies are:

1. The holding company and subsidiaries have the same management team.
2. The holding company uses the company's assets for personal interests.
3. No election of directors and members is allowed in the GMS.
4. The holding company owns all or most of the shares of the subsidiary.
5. The day-to-day operations of the holding company are not separate from the subsidiary.
6. The subsidiary does not conduct any business activity in the absence of work from the holding company or only conducts business with the holding company.
7. The holding company provides large loans to subsidiaries.
8. The existence of very small capital for the subsidiary compared to its business.

9. The holding company pays the salaries of its subsidiaries' employees and bears other expenses of its subsidiaries.
10. The subsidiary acts in the interest of the holding company.
11. More attention is paid to the interests of the holding company, especially for the management of the subsidiary, than the interests of the subsidiary.

Therefore, the principle of piercing the corporate veil principle that shifts the responsibility of the corporation to its shareholders and directors. The principle of piercing the corporate veil by the shareholders, then in this case the shareholders are responsible for the company's creditors, considering that the actions in this case have harmed the company's assets and made it impossible to fulfill obligations to creditors.

Referring to the theory of the principle of piercing the corporate veil which combines the economic and legal interests of the parent company, because the principle of piercing the corporate veil in Indonesia is still relatively new, it is still necessary to develop its application in the Indonesian positive legal system. The founders of the legal entity theory recognized that corporate legal acts are essentially carried out by humans in the legal entity, and that these people can be misused to do evil when they are still legal entities. As a subject, it depends on the authority to act.

The principle of piercing the corporate veil relates to the exception to the limited liability of shareholders. This principle encourages shareholders to account for their personal assets if the company suffers losses and is unable to pay its debts, such as: 1. There is fraud, 2. There is injustice, 3. There is an element of oppression, 4. Illegal, 5. Controlling shareholders is not in place, 6. Alter ego of major shareholders.

Piercing the Corporate Veil theory is very useful for legal interests, especially for holding companies with legal acts of their subsidiaries. Because when there is legal entanglement, of course this will cause legal consequences.

It is clear that the legal structure between a holding company and its subsidiaries in Indonesia is based on the principle of Piercing the Corporate Veil, which involves removing the veil between shareholders or between the holding company and its subsidiaries, resulting in the loss or blur of independence. This is because the Piercing the Corporate Veil principle demonstrates that a Limited Liability Company (PT) within the corporate group is inseparable from the desires of the shareholders occupying that position, namely the holding company. In this context, this principle serves as an exception to the distinct situation between the PT as a subsidiary and the holding company as the shareholder, thereby eliminating the principle of limited liability for shareholders. By eliminating the principle of piercing the corporate veil and the holding company's involvement in managing the corporate group as a shareholder, the barriers to limited liability are automatically removed (Harahap, 2017).

3.2. Contradictions in the Legal Status of State-Owned Enterprise (SOE) Subsidiaries in the Parent Holding Company

The legal status of a subsidiary is a legal entity which in this case is separate from the holding company. The subsidiary has independent rights and obligations as a legal entity, and its management is subject to the authority of each legal entity in accordance with the regulations in the Company Law and the company's articles of association, and the directors of the subsidiary must manage the subsidiary's business honestly and responsibly in carrying out the management of the company. The directors of the

subsidiary will act as supervisors, and the GMS of the subsidiary will be the manager of the management and assets carried out by the directors of the subsidiary, and is fully responsible for the management and management decisions of the company.

Shareholders of subsidiaries have indirect control over the company's operations, in accordance with the policies of the board of directors. The role of shareholders is basically only to control the company's policies through the GMS mechanism, and is not responsible for the implementation of the functions of the board of directors in general. The participation of the holding company in the subsidiary's business as a shareholder is basically facilitated by placing trusted people as directors and officers of the subsidiary, so that the holding company can directly "direct" the course of the subsidiary's business. Through such business relationships and networks and contractual subsidiaries, where this is legally not in accordance with the company's articles of association.

As explained at the outset, a holding company can be likened to a public company, and by law the principle of limited liability applies therein. The principle of limited liability and piercing of the corporate veil is a form of exception. The principle of separate liability is regulated in Article 3 paragraph (1) of the PT Law.

The legal status of BUMN as a subsidiary can be seen from the aspect of the authority of the Minister of BUMN in relation to the appointment of directors of BUMN subsidiaries and committee members. The provisions of Article 14 paragraph (1) of the BUMN Law, in this case the Minister responsible for BUMN and acts as GMS, where this is done when all shares in the Persero are owned by the government / state and acts as a shareholder of the Persero GMS.

The company has limited liability when all or none of its shares are owned by the government/state. Of course, the Minister acts as the GMS, and the Minister has the authority to appoint and dismiss directors and appoint and dismiss members based on the rules of Article 15 and Article 27 of the BUMN Law. However, this power is not found in GR 44/2005 combined with GR 72/2016. Article 2 paragraph (2) of Permenneg BUMN 3/2012 states that: "The appointment of members of the board of directors and members of committees in subsidiaries is carried out by the subsidiary's GMS. The regulation regulates the appointment of directors and members of committees of SOE subsidiaries which is carried out by the subsidiary's GMS and not by the Minister of SOE. In this perception, it is clear that the legal status of SOE subsidiaries is not SOEs.

Based on the latest information, PTPN will undertake corporate actions by reducing its 14 subsidiary companies to 3 subsidiaries (SugarCo, PalmCo, and SupportingCo). Specifically, the consolidation results in 35 sugar factories, which were previously managed by PTPN II, VII, IX, X, XI, XII, and PTPN XIV. Starting from the year 2021, PTPN III has established the quasi-holding company SugarCo. SugarCo's mission is to revitalize the domestic sugar industry and increase domestic sugar production. Furthermore, PTPN V, VI, and XIII will merge to form PTPN IV, creating the quasi-holding company PalmCo. PalmCo aims to enhance productivity and performance in oil palm plantations and their processed products beyond the set targets. Additionally, a subsidiary holding company, SupportingCo, will be formed, incorporating PTPN II, VII, VIII, IX, X, XI, XII, and XIV, which will be merged into PTPN I. SupportingCo itself will become a leading plantation asset management company in Indonesia (Uly, 2023).

This reduction or simplification does not mean that employees will be laid off. In fact, in this case you can absorb more because the business can continue to grow.

Improved performance can be achieved through more efficient and effective operations related to corporate governance aspects. Efficient efforts will certainly be a better and more efficient performance of PTPN.

4. CONCLUSION

The principle of Piercing the Corporate Veil applies to the state that has a holding company of BUMN, in which case if the state performs actions / actions that harm the company directly, and the use of the company's assets becomes unauthorized, directly or indirectly resulting in the company's assets are insufficient to pay the company's debts. In other words, the principle of Piercing the Corporate Veil can be implemented and proven by the existence of control or controlling of subsidiaries carried out by the holding company as long as it concerns the actions covered by the principle of Piercing the Corporate Veil. If the conditions stipulated in Article 3 paragraph (2) UUPT have been fulfilled, then legal responsibility can not only be charged to the company but also to shareholders. The conditions that fulfill the element of piercing the corporate veil are the conditions as stipulated in Article 3 paragraph (2) of the Company Law. It is important to know that the application of the principle of Piercing the Corporate Veil can also be done even though the subsidiary only functions as a vehicle or tool for the holding company to pursue the personal interests of its shareholders.

When a State-Owned Enterprises (BUMN) becomes a subsidiary of a holding company, in this case, its position or legal status no longer remains that of a State-Owned Enterprise, whether in the form of a Public Corporation (Perum) or a Limited Liability Company (Persero). This is because the shares of the State-Owned Enterprise, which has become a subsidiary, no longer have legal status as a State-Owned Enterprise. Even though the State-Owned Enterprise, which has become a subsidiary, has lost its legal status as a State-Owned Enterprise, the government still retains ultimate authority over its supervision as it is a subsidiary of the holding company. This authority is indirectly held by the government through the State-Owned Enterprise, and the State-Owned Enterprise itself serves as the holding company, representing the government with a majority of shares in its subsidiaries.

There is an urgent need for refinement or amendment to the Company Law, especially regarding the clarity of regulations governing the relationship between the holding company and its subsidiaries within a holding company structure. This refinement should facilitate judges in making decisions, considering that the principles of justice emphasize swiftness, simplicity, and cost-effectiveness. The broadening of the concept of piercing the corporate veil should also be accompanied by strict sanctions for executives of the parent company proven guilty of actions detrimental to the subsidiary for the benefit of the parent company, causing potential harm to both the subsidiary and third parties. There should be clarity regarding the legal status of the independence of subsidiaries and the holding company's responsibility for its subsidiaries under the holding company structure. This is essential given the absence of specific regulations explicitly addressing these issues. It is hoped that such clarity can elucidate the aspects of the holding company's responsibility for the actions and legal affairs of its subsidiaries.

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LEGAL OVERVIEW OF COMPENSATION FOR LAND IN THE DEVELOPMENT OF PT. PLN'S SUTET TOWER NETWORK IN THE TAKTAKAN DISTRICT OF SERANG CITY, BANTEN PROVINCE

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Abstract

The implementation of land compensation to the community for the construction of the Extra High Voltage Transmission Network (SUTET) by PLN falls under the Ministry of Energy and Mineral Resources (ESDM). The Ministry of Energy and Mineral Resources released Ministerial Regulation (Permen) ESDM number 13 of 2021 regarding Free Space and Minimum Clearance Distance for Electric Power Transmission Network and Compensation for Land, Buildings, and/or Plants Located in the Free Space of Electric Power Transmission Network. This regulation was enacted by Minister of ESDM Arifin Tasrif on June 17, 2021, and took effect upon its promulgation on June 17, 2021. With this regulation, the rights of the community whose land is traversed by the transmission will receive compensation. However, the regulation does not comprehensively address the impact of the development and compensation for the transmission lines of 500 kV or 150 kV, leading to injustice and legal uncertainty. PLN's responsibility for the land value of the community affected by the construction of the SUTET transmission network is limited. In providing compensation to the community whose land is traversed by the Extra High Voltage Transmission Line (SUTET), PT PLN follows existing regulations. PLN refers to Ministerial Regulation No. 01.P/47/MPE/1992 on SUTET Free Space and SUTET for Electricity Distribution Article 5 paragraph (3) concerning land for establishing support structures, including buildings and plants on that land, which must be cleared and compensated.

Keywords: *Land, PLN, SUTET*

1. INTRODUCTION

Land is an essential need for humans throughout their lives, from birth to death. In a cosmological context, land is not just a place of residence for humans but also their origin and ultimate destination. The presence of land has wide-ranging impacts, including in economic, social, cultural, and political aspects (Limbong, 2017).

By definition, land can be described as the "earth's surface or the layer of earth located above it" (Tim Penyusun Kamus Pusat Bahasa, 2018). However, in the legal framework governed by Law Number 5 of 1960 Regarding Basic Agrarian Principles (Basic Agrarian Law), land holds a deeper meaning. This law grants rights and authority to individuals to manage and utilize land, including elements such as the earth's body, water, and the space above it.

The concept of land in a legal context refers to the surface of the earth itself. However, land rights pertain to an individual's rights over a specific portion of this earth's surface, with clear limitations in two dimensions: length and width. The concept of land use and utilization regulated by the Basic Agrarian Law is not solely confined to the earth's surface. This is because humans require a portion of the earth's layer beneath it, as well as access to water and the space above it. Therefore, land rights encompass not only

the earth's surface but also other elements, including the earth's body beneath it, water, and the space above it (Sahnan, 2018).

However, it is important to remember that at the highest level, all land rights remain under the control and authority of the State as a representation of the power of the entire population. This is regulated in accordance with Article 33, paragraph (3) of the Constitution of the Republic of Indonesia of 1945. In this context, the authority of the State includes:

1. Regulating and implementing the allocation, utilization, supply, and maintenance of the earth, water, and airspace.
2. Determining and regulating legal relations between individuals and the earth, water, and airspace.
3. Determining and regulating legal relations between individuals and legal actions involving the earth, water, and airspace.

With the increasing population growth of the Republic of Indonesia by 1.36 million people per year, it will certainly impact the rising living needs of the society, including basic necessities, additional requirements, and luxury needs. The government of the Republic of Indonesia strives to support the fulfillment of these needs while also boosting the economy and welfare of the population through infrastructure development. This includes sectors such as transportation, housing, irrigation, telecommunications, and electricity. The economic growth of the community must be balanced with the availability of electricity in sufficient quantity and quality, consistently distributed through the 500 kV Extra High Voltage Transmission Network (SUTET) or the 150 kV Transmission Network (SUTT).

The development of the SUTET 500 kV or SUTT 150 kV network is a significant land acquisition initiative for public interest as regulated by Law No. 12 of 2012; Government Regulation No. 71 of 2021, and the Agrarian Law. The progress of the development process that has occurred in Indonesia not only influences land prices in various locations, causing a surge, but also creates an environment where land has become a significant economic commodity with a very high value. Consequently, there is a possibility that future developments will face challenges in managing the upward trajectory of land prices.

The development of infrastructure in these sectors requires land acquisition as essential infrastructure for related projects. It is important to note that in the process of land acquisition, existing rights to the land must be respected. Thus, land becomes not only a basic human need but also a crucial component in the development of infrastructure aimed at fulfilling the needs of society, including electrical infrastructure (IESR, 2010).

The construction of development projects that continue to grow in Indonesia not only forces land prices in various places to always increase, but has also created an atmosphere where land has become an economic commodity that has a very high value, so it is likely that further development will have difficulty in managing the rate of development of land prices.

Electric power is a form of electrical energy that is generated, transmitted, and distributed for various purposes, except the use of electricity in communication, electronics, or science. Electricity, on the other hand, covers all aspects related to the production and use of electricity as well as all efforts that support the provision of

electricity itself. Efforts in the provision of electricity include generation, transmission, distribution, and sale of electricity to consumers.

The President of the Republic of Indonesia has announced the Development of Electricity Infrastructure as one of the National Strategic Projects through Presidential Regulation Number 3 of 2016 which aims to expedite the implementation of strategic projects at the national level. Furthermore, PT PLN (Persero), a State-Owned Enterprise (SOE), is given a special task by the Government to carry out the strategic project in accordance with the provisions stipulated in Presidential Regulation Number 4 of 2016 which refers to the acceleration of electricity infrastructure development.

This special assignment is recorded in a power company plan covering a 10-year period, namely the 2018-2027 Electricity Supply Business Plan (RUPTL). This RUPTL has been approved by the Ministry of Energy and Mineral Resources. In this RUPTL, there are details about the plan to develop electricity infrastructure throughout the Republic of Indonesia. This includes power plants, high voltage networks, medium voltage networks, low voltage networks, and substations. All of this planning is based on projected electrical energy needs in accordance with industrial development and population growth.

The RUPTL also includes targets for achieving electricity infrastructure output each year, including power generation capacity (in megawatts), transmission networks to deliver high-voltage/extra-high-voltage electricity (35 to 500 kilovolts), high-voltage/extra-high-voltage substations, and distribution networks (under 35 kilovolts). The success of PT PLN (Persero) in achieving its power supply target depends not only on building power generation capacity, but also on its ability to develop the capacity of the transmission network, which acts as a link between the power plant and the distribution system, and provides electrical energy to consumers' homes at low voltage.

However, the expansion of the network is a natural outcome of advancements in electricity technology, serving as an essential component in enhancing the quality and sustainability of the electricity distribution system. Despite its crucial importance and expected benefits, there are individuals who exhibit opposition towards this progress. Concerns frequently arise regarding the potential health hazards associated with the radiation emitted from the 500 kV SUTET or 150 kV SUTET network, as well as allegations of discriminatory practices, infringement of rights, and grievances from the community towards the government. These issues hold significant significance and should be carefully taken into account.

The topic of land is perpetually captivating due to its multifaceted implications on people's lives and sustenance. A pressing predicament encountered in both developed and developing nations is the diminishing availability of agricultural land, which serves as a crucial catalyst for progress. This issue is particularly pronounced in countries where communities heavily depend on agriculture for their livelihoods and consequently hampers their agricultural pursuits (Soemardjono, 2008).

Land is a social asset, as a means of binding social unity among communities for life and livelihood. Meanwhile, as development capital, land is a crucial factor in economic growth as well as a material for valuation and an object of speculation. Constraints on land acquisition for the public interest in Indonesia refer to the provisions of Article 18 of the UUPA:

"In the public interest, including the interests of the nation and state as well as the common interests of the people, land rights may be revoked, by providing adequate

compensation and in accordance with the method regulated by Law No. 20 of 1961 concerning the revocation of land rights."

The article explicitly asserts that in the event of individuals losing their land rights, even if it is for the greater good of the public, they must receive appropriate compensation. Nevertheless, if those who have been deprived of their rights are not provided with compensation, it cannot be considered as a mere land acquisition, but rather as a violation of their land rights by the party in need (Satjipto Rahardjo, 2006).

According to Hudson (2001), the demand for infrastructure increases as people's expectations for improved living standards and public services rise. This trend is consistent with urban development and population growth, which also contribute to the increased need for infrastructure. Quelilroz, in a study conducted by the World Bank (Hudson, 2001), highlights the close relationship between economic development and infrastructure development, particularly in the case of roads. Additionally, the development of electrical energy infrastructure, such as the 500 kV SUTT or 150 kV SUTT transmission, plays a crucial role in supporting urban development and meeting the growing demand for a better quality of life.

In terms of land acquisition, the legal treatment differs depending on whether the land is directly or indirectly used. Directly used land requires payment of compensation, while land that is not directly used is compensated in a different form. The determination of compensation amount takes into consideration various factors, including Base Price Value, Market Price Value, and NJOP. On the other hand, indirectly used land is not acquired and does not receive compensation, but compensation is provided due to its being affected by the 500 kV SUTT or 150 kV SUTT transmission. This aligns with the regulations set forth in Minister of Energy and Mineral Resources Regulation No. 12 of 2021. The compensation for land, buildings, and plants affected by the transmission is based on their economic value. Any disagreement with this approach is perceived by the community as an act of injustice.

The construction of PLN towers faces numerous challenges that hinder the land acquisition process. Limited information possessed by the involved parties often impedes the alignment process. Additionally, difficulties in identifying the objects affected by the transmission pose a recurring problem when assessing compensation payments. However, the availability of informative land plots related to the issue can be addressed through collaborative efforts among the parties involved in providing data.

The map facilitates the coordination between the parties seeking land and the community, which acts as the provider of land, in order to streamline the process of acquiring land. Apart from the aforementioned intersectoral challenges, opposition from residents also emerges due to disputes over the compensation price for land acquisition, disagreements regarding the release of only a portion of the community's land instead of the entire plot, and a decline in the value of land, which are the prevailing issues encountered during the construction of this tower.

2. RESEARCH METHODS

The normative research methodology employed entails interpreting the law based on its written form, such as legislation, or as a compilation of norms and rules that govern human behavior in a reasonable manner (Amiruddin & Asikin, 2019). This analytical

approach places emphasis on utilizing secondary data sources or relevant literature to address the research problem at hand. Normative legal analysis involves examining the legal norms outlined in regulations or laws pertaining to the research subject. This approach serves as a normative framework that begins with broad premises and leads to specific conclusions. Its primary aim is to generate fresh insights within both theoretical and practical realms (Marzuki, 2016).

3. RESULTS AND DISCUSSION

Throughout history, from the time of Sokrates to the era of François Gény, Natural Law theories have consistently upheld the principle of justice as the pinnacle of legal systems (Friedrich, 2004). These theories place great emphasis on the pursuit of justice, recognizing its significance in establishing a fair and equitable society. Within the realm of Natural Law theories, various perspectives on justice and the construction of a just society have emerged, encompassing notions of rights, freedoms, opportunities for power, income, and prosperity. Notable examples of these theories include Aristotle's exploration of justice in his renowned work "Nicomachean Ethics," John Rawls' comprehensive theory of social justice presented in his influential book "A Theory of Justice," and Hans Kelsen's profound analysis of law and justice in his seminal work "General Theory of Law and State."

Aristotle's perspectives on justice are expounded upon in his notable works, namely Nicomachean Ethics, Politics, and Rhetoric. Notably, the Nicomachean Ethics extensively delves into the subject of justice. In accordance with Aristotle's philosophy of law, justice is regarded as the fundamental pillar of his legal philosophy, as "law can only be established in relation to justice." (Van Apeldoorn, 1996). Essentially, this conception of justice entails a harmonization of equal rights rather than absolute equality.

Aristotle discerned equal rights based on proportional rights. The notion of equal rights perceives human beings as a collective entity or an identical vessel. It can be comprehended that all individuals or every citizen, in the eyes of the law, are deemed equal. Conversely, proportional equality gauges the rights of each individual in accordance with their abilities and accomplishments.

Moreover, Aristotle's perspective on justice encompasses two distinct categories: distributive justice and commutative justice. Distributive justice entails allocating resources and rewards to individuals based on their accomplishments. On the other hand, commutative justice involves treating all individuals equally without considering their achievements, particularly in the context of exchanging goods and services (Faiz, 2009).

Several concepts of justice proposed by American philosopher in the late 20th century, John Rawls, are included in his works "A Theory of Justice", "Political Liberalism", and "The Law of Peoples". These works have had a significant influence on the discourse of justice values (Friedrich, 2004).

John Rawls, widely recognized as the pioneer of "liberal-egalitarian of social justice," posits that justice is the primary virtue of the existence of social institutions. However, the virtue for the entire society cannot be realized or questioned for justice by every individual who has experienced it. Particularly, the marginalized members of society who are in search of justice (Friedrich, 2004).

Rawls' perspective implies the existence of a situation that is equal and equitable for every individual within society. There are no differences in status, position, or having

a higher position between one another, allowing each party to reach a fair agreement. This is Rawls' view as a "baseline position" that relies on the harmonization of reflective balance, based on the principles of rationality, freedom, and equality, in order to govern the basic structure of society.

While John Rawls translated the concept of "veil of ignorance" as a condition in which every individual is confronted with the complete lack of knowledge about themselves, including their social position and specific doctrines, thus blinding them to the existence of any consensus or evolving understanding of justice. Through this concept, Rawls encourages society to develop principles of fairness by considering his theory known as "Justice as Fairness" (Rawls, 2020).

According to John Rawls' perspective on the concept of the "original position," there are primary principles of justice, including the principle of equality, which states that every individual is equal in universal freedom, rights, and compatibility, as well as inequality in social and economic needs among individuals. The first principle is expressed as the principle of equal freedom, encompassing freedom of religion, political liberty, freedom of speech and expression, while the second principle is expressed as the difference principle, which emphasizes equal opportunity principle.

Furthermore, John Rawls reinforces his view on justice that a differentiated justice development program for society should consider two principles of justice. Firstly, it ensures equal rights and opportunities to basic freedoms to the extent that they are equally available to every individual. Secondly, it is capable of reorganizing the social and economic inequalities that occur in order to provide fair advantages (Kelsen, 2008).

According to Utrecht, legal certainty encompasses two meanings. Firstly, the existence of general rules enables individuals to know what actions are permissible and prohibited. Secondly, it provides legal security for individuals and flexibility for the government, as these general rules allow individuals to understand what can be done or carried out by the State towards them (Utrecht, 1989).

Legal certainty is achieved when a regulation is made and enacted precisely, as it governs in a clear manner. Clear in the sense that it does not create doubt and is logical. Clear in the sense that it establishes a system of norms that are consistent with other norms, thus avoiding conflicts or normative contradictions. Legal certainty refers to the application of law that is clear, stable, consistent, and consequential, and its implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands, but they factually characterize the law. An uncertain and unjust law is not just a bad law.

Legal certainty is the key to effective law enforcement. With certainty, it is expected that all law enforcement agencies can carry out their duties effectively, ensuring that the goals of the state are achieved concretely. Certainty refers to a definite state, provision, or order. Law, in essence, must be certain and just. It should serve as a guide for behavior and be just because it should support a reasonable order. It is only through fairness and certainty that the law can fulfill its function. Legal certainty is a question that can only be answered normatively, not sociologically.

Legal certainty reflects the certainty of the law. The concept of a rule of law state itself originates from the fundamental concept of legal sovereignty, which states that the highest authority in a state is the law. Therefore, all state institutions, regardless of their names, including citizens, must submit, obey, and uphold the law without exception. This

means that the state, as the creator and enforcer of the law, must abide by the law in all its activities. In this sense, the law carries the state. Based on the understanding that the law derives from the legal consciousness of the people, the law possesses authority that is not related to any individual (impersonal).

The criminal justice system is a network of courts that utilizes substantive criminal law, formal criminal law, and criminal enforcement law. However, if it becomes too formal, relying solely on the interest of legal certainty, it can result in injustice.

The Rule of Law is the Rule of Law, and as a concrete consequence in the administration of the State, especially the Government, it must be based on the applicable Positive Law. This becomes the main requirement in the decision-making process of the State to ensure that the State's administrators do not act arbitrarily.

Aristotle formulated the Rule of Law, in which citizens are involved in the state's deliberations (ecclesia), with the aim of establishing a state that is governed by law and guarantees justice to its citizens. Justice needs to be taught, and the State must set an example in obedience to the law, especially in the administration of the State.

The essence of the concept of the rule of law in a country is derived from the fundamental concept of legal sovereignty, which essentially states that the highest authority in a country is the law. Therefore, all state institutions, regardless of their name, including citizens, must submit to and uphold the law without exception. As the creator and enforcer of the law, the state must adhere to the law in all its activities. In this sense, the law guides the state. Based on the understanding that the law originates from the legal consciousness of the people, the law possesses an authority that is not related to personal differences.

Friedrich Julius Stahl added Kant's concept of the rule of law in his effort to explain the concept of the rule of law (Stahl, 1847). It encompasses key elements, including the recognition and protection of human rights. In order to protect these human rights, the governance of the state must be based on the principle of separation of powers or the trias politica. In carrying out its duties, the government must be based on existing rules or laws, and if it violates the provisions, there is an administrative court that will resolve it (Hutabarat et al., 2022).

4. CONCLUSION

The compensation for land affected by the construction of electricity networks by PLN, as outlined in Ministerial Regulation ESDM number 13 of 2021, is based on the provisions set by the Ministry of Energy and Mineral Resources. This regulation, which was enacted by Minister Arifin Tasrif on June 17, 2021, ensures that individuals whose land is traversed by transmission lines will receive appropriate compensation.

However, this regulation does not comprehensively address the impact of compensation for the development of 500 kV SUTT or 150 kV SUTT transmissions. This lack of clarity may result in unfairness and legal uncertainty.

When it comes to compensating communities for the value of land affected by the construction of electricity networks, PLN follows the guidelines set forth in existing regulations. Specifically, PLN refers to the Regulation of Energy and Mineral Resources Number 01.P/47/MPEL/1992, which stipulates that land, including any buildings or plants located on it, must be released and compensated for the construction of buffer sites for SUTET. In cases where land or buildings were affected by the SUTT/SUTET free

space project, compensation was provided under the Minister of Mining and Energy Decree No. 975 K/47/MPEL/1999, which replaced the previous regulations.

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CHARACTERISTICS OF INDIRECT EVIDENCE TOWARDS PRICE FIXING AGREEMENTS IN THE PERSPECTIVE OF COMPETITION LAW

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Abstract

In the ever-changing landscape of Indonesian business, the pursuit of profits drives actors to engage in intense competition, all regulated by the Business Competition Law. This unique legal field combines both conventional law and economics to address unfair business practices, such as agreements that manipulate prices to deceive consumers. This research focuses on the characteristics of indirect evidence utilized by the Business Competition Supervisory Commission (KPPU) when investigating cases of price-fixing. The goal is to gain a deeper understanding of the legal implications of using indirect evidence within the procedural framework of Business Competition Law in Indonesia. To achieve this, a Normative Research method is employed, utilizing a multi-faceted approach. Through case analysis, statutory examination, conceptual exploration, and comparative study, the research explores patterns, legal frameworks, theoretical concepts, and perspectives from different jurisdictions, all related to the use of indirect evidence in the context of price fixing. The results revealed that Indirect evidence, classified as clue evidence under Perkom No. 1 Of 2019, encompasses communication and economic evidence. When direct evidence is lacking, these components, including documents or electronic information, play a crucial role in proving allegations of price-fixing. The legal implications of indirect evidence in the Indonesian competition law evidentiary system highlight its widespread use in resolving cases. However, there is a legal gap that poses challenges to the admissibility of indirect evidence in court proceedings. This emphasizes the need for legal reforms to effectively accommodate the role of indirect evidence.

Keywords: *Business Competition Law, Price-fixing, Business Competition, Supervisory Commission (KPPU), Indirect Evidence*

1. INTRODUCTION

Business actors as the driving force of the economy in Indonesia will always think of various ways to gain profits in running their business. This is what forms a business competition between business actors in Business Competition Law. Business competition law itself is a field of law that has a different character from other laws and has a unique character. The main difference between business competition law and other laws lies in the combination of the field of conventional law with the economic field. So that business actors in the fulfillment of economic motives, namely seeking profits, carry out activities or acts of unfair business competition. Business actors entering into agreements with other business actors to influence prices that trick consumers is one of the acts of unfair business competition.

The Business Competition Supervisory Commission (KPPU) or hereinafter referred to as the Commission, in carrying out its duties and authority to conduct examinations and investigations into alleged violations of unfair business competition must show evidence of examination as stipulated in the provisions of Article 42 of Law Number 5 Of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

The development in the evidentiary system in competition law is the emergence of the terms direct evidence and indirect evidence (circumstantial evidence). This is related to the principle of per se illegal and rule of reason in conducting economic analysis to make a decision whether the business actor's actions violate Law No. 5 Of 1999 or not. However, in terms of evidence, especially in business competition law, it is difficult to find direct evidence, so the Commission as a supervisory institution that conducts examinations and investigations into alleged violations of unfair business competition often uses indirect evidence in resolving cases.

Business competition law in Indonesia has been regulated in Law Number 5 Of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Business competition is one of the important factors in running the economy of a country where business competition can influence policies related to trade, industry, conducive business climate, certainty and business opportunities, efficiency, public interest, people's welfare and so on. Based on the provisions of Article 2 of Law No. 5 Of 1999 related to the principles in business competition, business actors in Indonesia in carrying out their business activities are based on economic democracy with due regard to the balance between the interests of business actors and the public interest.

As for the business competition market that regulates the issue of price fixing, which is regulated in the provisions of Article 5 paragraph (1) of Law No. 5 Of 1999 which states as follows:

"Business actors are prohibited from entering into agreements with their competing business actors to fix prices for the quality of goods and/or services that must be paid by consumers or customers in the same relevant market."

Business actors who cooperate in price fixing with other business actors have occurred in several cases in Indonesia where the Commission used indirect evidence in its investigation, namely in the case of the Commission's decision with Case Number 24/KPPU-I/2009 which examined alleged violations of Article 4, Article 5 paragraph (1), and Article 11 of Law No.5 of 1999 relating to the Palm Oil Edible Oil Industry in Indonesia, the Commission's decision with Case Number 04/KPPU-I/2016 on alleged violations of Article 5 paragraph (1) of Law No.5 of 1999 relating to the Motorcycle Industry. Of 1999 relating to the Palm Cooking Oil Industry in Indonesia, KPPU's decision with Case Number 04/KPPU-I/2016 concerning alleged violations of Article 5 paragraph (1) of Law No.5 Of 1999 relating to the 110-125 CC Motorcycle Industry in Indonesia, and KPPU's decision with Case Number 15/KPPU- I/2019 concerning alleged violations of Article 5 paragraph (1) and Article 11 of Law No. 5 Of 1999 relating to Domestic Economy Class Passenger Scheduled Commercial Air Transport Services.

Regarding the indirect evidence used by the Commission in proving whether the alleged business actors are proven to have entered into a price fixing agreement, it should be noted that the use of indirect evidence is supported by additional evidence, namely communication evidence and economic evidence. The use of indirect evidence in price fixing and cartel cases in other countries can be seen from. Cases in the United States using indirect evidence related to price fixing agreements such as the case of America Tobacco Co. V. United States, 328, U.S. 781 (1946) which was decided by the Court on June 10, 1946. As well as the High Fructose Corn Syrup case in In Re High Fructose Corn Syrup Antitrust Litigation, 936 F. Supp. 530 (C.D. III. 1996) which was decided by the Court in August 1996. Conducted by Archer Daniels Midland Company (ADM) where the Chicago Court, ADM employees released sounds and videos that sounded conspiracy

meetings conducted by ADM managers regarding price fixing, so that it became one of the indirect evidence used as a basis for the verdict. Therefore, this thesis will discuss in more depth the characteristics of indirect evidence used by the Commission in investigating and resolving price fixing cases in Competition Law in Indonesia and the legal consequences arising from the application of indirect evidence, especially in the theory of evidence applicable in Indonesia.

Based on the previous background description, the problem formulations that will be discussed in are:

a) Characteristics of indirect evidence used by the Commission in examining price fixing cases in Indonesian Competition Law.
b) Legal consequences arising from indirect evidence, especially in the evidentiary system in the procedural law of Business Competition in Indonesia.

2. RESEARCH METHODS

The Normative Research method is utilized in this study to delve into the characteristics of indirect evidence in the context of price fixing within the realm of business competition law. This research approach encompasses various methodologies, including the case approach, statute approach, conceptual approach, and comparative approach.

The case approach involves an in-depth analysis of specific legal cases related to price fixing. By examining these cases, researchers can identify patterns, trends, and commonalities in the use of indirect evidence in proving price fixing allegations.

The statute approach focuses on the examination of relevant laws and regulations pertaining to price fixing. Researchers analyze the language, provisions, and interpretations of these statutes to gain insights into the role of indirect evidence in legal frameworks.

The conceptual approach involves the exploration of theoretical concepts and principles related to indirect evidence and price fixing. Researchers examine existing literature, theories, and frameworks to develop a conceptual understanding of the nature, types, and implications of indirect evidence in the context of business competition law.

The comparative approach involves comparing and contrasting different jurisdictions, legal systems, or approaches to price fixing cases. Researchers analyze how indirect evidence is utilized in various contexts, considering differences in legal frameworks, cultural norms, and enforcement practices.

By employing these research approaches, this study aims to shed light on the characteristics of indirect evidence in relation to price fixing in business competition law. The combination of the case approach, statute approach, conceptual approach, and comparative approach allows for a comprehensive and nuanced understanding of the role and significance of indirect evidence in proving price fixing violations.

3. RESULTS AND DISCUSSION

3.1. Characteristics of Indirect Evidence Used by the Commission in Examining Price Fixing Cases in Indonesian Competition Law

Perkom (Regulation of the competition supervisory commission) No. 4 Of 2011 explains the definition of Price Fixing as a behavior that is highly prohibited in the

development of competition law regulation. This is because price fixing always results in a price that is always far above the price that can be achieved through fair business competition. This high price, of course, causes losses to the public, both directly and indirectly.

Horizontal price fixing in competition law in Indonesia uses a per se illegal legal approach. Horizontal restraint is an unfair business competition practice that results in losses for fellow business actors in the same horizontal degree in the same market. The effect of this horizontal price fixing agreement is that among competing business actors, it can reduce the desire to be innovative and cause market dominance or attempt to limit the entry of new competitors. Business actors and competing business actors may also promise to limit the entry of production so as to cause prices to rise, set the same price and harm the interests of consumers and the economy.

If a business actor and its competitors enter into an agreement knowingly or unknowingly, it will reduce or even eliminate the level of competition between them. That is, in accordance with Article 5 paragraph (1) of Law No. 5 Of 1999, horizontal price-fixing agreements are prohibited regardless of the effect of such agreements on competition. The prohibition of price-fixing agreements aims to prevent the actions of business actors to control the market for certain goods or services, because such price-fixing agreements have a direct effect on the price of the goods or services offered.

In relation to the Cartel in Article 11 of Law No. 5 Of 1999, Article 5 paragraph (1) of Law No. 5 Of 1999 is actually also a regulation on cartels, this is regulated in Perkom (Regulation of the competition supervisory commission) No. 4 Of 2011 which states that the cartel in question is a price cartel, so Article 5 paragraph (1) of Law No. 5 Of 1999 directly regulates the prohibition of price fixing. Meanwhile, the cartel regulated in Article 11 of Law No. 5/1999 is a production and marketing cartel whose ultimate goal is to influence prices. The definition of cartel according to the ELIPS Dictionary of Economic Law is defined as a conspiracy or alliance among several producers of similar products with the intention of controlling their production, prices, and sales, as well as to obtain a monopoly position.

US competition law, regulates cartels and price fixing under Section 1 of the Sherman Act, using the per se illegal approach. A behavior that is determined by the Court to be per se illegal, will be punished without a complicated investigation process. The per se illegal approach in terms of administrative process is straightforward. This is because it allows the Court to decline to conduct a detailed, usually lengthy and costly investigation into the facts of the relevant market.

Thus, the reason why the United States uses the per se illegal method in resolving cartel and price fixing cases is the great benefit of its use, namely its ease and clarity in the administrative process. The per se illegal approach has a broader self-enforcing power than prohibitions that depend on an evaluation of the effects of complex market conditions. Therefore, the use of the per se illegal approach can shorten the process to some extent in the enforcement of an antitrust law. A process that is considered relatively easier and simpler, as it only involves identifying the illegal conduct and proving it. In this case, there is no need to investigate the market situation and characteristics. Therefore, violations based on per se illegality are an easier issue to resolve.

In contrast to Japan, the Anti-Monopoly Law in Japan does not formulate cartels directly but instead regulates restraint of trade with the aim of prohibiting cartels. The resolution of cartel cases in Japan uses the rule of reason approach, where the competition

authority makes an evaluation of the effects of a particular agreement or activity, in order to determine whether the agreement or activity inhibits or supports competition. In addition, the purpose of the rule of reason approach is for the Court to carefully analyze business practices with many considerations to determine whether or not the business conduct is contrary to the antitrust laws.

In relation to Oligopoly in Article 4 of Law No. 5 Of 1999, oligopoly is one of the market structures, where most of the commodities (goods and services) in the market are controlled by a few companies (few sellers). Each company in the market has considerable power to influence market prices and influence the behavior of other companies in the oligopoly market. In an oligopoly market, there is a reaction relationship if a business actor increases the price of its goods, then other business actors will also increase the price of these goods. Vice versa, this condition is called mutually adjusting behavior among business actors, because the homogeneous nature of goods results in the absence of quality competition for traded goods and services.

The prohibition of oligopoly agreements is regulated in Law No. 5 Of 1999 in the provisions of Article 4 paragraph (1) which states, as follows:

"Business actors are prohibited from entering into agreements with other business actors to jointly control the production and or marketing of goods and or services that may result in monopolistic practices and or unfair business competition."

Article 4 paragraph (1) of Law No. 5 Of 1999 is an article that is interpreted using the rule of reason legal approach. Therefore, in determining whether an act can be said to violate Article 4 of Law No. 5 Of 1999, the Commission institution needs to assess and evaluate the consequences of oligopoly agreements made by business actors whether they are inhibiting competition or not.

The relationship between oligopoly and cartels and price fixing is that cartels are part of a collusive oligopoly. That is, there has been a cooperation either intentionally or tacitly without any agreement between business actors (tacit collusion) to jointly fix the price or production of a good which is prohibited in competition law. An example of a case that constitutes a collusive and cartel oligopoly is OPEC (Organization of the Petroleum Exporting Countries), an oligopoly market structure that conducts a world oil price and production cartel. OPEC itself consists of oil-producing countries, such as Saudi Arabia, Iran, Iraq, Kuwait, and other oil-producing countries. The mission of OPEC is to coordinate and unify the petroleum policies of member countries and ensure oil market stability. Therefore, businesses will dare to set a price if the product is an item that is widely considered by consumers.

There are 2 (two) methods of approach in competition law in Indonesia, namely the legal approach and the economic approach. In the legal approach, there is the per se illegal approach and the rule of reason approach. The per se illegal approach is an approach that states that certain agreements or activities are illegal or unlawful, without the need for further proof of the impact caused. Meanwhile, the rule of reason approach is an approach used by the Commission to assess and evaluate the effects of agreements or activities in competition law whether they are inhibiting competition or not.

In general, in Law No. 5 Of 1999, the regulation of the legal approach can be seen from the formulation of articles where the use of the rule of reason approach is usually applied to articles that include the words "which may result" and or "reasonably

suspected". Meanwhile, the application of the per se illegal approach is usually used in articles that state the term "prohibited", without the clause "...which may result in...".

These two approaches certainly have their own advantages and disadvantages. The rule of reason has the advantage of economic analysis to be able to know with certainty the violation that occurred. With the disadvantage that the ability of Judges and other parties authorized to examine cases with the rule of reason approach has a limited understanding in the field of economics so that the inability to understand cases in business competition. Meanwhile, per se illegal has the advantage of a short period of proof because there is no need to look for the consequences of the agreement or business activity in question. In addition, the per se illegal approach has a firmer and broader binding force and does not depend on the evaluation and influence of complex market conditions.

There are differences in the use of the per se illegal and rule of reason approaches. In the per se illegal approach, if there is an agreement or activity that is prohibited in Law No. 5 Of 1999, the first analysis that can be done is to look at the wording of the article in the competition law, for example in business competition violations that use the per se illegal approach is the provision of Article 5 paragraph (1) of Law No. 5 Of 1999 on price fixing, in the article there is a word clause "...prohibited..." which means that it has fulfilled the elements in the use of per se illegal that any price fixing agreement made by a business actor with its competing business actors is an illegal or unlawful act.

Next, it explains the use of the rule of reason approach in competition law in Indonesia. If the commission has suspected a violation of an agreement or activity prohibited in Law No. 5 Of 1999, for example in the provisions of Article 11 on Cartel which contains the clause "...which may result in..." this is a rule of reason approach but an in-depth evaluation of other factors that are regulated more in each article is needed. Therefore, it takes a longer time to determine whether the evaluated factors support or hinder competition. If the agreement or activity is found to hinder competition, it is declared illegal or unlawful.

While in the economic approach method in competition law there are 4 (four) economic approaches that can be understood, as follows:

A. Relevant Market

Basically, the relevant market is regulated in the provisions of Article 1 paragraph 10 of Law No. 5 Of 1999. In the relevant market, there are 2 (two) approaches, namely production market and geographic market, with the following explanation:

According to Perkom (Regulation of the competition supervisory commission) 3 Of 2009 on Guidelines for the Application of Relevant Market, a production market is defined as competing products of a particular product plus. The most important thing in a production market is whether or not there are close substitutes in the market. For example, in the two-wheeled motor vehicle industry, company A raises prices by 7% and consumers continue to buy products from company A, so this condition has reflected a market power in the relevant market, which results in reducing the level of competition and limiting other competing products in the same industry. This is prohibited in competition law because consumers should be able to buy other products as substitute products.

Meanwhile, Perkom (Regulation of the competition supervisory commission) 3 Of 2009 explains that a geographic market is an area where a business actor can increase its prices without attracting new business actors or without losing significant consumers,

who move to other business actors outside the area. For example, in cellular telecommunication services in Indonesia, this service has different coverage areas in each region, so it can lead to competition between cellular telecommunication service business actors throughout Indonesia.

B. Market Power

Market dominance in the Article 19 guidelines made by the Commission is a monopolization behavior, which is the action or effort of a company or group of companies to maintain or increase a monopoly position or dominant position in a relevant market. Competition law does not prohibit a company from having a dominant position, but if the company utilizes its dominant position to reduce or eliminate competitive pressure from competing business actors, the company is declared to have committed abuse of monopoly or dominant position.

This behavior is contrary to the principles of competition law with the impact of limited consumer choice due to fewer competitors, increased prices paid by consumers, and decreased social welfare. An example of a case in this market control violation occurred in container services in case number 29/KPPU-L/2020 related to Goods Loading and Unloading Services at the Yos Sudarso Pier at Ambon Port which violated Article 19 letter a and letter b of Law No. 5 of 1999 where PT PI prevented consumers from using services at its competitors, through the act of sending letters by PT PI to its consumers.

C. Barrier to Entry in the Relevant Market

One of the ways taken by business actors to launch business activities is to impose barriers to entry into the relevant market. By attempting to retain competing businesses with diverse characteristics and preventing entry barriers in the relevant market, is an appropriate action for antitrust enforcement. Concerns about the entry of new competitors who are more innovative and aggressive will force existing businesses to seek useful breakthroughs and the latest innovations in the products and production processes of certain goods and or services.

Barrier to entry is also one of the ways taken by one or several business actors who have controlled the market before, to inhibit other business actors who are considered to have the potential and ability to compete, thus reducing the profits to be achieved. Competing business actors are business actors that have the same/similar business activities in the same market or are in the relevant marketing area. This is what makes barrier to entry an approach to analyze whether there are indications or allegations of violations of Law No.5 of 1999 committed by business actors.

D. Pricing Strategy

Price is one of the benchmarks to observe whether there are allegations of violations of Law No. 5 Of 1999, which serves as a monitoring instrument for potential violations in competition law. The price strategies that are often carried out by business actors, especially in price fixing, are:

First, pricing that can generate maximum profit. Second, pricing strategies for costs and special demand structures on pricing based on holidays, for example on Eid holidays, Christmas holidays, New Year holidays, or state independence days. Another example for special demand such as demographic conditions, for example: the existence of products that are specific to a certain age, for example baby products. In addition, products that are specialized for certain genders, for example: special facial soap for women. There is also special demand in technology, for example in mobile phone

communication products with Apple or Android brands. Third, other anticompetitive pricing, which consists of:

a) Pricing below marginal cost (predatory pricing or selling at a loss);
b) Maximum pricing and minimum pricing; and
c) Providing price discounts.

The evidentiary process in business competition law in Indonesia stipulates that there are 2 (two) means of evidence, namely direct evidence and indirect evidence. Direct evidence is evidence that can explain specifically, clearly, and distinctly the material of the agreement between business actors. OECD (Organization for Economic Cooperation and Development) states that direct evidence is such as documents, attachments included, oral or written agreements related to the participation of business actors.

Perkom (Regulation of the competition supervisory commission) No. 4 Of 2011 explains that what is meant by Direct Evidence or Hardcore Evidence is observable elements and shows the existence of a price-fixing agreement on goods and/or services by competing business actors. Where in the direct evidence there is an agreement and the substance of the agreement. Direct evidence can be in the form of: fax evidence, recordings of telephone conversations, electronic mail, video communications, and other tangible evidence.

Initially, all competition authorities in each country used direct evidence as stipulated in the law. Direct evidence can be in the form of documents (letters) or witness testimony. However, in its development, the use of direct evidence is not easy to use due to difficulties in obtaining direct evidence. In fact, it is almost impossible for competition authorities to obtain direct evidence. There are several reasons why direct evidence is difficult to obtain, among others, because business actors in conducting agreements or actions are no longer in the form of written agreements. However, it is already in the form of an oral agreement. Although, in the form of a written agreement, the evidence is neatly secured so that it cannot be known and at the same time so that it cannot be confiscated by the competition authority.

Characteristics of indirect evidence As in the provisions of Perkom (Regulation of the competition supervisory commission) No. 4 Of 2011 that in the development of price fixing case handling in various parts of the world, evidentiary efforts are also developed not only through direct evidence (hardcore evidence) but also other evidences through indirect evidence. The development of this indirect evidence in some countries has been known and explicitly recognized as evidence that is no longer distinguished from direct evidence.

Frederic Jenny, mentioned that almost all countries that have competition law laws use indirect evidence. This happens because direct evidence is becoming increasingly difficult to find because it has been avoided by business actors. Thus, the use of indirect evidence can develop and be used in accordance with the provisions of competition law in Indonesia.

The discussion of indirect evidence is closely related to the regulation of evidence in procedural law. However, what characterizes indirect evidence is that out of a number of evidence regulated in the legislation, there are no laws that expressly regulate indirect evidence. What is regulated in the law is presumptive evidence or instructions. Presumptive evidence is regulated in the HIR and Civil Code, while clue evidence is regulated in; Article 184 paragraph (1) letter d of Law No. 8 of 1981 concerning Criminal

Procedure or KUHAP, Article 36 paragraph (1) letter e of Law No. 24 of 2003 concerning the Constitutional Court, and Article 42 letter d of Law No. 5 of 1999 concerning Prohibition of Anti-Monopolistic Practices and Unfair Business Competition.

The explanation of indirect evidence in Perkom (Regulation of the competition supervisory commission) No. 4 Of 2011 is that indirect evidence is evidence that does not directly state the existence of a price fixing agreement. Indirect evidence can be used to prove the occurrence of a situation or condition that can be used as an allegation of the enactment of an unwritten agreement. Indirect evidence can be in the form of: Communication Evidence and Economic Evidence. The purpose of economic evidence is an attempt to rule out the possibility of independent price fixing behavior. A form of indirect evidence that is appropriate and consistent with the conditions of competition and collusion at the same time cannot be used as evidence that there has been a violation of Article 5 of Law No.5 Of 1999.

Indirect evidence can be "communications evidence" and "economic evidence". Communication evidence in the OECD report refers to recording calls or conversations between business actors, traveling together at a tourist attraction or participating in a meeting, such as a trade conference. In addition, official documents or reports related to prices, the existence of demand and capacity, evidence of internal documents, or strategies to determine competitors' prices.

One example of the emergence of modern evidence is electronic evidence in the form of electronic information or electronic documents in the provisions of Article 5 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, hereinafter referred to as the ITE Law, which states that "Electronic Information and / or Electronic Documents and / or their printouts are valid legal evidence". With the explanation of the Article which states that the existence of Electronic Information and / or Electronic Documents is binding and recognized as legal evidence to provide legal certainty for the Implementation of Electronic Systems and Electronic Transactions, especially in proof and matters relating to legal acts carried out through Electronic Systems.

So with this it is clear that electronic evidence in the ITE Law is used in trials and is one of the judge's considerations. And with the existence of electronic evidence regulated in the ITE Law, it recognizes communication evidence as valid evidence. Likewise, the use of communication evidence does not only apply to certain procedural laws, but applies to all procedural laws, including in business competition procedural law. This means that the use of communication evidence in business competition cases already has a legal basis.

The next form of indirect evidence is economic evidence. This economic evidence identifies company behavior that shows that the agreement has been reached. This is by identifying in depth the overall industry behavior, elements of the market structure that show that secret price fixing has occurred. Seeing and identifying that there has been parallel price fixing, unreasonably high profits.

This economic evidence is used to determine with certainty the implications of a business actor's actions on fair business competition. In other words, the economic analysis that will be conducted is to ascertain whether an action is considered to hinder competition or encourage competition. By using economic analysis, the absence of written evidence on direct evidence should not be an obstacle in revealing the existence of a price fixing agreement.

Legal comparison with the United States, that in antitrust law in the United States is regulated by several laws, namely the Sherman Act 1890, Clayton Act, and Federal Trade Commission Act.51 The regulation of price fixing in the United States is regulated in Section 1 of the Sherman Act 1890 which states that:

"*Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court."*

When freely translated it is as follows "Any agreement, combination or amalgamation in trust or otherwise, or conspiracy, in restraint of trade between the several states, or with any other state, is from now on declared illegal. Any person who makes a party to any contract engaging in a combination or conspiracy which is thereby declared illegal and is guilty of a felony, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than $100,000,000 if a corporation or if any other person, $1,000,000 or by imprisonment not exceeding ten (10) years, or by both in the discretion of the Court." The trusts contemplated under Section 1 of the Sherman Act are prohibited agreements in the case of larger business combinations intended to restrain trade.

In the United States, agreements regulated in Section 1 of the Sherman Act 1890 are not only prohibited agreements (contracts), but the form of combination or combination and conspiracy is also prohibited. Because written or unwritten agreements between two or more business actors aim to take concerted action. The definition of concerted action is an action that is planned, organized, and agreed upon by the parties together and with the same purpose. The Sherman Act does not expressly state that agreements regarding prices are against the law, what is prohibited is agreements that hinder trade and unfair agreements.

This is different from the regulation of price fixing agreements as stipulated in the provisions of Law No. 5 Of 1999. Competition law in Indonesia has regulated forms of anticompetition and monopoly that are classified in the form of prohibited agreements and activities prohibited by the antitrust law. It specifically explains article-by-article what forms of anti-competition and monopoly are, as well as the regulation of price fixing which has been specifically regulated in Article 5 (1) of Law No. 5 Of 1999 on price fixing.

In addition, in the United States, the formulation of a price fixing agreement in Section 1 of the Sherman Act only mentions the element of the legal subject "any person", but in legal facts, it can be done by both the Company and the Association of Business Actors. This can be seen in the case of Jung vs. Association of American Medical Colleges (AAMC). Competition law in Indonesia has regulated that in the provisions of Article 1 paragraph 5 of Law No. 5 of 1999 that the legal subject that violates is a business actor. Business actors themselves are individuals and/or legal entities, whether in the form of legal entities or not. Business actors as legal subjects enter into price-fixing agreements with their competitors, which are other business actors in the same relevant market.

The antitrust enforcement agency in competition law in the United States is The Federal Trade Commission (FTC) which was established in 1914 under The Federal Trade Act 1914 (FTC ACT 1914). According to the FTC ACT 1914, the FTC is an institution that has the authority to conduct inquiries and investigations and take action against violations of competition law. US law dictates that the FTC can only handle civil violations. The FTC does not have criminal jurisdiction over competition law violations. The antitrust enforcement agency in Indonesia is the KPPU which is an independent institution that has the duty and authority to oversee and implement Law No. 5 of 1999 and is directly responsible to the President of the Republic of Indonesia. KPPU has a law enforcement function in competition law but KPPU is not a judicial institution so it does not have the authority to impose criminal sanctions or civil sanctions. Therefore, in accordance with its authority, KPPU can only impose administrative sanctions on business actors who violate competition law.

Competition law in the United States considers that price fixing is per se illegal and also constitutes horizontal price fixing. The first case that applied the per se illegal approach was United States vs. Trans-Missouri Association. The reason for using the per se illegal approach is because of its ease and clarity in the administrative process, as well as its broader self- enforcing power, and its use shortens the process time in examining an antitrust case. The use of per se illegal in reality can change to rule of reason or vice versa. The reason is to determine whether a company's actions inhibit or encourage business competition. In contrast to the application of per se illegal in Indonesia, which in Law No. 5 Of 1999 has been determined with certainty, but sometimes in a case in one relevant market there can be two or more anticompetitive and monopolistic acts. For example, the Cartel case in the cooking oil industry in KPPU Decision No. 24/KPPU-I/2009 which violated the provisions of Article 4, Article 5, and Article 11 of Law No. 5 Of 1999, namely on oligopoly, price fixing, and cartel where oligopoly and cartel are rules of reason that require in-depth evaluation of whether the actions of business actors can be said to hamper or encourage competition while price fixing is per se illegal.

In addition, the United States is a member of the OECD and has been using indirect evidence for a long time. The rationale behind the use of indirect evidence is that there are limitations to obtaining direct evidence. This is an obstacle in solving problems in antitrust cases in the United States. Such constraints also encourage the use of indirect evidence, as an alternative to the use of indirect evidence "circumstantial evidence can be a valueable tool for competition authorities in cases where direct evidence of collusion is difficult or impossible to obtain."Which translates to circumstantial evidence being a valuable tool for competition authorities in resolving cases of collusion where direct evidence is difficult or impossible to obtain. Although Indonesia is not yet a member country of the OECD, Indonesia has shown its seriousness to join, namely at the meeting of the Minister of Finance (*Menkeu*), Sri Mulyani, has attended the OECD Council Meeting in the city of Paris, France. This is progress, especially in competition law in Indonesia, especially in the application of circumstantial evidence in resolving anticompetitive and monopoly cases.

3.2. Legal Consequences of Indirect Evidence, Especially in the Evidence System in the Law of Business Competition Procedure in Indonesia

The anti-competition and monopoly enforcement agency in Indonesia is the Business Competition Supervisory Commission (KPPU) or the Commission as stipulated in Article 1 point 18 of Law No. 5 Of 1999 which states that the Commission is established to supervise business actors in carrying out their business activities so as not to commit monopoly and/or unfair business competition. The status of the Commission in accordance with the provisions of Article 30 paragraph (2) and paragraph (3) is an independent institution that is independent of the influence and power of the Government and other parties and is directly responsible to the President.

The Commission as an independent institution has enormous powers, including those of the judiciary. These powers include investigation, prosecution, consultation, examining and deciding cases. The Commission in the constitution is a complementary state institution (state auxiliary organ) that has the authority based on Law No.5 Of 1999 to enforce business competition law. So that the Commission has a multi-complex task in overseeing every move, step and practice of unfair business competition carried out by business actors. As well as carrying out duties and authorities in accordance with the provisions of Article 35 and Article 36 of Law No. 5 Of 1999.

The process of proving a violation of Article 5 paragraph (1) of Law No. 5 of 1999 in Perkom (Regulation of the competition supervisory commission) No. 4 of 2011 is that the Commission must fulfill all the elements in Article 5 of Law No. 5 of 1999 on cases that allegedly violate price fixing. After that, categorize whether the case is in the same relevant market, for example in the Case of Domestic Economy Class Passenger Scheduled Commercial Air Transport Services in KPPU Decision Number 15/KPPU-I/2019 which is a violation of Article 5 and Article 11 which are in the same relevant market.

After proving the same market, the next stage is proving the existence of an agreement among business actors suspected of entering into a price-fixing agreement. The Commission must find the agreement made by the business actors, if it can find it, the agreement is a form of direct evidence (direct evidence or hardcore evidence). However, if the Commission cannot find evidence of a direct agreement, the use of indirect evidence (indirect evidence or circumstantial evidence) becomes important when no direct evidence is found stating the existence of an agreement.

The indirect evidence sought is communication evidence and economic evidence. Economic evidence needs to be carried out with economic analyses that act as a tool to infer (inferee) the existence of coordination or agreement between business actors in the market. Evidence from economic analysis is used to conclude whether the conditions in the market are favorable for a successful collusion (prerequisites for successful collusion). If a violation of price fixing is proven, indirect evidence can be used in the form of clue evidence as well as other evidence in Article 42 of Law No.5 Of 1999.

The evidentiary system using indirect evidence as evidence in competition law is sometimes not possible other than using evidence that has been regulated in law when in fact the evidence that can be used to prove a case is not only regulated in law. The Supreme Court in a number of decisions, also stated that clue evidence is not the same as indirect evidence. In the context of evidentiary theory, clues are circumstantial evidence or indirect evidence, which is complementary or accessory evidence. This means that

clues are not independent evidence, but are secondary evidence obtained from primary evidence.

Based on the provisions in Article 57 of Perkom (Regulation of the competition supervisory commission) No.1 Of 2019, the meaning or definition of clues as stated in Article 42 of Law No.5 Of 1999, is not the same as the clues in the Criminal Procedure Code. In Article 57 of Perkom (Regulation of the competition supervisory commission) No.1 Of 2019, the Commission provides an explanation that clues are communication evidence and economic evidence. This is also in line with the classification of indirect evidence as communication evidence and economic evidence adopted by a number of countries that are members of the OECD. In a number of OECD countries there is an agreement to recognize and use indirect evidence, as valid evidence in handling business competition cases.

The indirect evidence system, as previously explained, consists of Communication Evidence and Economic Evidence. An explanation of its forms is as follows:

1. Evidence of electronic communication or information

Udin Silalahi in his opinion states that evidence of communication can be in the following form:

a) Recordings of telephone conversations (but not the content of the conversations) between competing businesses, or records of travel to the same destination or participation in certain meetings such as trade conferences;
b) Other evidence of where business actors communicate include, among others, minutes or records of meetings indicating discussions on price, demand, or capacity utilization such as internal company documents indicating knowledge or understanding of competitors' pricing strategies such as knowledge of future price increases by competitors.
c) Electronic information and communication evidence commonly used by law enforcement such as e-mail , short messages, chats via communication media and social media.

2. Economic evidence

Economic evidence can be classified into 2 (two) forms, as follows:

a) Structural evidence: is a study relating to the level of market concentration, product homogeneity, entry barriers that make it possible to form a cartel, including the presence or absence of a market structure that allows for price fixing agreements. For example: the level of attention to the market, the level of market entry, vertical integration and standardization or equalization of products.
b) Behavioral evidence: studies relating to suspicious bidding patterns and parallel price increases that indicate non-competitive behavior of business actors. This behavioral evidence may include parallel pricing, abnormally high profits, stable market share, history of competition law violations, and market structure.

Economic evidence in Perkom (Regulation of the competition supervisory commission) No. 4 Of 2011 refers to the conditions of competition and collusion, hence the proof by looking at parallel behavior or strategy, which cannot be used as sufficient evidence to prove the existence of a price fixing agreement. What is meant by parallel business conduct is a simple concept in economics that refers to the anti-competitive behavior of individual firms within an industry when they cooperate with each other in

some say - usually to control prices and/or production and thereby make unfair economic profits at the expense of consumers. Freely translated, parallel behavior is a simple concept in economics that refers to the anti-competitive behavior of individual firms within an industry when they cooperate with each other in some way - usually to control prices and/or production and thereby make unfair economic profits at the expense of consumers.

This requires additional analysis (plus factors) that can be used as indirect evidence as described in Perkom (Regulation of the competition supervisory commission) No.4 of 2011, as follows:

1) Pricing Rationality
2) Market Structure Analysis
3) Work Data Analysis
4) Analysis of the Use of Facilitating Devices

However not all of the above plus factor analysis tools must be fulfilled but must be interpreted as a whole and not separately. If the plus factor analysis supports the indirect evidence of the price fixing process, the indirect evidence can become evidence in the form of clues, as referred to in Article 42 of Law No. 5 Of 1999. The best proof is to use direct evidence and indirect evidence together. However, in a condition where direct evidence is difficult to obtain, the use of indirect evidence must be applied carefully. The best use of indirect evidence is to combine communication evidence and economic evidence.

Competition cases that use indirect evidence:

1) Case Number 04/KPPU-I/2016 concerning the 110-125 CC Matik Scooter Type Motorcycle Industry in Indonesia
2) Case Number 15/KPPU-I/2019 Regarding Domestic Economy Class Passenger Scheduled Commercial Air Transportation Services

The legal consequences of indirect evidence used by the Commission in resolving business competition cases in Indonesia are not regulated in the laws and regulations, especially in Law No. 5 Of 1999. This is what causes the existence of indirect evidence in proof in business competition procedural law is often unacceptable on the grounds that indirect evidence has no governing rules or indirect evidence is difficult to accept. The various types of evidence regulated in several laws, such as in civil procedure law, criminal procedure law, and Law No. 5 of 1999 have not covered the development of evidence in business traffic.

Competition law in Indonesia using Law No. 5 of 1999 is still limited and to use evidence other than the system of evidence that has been regulated is still limitative. Seeing the development made by business actors is no longer making agreements in writing, making it difficult to obtain direct evidence of agreements. The Commission's way to be able to create a world of fair business competition is by conducting observations with economic analyses if there are allegations of competition violations, especially against violations of Article 5 paragraph (1) of Law No. 5 Of 1999 concerning price fixing.

The legal effect of the use of indirect evidence is that there is a legal vacuum in regulating the use of indirect evidence in the settlement of competition law cases in

Indonesia. Although in Article 57 of Perkom (Regulation of the competition supervisory commission) No. 1 Of 2019 it has been explained that direct evidence in competition law is economic evidence and communication evidence which are part of indirect evidence, this is not yet a strong basis. The discussion of indirect evidence is also discussed in Perkom (Regulation of the competition supervisory commission) No. 4 of 2011 which explains the additional analysis (plus factors) in economic evidence in analyzing cases of alleged violations of business competition in Indonesia, especially violations of Article 5 paragraph (1) of Law No. 5 of 1999 concerning price fixing. In its decisions, when reading the Commission's decisions, it often uses cases from other countries with the intention of showing that the use of indirect evidence is also used in the same or related cases. For example, Case No. 03/KPPU-I/2002 was the first to use indirect evidence in Indonesia regarding the sale of shares in PT Indomobil Sukses Internasional. To corroborate its evidence the Commission used indirect evidence referring to cartel cases in Brazil in the Steel Cartel case and the Sao Paolo Airlines case, which were used by Brazil's competition enforcement agency, Brazil's Council for Economic Defense (CADE).

The Commission has been aware of the development of circumstantial evidence which has been commonly used in other countries. Indirect evidence has been used for a long time by the United States in resolving competition cases. Likewise, the use of indirect evidence has been commonly used in OECD member countries, therefore the use of indirect evidence itself is important in resolving cases in competition law in Indonesia.

4. CONCLUSION

The characteristics of indirect evidence in business competition law in Indonesia are used when in a business competition case, especially a case on price fixing, there is no evidence of a written agreement (direct evidence) made by business actors to reach an agreement to influence prices. Indirect evidence is regulated as clue evidence according to Article 57 of Perkom (Regulation of the competition supervisory commission) No. 1 Of 2019 which consists of communication evidence and economic evidence. Communication evidence in its development can be in the form of documents or electronic information while economic evidence itself can be further classified through behavioral evidence and structural evidence as well as with additional analysis (plus factors).

The legal effects of indirect evidence in the evidentiary system in competition law in Indonesia by seeing that through business competition cases many use indirect evidence in resolving cases. However, the regulation of indirect evidence has not facilitated developments in the evidentiary system in competition law. There is a legal vacuum that can cause indirect evidence to not be used in court cases.

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LEGAL VALIDITY OF NOTARIAL DEEDS SIGNED WITH ELECTRONIC SIGNATURE (Comparative Study between Indonesian Law and Australian Law)

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Abstract

Currently, the profession of Notary holds significant importance in the economic landscape of Indonesia. However, there is a lack of legislation that enables Notaries to execute their duties by creating electronically signable deeds. In Indonesia, an authentic deed prepared by a Notary necessitates physical presence and cannot be executed electronically. This research seeks to identify the legal validity of notarial deeds signed with Electronic Signatures, particularly in Indonesia and New South Wales, Australia. The study aims to understand the regulatory frameworks, examine the nature of Electronic Signatures, and evaluate the implications for contract law in both jurisdictions. Utilizing a Normative Research approach, this study employs the Statute, Conceptual, and Comparative Approaches. Primary legal materials include relevant Indonesian and Australian laws, while secondary and tertiary legal materials provide additional context. A literature review involving books, e-journals, and internet sources contributes to the analysis. The research reveals a gap in explicit regulations governing electronically signed deeds in both Australia and Indonesia. Despite practical application in public contracts, especially in business collaborations, concerns about vulnerability to forgery persist. The absence of clear regulations necessitates a physical appearance before a notary for authentic deeds. The study concludes that regulatory models addressing protection, implementation, and supervision of electronically signed deeds should be explored collaboratively by the Government and the House of Representatives in Indonesia.

Keywords: *Electronic Signature, Legal Power, Validity of Notarial Deed*

1. INTRODUCTION

The potential for business growth in Indonesia is highly promising. As of March 2021, data from the Ministry of Cooperatives and Small and Medium Enterprises (KemenkopUKM) revealed that there were approximately 64.2 million Micro, Small, and Medium Enterprises (MSMEs) in the country. This number is expected to continue increasing over time, indicating a positive outlook for Indonesia's economic development, particularly in the business sector. Given the significant presence of companies in Indonesia, it becomes imperative to establish robust legal systems and frameworks that can ensure legal certainty for all parties involved in business activities. By providing legal certainty, the business environment in Indonesia can offer a sense of security and stability to those engaged in various business endeavors.

Economic development inevitably paves the way for potential collaborations among nations. Consequently, the regulatory body of Indonesia, as the governing authority, can establish legislation that ensures legal assurance, fostering a sense of confidence and trust among companies engaging in cooperative endeavors, both domestically and internationally. Moreover, the government plays a crucial role in

upholding political stability within the nation, thereby instilling a sense of security for foreign investors who wish to invest in Indonesia.

With the passage of time, the commodities exchanged in the realm of commerce have evolved from tangible entities that can be visually perceived to intangible assets known as intellectual property rights. In Indonesia, the notary, being a public official, bears the responsibility of creating legally valid documents that are essential for business operations within the country, as well as for collaborations with international counterparts. These documents encompass various agreements and the establishment of business entities.

The signature holds significant importance in a Notarial Deed as it signifies that the involved parties are aware of and consent to the contents of the deed. Without the signatures of the parties, the Notarial Deed cannot be considered valid, thus lacking legal certainty for the parties involved and lacking the ability to serve as legal evidence in case of a dispute. Traditionally, signatures are physically affixed by the parties on the deed, but with the advancement of technology, Electronic Signatures have emerged as an alternative method.

Electronic signatures eliminate the need for face-to-face interactions as parties can transmit their signatures via the internet. This convenience offered by electronic signatures facilitates transactions by saving time and reducing costs for all involved parties, particularly in the context of creating notarial deeds. Nevertheless, a crucial concern arises: does a notarial deed signed with an electronic signature possess the necessary legal validity to ensure legal certainty and protect the rights of the parties involved?

The notary profession is not limited to Indonesia; it exists in several other countries, including Australia. However, there are differences in the arrangements related to notarial activities between Indonesia and Australia. These differences stem from the distinct government systems in each country. Indonesia operates as a unitary state, whereas Australia is a federal state composed of individual states. One such state in Australia is New South Wales, with Sydney serving as its capital. In the context of notarial activities, particularly regarding the validity of notarial deeds signed with an Electronic Signature, there are likely to be significant differences between Indonesia and Australia. These differences present an intriguing area for further research to explore the validity of notarial deeds signed with an Electronic Signature.

The use of Electronic Signature offers significant convenience in various activities as it eliminates the need for face-to-face interactions between relevant parties. For instance, in a sale and purchase transaction where the subject of the transaction is located in Indonesia while one or both parties are abroad or include foreign citizens, Electronic Signature proves to be highly advantageous. It streamlines transactions, saves time and costs, and simplifies the process of creating notary deeds, thereby benefiting notaries as well.

Conducting this research is of utmost importance as it aims to enhance our understanding and shed light on the Legal Power of the Validity of Notarial Deeds Signed with Electronic Signature. This is particularly crucial in the current era of rapid technological advancements. The utilization of Electronic Signatures in Notarial Deeds holds the potential to stimulate the enhancement of public services within the private sector. In light of the aforementioned context, the following issues can be formulated: What is the nature and regulatory framework of Electronic Signatures in accordance with

the positive law in Indonesia and the State of New South Wales, Australia? Furthermore, what is the legal validity of a Notarial Deed signed with an Electronic Signature in both Indonesia and Australia, and what are the implications of such validity in the realm of contract law in these respective jurisdictions?

2. LITERATURE REVIEW

2.1. Comparative Theory of Law

According to the theory put forward by René David related to the Theory of Comparative Law, as published in George Mousourakis' book. This legal comparison can be focused on three main issues, namely: (i) legal substance; (ii) legal structure; (iii) legal culture. Substance, in this case, refers to the rules related to electronic signature. Furthermore, the legal structure here refers to the institutions or institutions that implement these provisions and rules, while the legal culture refers to the response of the community / practice on the application of rules / provisions related to the enactment of electronic signature.

2.2. Legal Certainty Theory

Legal certainty shows that each individual knows their rights and obligations so that there can be peace, justice and order in social life. According to Sudikno Mertukusumo, legal certainty is a guarantee that the law must be carried out in a good way. Legal certainty requires efforts to regulate the law in laws and regulations made by authorized and authoritative parties, so that these rules have juridical aspects that can guarantee the certainty that the law functions as a rule that must be obeyed (Asikin, 2012).

2.3. Validity

Legal Validity Theory is one of the important theories in legal science. The theory of validity or legitimacy of law (legal validity) is a theory that teaches how and what the conditions are for a legal rule to be legitimate and valid, so that it can be applied to society. (Munir, 2013). In addition, Coherence Theory is also known which is associated with legal truth, coherence theory is implemented at the level of *ius constituendum* (legal ideas) which are adjusted to the reality of community behavior. The legal truth to be fulfilled in this aspect is the aspect of justice that is prioritized (Harefa, 2016).

2.4. Notarial Deed

A Notarial Deed is an official document issued by a Notary. A Notarial Deed is an authentic deed which in Article 1870 of the Civil Code states that a Notarial Deed has absolute and binding evidentiary power. The position of a Notarial Deed is very strong in being a trial evidence.

2.5. Electronic Signature

Based on Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions Article 1 number 12:

Electronic signature is a signature consisting of electronic information attached, associated or related to other electronic information used as a verification and authentication tool.

Mason (2000) argues in his Journal that electronic signatures can be expressed in various forms. Electronic Signature includes "I accept" signs, pins, typing names into emails and word documents, scanned signature manuscripts, biodynamic signatures and digital signatures. According to Stephen Mason, the most important thing is that there is sufficient evidence to show that the person who signed the document, made the electronic signature attached to a document.

3. RESEARCH METHODS

The type of research used in this study was Normative Research. The approach methods included in this research were the Statute Approach, Conceptual Approach, and Comparative Approach. The data used in this research are as follows:

1) Primary Legal Materials:
   a. Law Number 11 of 2008 on Information and Transactions
   b. Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Transactions
   c. Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Position of Notary
   d. Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions
   e. Constitutional Court Decision Number 20/PUU-XIV/ 2016
   f. Electronic Transactions Act No. 8
   g. Public Notaries Act 1997
2) Secondary Legal Materials

Secondary legal materials are data obtained from official documents, books, related to the object of research, research results in the form of reports, theses, theses, and dissertations that serve to provide explanations related to primary legal materials.

3) Tertiary Legal Materials

Legal materials obtained from additions such as legal dictionaries, encyclopedias, which are related to the problem to be studied.

The data collection technique in this research involved a literature review, where literature books, e-journals, and the internet were studied to obtain secondary data. This process included collecting, studying, understanding, and quoting from books, laws, and regulations related to the research. The results of the analysis of legal materials were interpreted using the following methods: (a) systematic, (b) grammatical, and (c) theological.

4. RESULTS AND DISCUSSION

4.1. Nature And Regulatory Model of Electronic Signature According to Positive Law in Indonesia

4.1.1. Model of Electronic Signature Regulation According to Positive Law in Indonesia

Electronic signatures in Indonesia are regulated in the ITE Law. The ITE Law regulates important matters, namely the requirements of electronic signatures, legal consequences arising from the implementation of electronic signatures for the subject, in

this case, the signatory. Furthermore, Electronic Certificates which are one form of electronic signature, which are certified electronic signatures, are regulated in Article 51 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE 71/2019).

Legal force for electronic signatures, can arise if the electronic signature fulfills the applicable conditions which are in accordance with Indonesian Laws and Regulations. The requirements of electronic signatures are contained in Article 11 of the ITE Law:

Article 11

1) Electronic Signatures have legal force and legal consequences as long as they meet the following requirements:
   a. Related Electronic Signature creation data only to the Signatory;
   b. Electronic Signature creation data at the time of the electronic signing process is only in the power of the Signatory;
   c. Any changes to the Electronic Signature that occur after the time of signing can be known;
   d. Any changes to the Electronic Information related to the Electronic Signature after the time of signing can be known;
   e. There is a specific means used to identify who the Signatory is; and
   f. There is a specific way to indicate that the Signatory has given consent to the relevant Electronic Information.

With the fulfillment of the conditions stated in Article 11, electronic signatures in Indonesia will be legally valid, which means that electronic signatures can become valid evidence.

Everyone involved with Electronic Signatures certainly has an attachment to the responsibilities arising from the affixing of the Electronic Signature. In connection with these responsibilities as stated in Article 12 of the ITE Law, namely:

Article 12

1) Every person involved in Electronic Signatures is obliged to provide security for the Electronic Signatures they use.
2) Electronic Signature Security as referred to in paragraph (1) at least includes:
   a. The system cannot be accessed by other unauthorized persons.
   b. Signatories must apply the precautionary principle to avoid unauthorized use of data related to the creation of Electronic Signatures.
   c. The Signatory must without delay, using the method recommended by the Electronic Signature organizer or other feasible and reasonable means must immediately notify a person whom the Signatory considers to trust the Electronic Signature or to the Electronic Signature service supporter if:
      1. The Signatory knows that the data for making an Electronic Signature has been compromised; or
      2. Circumstances known by the Signatory to pose a significant risk, possibly due to the breach of data for the creation of Electronic Signatures; and
d. In the event that an Electronic Certificate is used to support an Electronic Signature, the Signatory must ensure the truth and integrity of all information associated with the Electronic Certificate.

Every person who violates the provisions as referred to in paragraph (1) shall be liable for all losses and legal consequences arising.

Further explanation related to Electronic Certificates is contained in Article 51 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE 71/2019), namely:

a. Electronic System Operator must have an Electronic Certificate;
b. Electronic System Users can use Electronic Certificates in Electronic Transactions;
c. To have an Electronic Certificate, the Electronic System Operator must submit an application to the Indonesian Electronic Certification Provider (PrSE Indonesia);
d. If necessary, the Ministry or Institution can require Electronic System Users to use Electronic Certificates in Electronic Transactions.

Thus, in Indonesia, the use of Electronic Signatures that are valid and guaranteed legal protection is a certified electronic signature, as regulated in the ITE Law which is then more specifically regulated in PP 82/2012 and PP 71/2019.

4.1.2. Regulatory Model of Electronic Signature under Australian Law (State of New South Wales)

Australia is a country divided into several states, one of which is the State of New South Wales. State and territory governments are responsible for all matters not delegated to the Commonwealth, and they also adhere to the principle of responsible government. In the states, the Queen is represented by a Governor for each state.

Electronic Signatures in NSW, Australia, are regulated in the Electronic Transactions Act 2000 No.8. According to the document published by education.nsw.gov.au which is the official website of the State Government of New South Wales Australia, in accordance with the Electronic Transactions Act 2000 No.8, it is stated that:

"The term E-Signature or "electronic signature" means a method of signing an electronic message that:

a) Identifies and authenticates a particular person as the source of the electronic message; and
b) Indicates such person's approval of the information contained in the electronic message.

A digitally signed document is a self-contained, portable and fully sustainable source electronic record that can be verified and trusted by internal and external parties independent of the organization or supplier of the electronic signature technology."

The use of electronic signatures in the state of New South Wales Australia must certainly meet the attributes of the requirements for its use, just like Indonesia which has requirements to determine the validity of an electronic signature. In the document uploaded by nsw.edu.gov.au, it is stated that what must be fulfilled in the implementation of electronic signatures are:

a. Electronic signatures must be unique and valid only as the signature of the person who owns the signature.
b. Has capabilities as a verification tool.
c. Is under the control of the person who owns the signature.

d. The electronic signature is linked to the data in such a way that if the data is changed, the use of the electronic signature becomes invalid.
e. In accordance with the requirements stated in the law.

In Australia, electronic signatures are regulated in the Electronic Transactions Act 1999 Section 10, which outlines the basic elements that must be met by electronic signature methods, namely:

"(1) If, under a law of the Commonwealth, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if:

a) in all cases-a method is used to identify the person and to indicate the person's intention in respect of the information communicated; and
b) in all cases-the method used was either :
   i. as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
   ii. proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and
c) If the signature is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the method used as mentioned in paragraph (a) be in accordance with particular information technology requirements-the entity's requirement has been met; and
d) If the signature is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity-the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a) "

All states in Australia rely on these laws in relation to Electronic Signature, but states in Australia have laws that are complementary to the regulations related to electronic signatures.

In the state of New South Wales in Australia, electronic transactions related to electronic signatures are further regulated in the Electronic Transactions Act 2000 No 8 (New South Wales) which in Section 9 includes the same rules as contained in the Electronic Transactions Act 1999 Section 10 previously mentioned.

In comparison, in the United States, specifically in the state of California, the use of electronic signatures must have certain purposes that are published on the official website of the California state government, namely :

1) Purpose of Digital Signatures

The American Bar Association identifies the following as the general purposes for signatures:

Evidence : A signature authenticates a record by identifying the signer with the signed document. When the signer makes a mark in a distinctive manner, the writing becomes attributable to the signer.

Ceremony : The act of signing a document call to the signer's attention the legal significance of the act and helps prevent inattention or inappropriate approval.

Approval : In certain contexts, a signature expresses the signer's approval or authorization of the record or the signer's intention that it have legal effect.
Efficiency : A signature on a written document often imparts a sense of clarity and finality to the transaction, and may reduce the subsequent need to inquire beyond the face of a document.

Basically, the use of digital signatures from the explanation aims to state the consent of the signatory party which is carried out digitally, and has legal consequences for the party signing the document electronically, more specifically, signing documents with digital signatures.

4.2. Legal Strength of Notary Deeds Signed with Electronic Signature and Implications for Contract Law in Indonesia and Australia (State of New South Wales)

4.2.1. The Legal Validity of Notarial Deeds Signed with Electronic Signature and its Implications for Contract Law in Indonesia

Notaries as public officials of the state have the authority to make deeds, where the deed is called an authentic deed. The definition of an authentic deed, which is one of the authorities of a notary, is contained in Article 1868 of the Civil Code, which reads:

"An authentic deed is a deed made in the form prescribed by law by/or before a public official authorized for that purpose, at the place where the deed is made."

As can be seen from the definition of Authentic Deed contained in the law above, there are elements that can be drawn, namely:

- Made in the form prescribed by law;
- In the presence of an authorized public official where the deed is made;

An Authentic Deed made in accordance with the applicable laws and regulations will later become valid evidence in the eyes of the law. Thus, the Notary has an obligation to include that what is contained in the Notarial deed, has really been understood and in accordance with the will of the parties, namely by reading it so that it becomes clear the contents of the Notarial deed, and providing access to information, including access to relevant laws and regulations for the parties signing the deed, so that the parties can determine the contents and agree to the contents of the deed made by the parties before the Notary.

According to Alwesisus, SH.MKn in his book entitled Basics of Notarial Deed Making Techniques, Notary is a public official authorized to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations and. or desired by those concerned to be stated in an authentic deed (Alwesius, 2019).

The form of consent of the parties that determines the content of the authentic deed made by the parties, is indicated by the affixing of the signatures of the parties on the deed made, and the signatures are affixed before the Notary. Signing is the most important thing in making a deed, by adding a signature a person is considered to bear the truth of what is written in the deed or be responsible for what is written in the deed (Moechthar, 2017).

The benefits of an authentic deed, which in English is called the benefits of deed authentic, while in Dutch it is called *wet uitkeringen authentiek* related to the usefulness or benefits of an authentic deed (Salim, 2015). The benefits of an authentic deed include:

1) Clearly define rights and obligations;
2) Ensure legal certainty;
3) Avoidance of disputes;
4) The strongest and fullest written evidence; and
5) In essence, it contains the formal truth in accordance with what the parties have told the notary.

In notarial practice, authentic deeds and underhand deeds are often known, where according to the previous explanation, an authentic deed is a deed made by a public official, namely a notary, while an underhand deed is only made by the parties without any intervention from a public official. It should be underlined that in notarial practice in Indonesia there is also what is called an underhand deed legalized by a Notary, and this deed is still not an authentic deed because even though it is legalized by a Notary, the underhand deed is still not a deed made by a Notary.
The Authentic Deed made by Notary is divided into 2 (two) forms, namely:

1. Party Deed (*Partij*)

According to Herlien Budiono, in a party deed, "making" the deed consists of drafting; reading the deed by the notary; and signing the deed by the confronters, witnesses and notary. A party deed is a deed that contains what happened based on the information given by the confrontants to the notary in the sense that they explained and told the notary and for this purpose deliberately came to the notary so that the information or action was stated by the notary in a notarial deed and the confrontant signed the deed. (Salim, 2015) A Party Deed as described above is a deed made directly in the presence of a notary, which consists of drafting, reading, and signing the deed by the parties, witnesses and notary (Alwesius, 2019).

2. Deed of *Relaas* / Official Deed

Deed of *relaas* is a form of deed made for authentic evidence of actions taken on a situation that is seen or witnessed by the notary himself in carrying out his position as a notary (Salim, 2015). Deed of relaas does not provide evidence regarding the information given by (the) confrontants by signing the deed, but for evidence regarding the actions and facts witnessed by the notary in carrying out his/her office. Included in this deed of relaas are, for example, the deed of the Minutes of the Lottery, the Deed of Minutes of the General Meeting of Shareholders of the Limited Liability Company (Alwesius, 2019).

There is one fundamental difference between a Deed of Relaas and a Deed of Party, which is related to the signing activity. In a *Partij* (Party) Deed, the signatures of the parties are absolute, so that if a party does not sign the deed, then the deed is deemed not to exist, whereas in an Official Deed (*relaas*), the signature is not an absolute requirement of the deed, so that if a party cannot be present or even does not want to sign the deed, then this is explained in the deed of *relaas*.

Related to the discussion of authentic deeds from notaries in accordance with the previous explanation, every deed always has an element of signature in it, however, in the previous explanation there is no specific explanation regarding what form of signature is meant for authentic deeds. Is the signature a wet signature or can it be a certified electronic signature?

However, as stated in Article 38 of UUJN-P:
(3) The End or Closing of the Deed contains :

a) Description of the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
b) Description of the signing and place of signing and place of signing or translation of the Deed if any;
c) The full name, place and date of birth, occupation, position, and residence of each witness to the Deed; and
d) A description of the absence of changes that occurred in the making of the Deed or a description of the changes that can be in the form of additions, deletions, or replacements and the number of changes.

In letters a and b of Article 38 paragraph (4) of the UUJN, it is stated that in the closing of the deed, the reading of the deed and a description of the signing and the place of signing the deed must be contained in an authentic deed. Thus, it will be difficult to contain information about the signing of an authentic deed, if the deed is done using an electronic signature even though it is not explained in detail in the UUJN whether a form of signing an authentic deed must be done with a wet signature or can be done electronically.

Furthermore, Article 16 paragraph (1) letter m of the UUJN-P stipulates that one of the obligations of notaries in carrying out their positions is:

"read out the Deed in the presence of the confronter in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of an underhand testament Deed, and signed at that time by the confronter, witnesses and Notary."

Thus, it can be concluded that an authentic deed in Indonesia must still contain a wet signature, because the reading and signing of the deed must be attended in person by the confrontants listed in the authentic deed. If an authentic deed made by a Notary, is signed electronically even though it uses a certified electronic signature and is in the form of a digital signature issued by companies authorized to issue digital signatures as regulated in laws and regulations, the authentic deed is still considered incomplete and it will be questioned whether the authentic deed is considered legal and its evidentiary power will be doubted because it does not meet the requirements for making an authentic deed as contained in the UUJN-P.

In addition, for a deed to fulfill its authenticity, there are requirements that must be met related to the authority of the Notary concerned with the deed. The authority includes 4 (four) things, including:

1. Notaries are authorized insofar as the deeds they make are concerned;
2. Notaries are authorized as far as the person for whose benefit the deed is made;
3. The notary is authorized as far as the place where the deed is made;
4. Notary is authorized as far as the time of making the deed (Notodisoerdjo, 1993).

According to Sita Arini Umbas (2017) in her journal states that in general there are 3 (three) legal powers possessed by an authentic deed, namely:

1. Outward evidentiary power. By outward evidentiary power is meant the ability of the deed itself to prove itself as an authentic deed. This ability according to Article 1875 of the Civil Code cannot be given to a deed made under hand.

2. Formal evidentiary power. With this formal evidentiary power by an authentic deed it is proven, that the official concerned has stated in the writing, as stated in the deed and apart from that the truth of what is described by the official of the deed.
3. Material evidentiary power. As far as the material evidentiary power of an authentic deed is concerned, the certainty that what is stated in the deed is valid proof of rights and applies in general unless there is evidence to the contrary (Umbas, 2017).

In its development, electronic signatures in the business world have indeed become an alternative for business people to be able to facilitate business activities. Indonesia has enormous potential in a variety of businesses that will continue to advance the Indonesian economy. Business actors in Indonesia are Indonesian citizens and foreign citizens while still guided by Indonesian laws and regulations.

Notary is one of the supporting professions for the business world in Indonesia, where the product of the Notary, namely the authentic deed itself is actually very much needed in the business world to provide legal certainty for business people. Currently, Electronic Signatures cannot be applied to Authentic Deeds because there is still a legal vacuum related to arrangements that legalize Authentic Deeds to be signed electronically.

Contracts in Indonesia are made based on important principles which are the basic principles of the agreement as contained in Chapter III of this Study, including the principle of consensually which states that an agreement will become law for those who make an agreement, as well as the principle of freedom of contract, where the parties who make a contract can make contracts freely as long as they do not violate the law so that the contract can be valid and has evidentiary power in the eyes of the law. Of course, the validity of a contract must fulfill the legal requirements of the agreement contained in Article 1320 of the Civil Code.

A contract in relation to a notary, is also an authentic deed if the contract is made before or by a notary, but if it is not made before a notary, then the contract is not an authentic deed, but still applies as law to the parties to the contract. An example that is often encountered as a form of contract that is not an authentic deed, is a cooperation contract between a distributor company and a retail store where an item is supplied by the distributor to be sold to consumers of the retail store, usually in some cases, this cooperation contract is carried out electronically or manually with a stamp as a reinforcement of the contract.

The use of Digital Signature in a contract certainly has great implications in the world of contracts in Indonesia, this is related to the efficiency of time, energy and especially related to funds. Indeed, the creation of a digital signature requires a fee that must be paid to certified electronic signature issuing companies, but if explained, there are many advantages obtained by using digital signatures as explained in the previous sub-chapter.

Currently, electronic signatures in Indonesia are more widely used in the financial world such as in banking, insurance, fintech, and investment companies. Even now in Indonesia, to open an account, apply for credit and loan applications, restructure credit, apply for insurance policies, and make insurance contracts, can already use electronic signatures. It can also be seen that some administrative services have used a system that enforces electronic signatures, with the Covid-19 Pandemic the potential for using electronic signatures is increasingly open even in formal activities (Online Law Publication Team, 2022).

Regarding the implications of a notarial deed signed with an electronic signature, it can be emphasized that in Indonesia, currently it does not allow Notaries to use electronic signatures in making their deeds, thus, notarial deeds cannot be signed with electronic signatures, if it is forced for a deed to be signed with an electronic signature, then the deed becomes invalid in the eyes of the law.

As explained in the previous discussion, the product of a notary, in this case what characterizes the Notary in Indonesia is an authentic deed made by a notary. Notarial deeds, as stated in the law, cannot be signed electronically because there is no regulation that allows this, moreover the law regulates that authentic deeds are made by notaries and signed in the presence of notaries, which means that the signature of an authentic deed must be signed with a wet signature.

In terms of contracts in Indonesia, for example in the business world, there are contracts that are needed, such as cooperation contracts and so on. In the event that a business or trade contract is signed using an electronic signature, as long as the electronic signature meets the requirements for the validity of an electronic signature, as well as the contents of the contract do not violate laws and regulations and the making of the contract is in accordance with the validity of the agreement stipulated in Article 1320 of the Indonesian Civil Code, then the contract signed using an electronic signature will be considered legally valid and will have evidentiary power in court.

Contracts that use digital signatures provide many conveniences for the contracting parties as has been listed in the previous discussion related to the advantages obtained by using digital signatures for a contract.

Furthermore, in the world of commerce in Indonesia, related to Limited Liability Companies which are regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), it is stated that the establishment of a limited liability company is submitted using an electronic administration system to the Minister of Law and Human Rights.

Article 10 paragraph (6) of the UUPT states that the Minister issues a decision on the ratification of the Company's legal entity which is signed electronically. In the establishment of a limited liability company, indeed the decision on the ratification of the company's legal entity is signed electronically by the Minister, but in practice, the Deed of Establishment of a PT as submitted using the electronic system must be signed directly because the Deed of Establishment of a PT is one of the products of an Indonesian Notary, where the Deed of Establishment of a PT is an Authentic Deed made by a Notary in Indonesia.

4.3. The Legal Validity of Notarial Deeds Signed with Electronic Signature and its Implications for Contract Law in Australia

Notaries in Indonesia and Australia have distinct differences due to the variations in their legal systems. To understand the legal validity of a Notarial Deed signed with TTE in Australia, it is important to familiarize oneself with the specific practices followed by Notaries in Australia.

Notaries in Indonesia and Australia have one significant difference regarding their authority. Notaries in Indonesia have the authority to issue an authentic deed, whereas in Australia, Notaries are not authorized to make an authentic deed. Notaries in Australia have the authority to :

1) A Notary Public principally:

a. Attests documents and certifies their due execution for use in Australia and overseas countries
b. Prepares and certifies powers of attorney, wills, deeds, contracts and other legal documents, for use in Australia and overseas countries.
c. Administers oaths for Australian and international documents
d. Witnesses signatures to affidavits, statutory declarations, powers of attorney, contracts, and other documents, for use in Australia and overseas countries.
e. Verifies documents for use in Australia and overseas countries
f. Certifies copy documents for use in Australia and overseas countries
g. Exemplifies official documents for use internationally
h. Notes and protests bill of exchange
i. Prepares ships' protests

2) Notary in principle:
a. Proving documents and certifying them for use in Australia or outside of Australia.
b. Prepare and certify powers of attorney, waists, deeds, contracts and other legal documents, for use in Australia and outside Australia
c. Responsible for oaths for Australian and international documents
d. Witnessing the signing of affidavits, legal declarations, powers of attorney, contracts and other documents for use in Australia and outside Australia.
e. Verifying documents for use in Australia and outside Australia
f. Certify copies of documents for use in Australia and outside Australia
g. Model official documents for international use.

"Justices of the Peace (JPs) in Australia provide services similar to American notaries, but are not permitted to witness documents for use in foreign countries. Notaries Public have this exclusive right and are the only true international "JP" in Australia". In Australia, Judges provide services similar to American Notaries, but are not allowed to witness documents for use in foreign countries. Notaries public have the 'exclusive' authority to perform this task.

Based on the information provided, it is clear that the role of an Australian Notary primarily involves document legalization and witnessing the signing of important documents. However, unlike an Indonesian Notary who can issue authentic deeds, there is no mention of Australian Notaries having this authority. Therefore, the implications of electronic signatures on notarial deeds in NSW cannot be determined. However, when it comes to trade contracts, electronic signatures are permissible in NSW and have been valid for a considerable period of time. It is worth noting that electronic signatures in NSW are also issued by third parties, such as PSrE in Indonesia. In NSW, the company known for issuing electronic certificates is generally recognized as Adobe.

As the role of Notary in Australia has been listed, there are significant differences that can be clearly seen. The authority of a Notary in Indonesia can be seen in Article 15 of Law 2/2014. Indonesian Notaries are authorized to make authentic Deeds regarding all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy and quotation of the deed, all insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law.

In addition, Notary is also authorized:

1) Certifying the signature and establishing the certainty of the date of the underhand letter by registering it in a special book (legalization);
2) Record underhand letters by registering them in a special book;
3) Make a copy of the original letter under hand in the form of a copy containing the description as written and described in the letter concerned;
4) Attesting that the photocopy matches the original letter;
5) Provide legal counseling in connection with the making of deeds;
6) Make deeds relating to land; or
7) Make a deed of minutes of auction.

In addition to these authorities, Notary has other authorities regulated in laws and regulations.

A very significant difference between Indonesian Notaries and Australian Notaries is that Notaries in Australia in the state of NSW do not have the authority to make an authentic deed, because the scope of their authority is limited. In Indonesia, this authority is the main authority of a Notary. So, the authentic deed in Australia in the state of NSW is not recognized.

As seen from the description above, Notaries in Australia have several roles that seem to be more prominent than other authorities, namely to legalize documents and witness the signing process of important documents related to the law (to legalize documents and witness the signing process of documents).

The products produced by Australian Notaries in the state of NSW and Indonesia are very different. Indonesian notaries produce 4 (four) legal products, namely:

1. Notarial Deed
2. Legalization
3. Waarmeking
4. Legalize

In the state of NSW, Australia, public notaries play a crucial role in verifying the authenticity of documents. However, when it comes to deeds signed with Electronic Signature in both Indonesia and NSW, Australia, it is currently not legally permitted. This is because neither legal system has specifically addressed the electronic signing of notarial deeds. On the other hand, in California, United States, the role of a California Notary is quite similar to that of an Australian NSW Notary. They both have the authority to legalize documents using the official Notary Seal and also witness the signing of important documents.

According to the data uploaded from the official website of the Australian Government, the state of New South Wales, related to electronic signatures, it is stated that :

However, there remain specific types of transactions where 'wet signatures' are required. These tend to be transactions where there is a need for high confidence in the validity of the transaction - such as deeds, statutory declarations or wills.

The data is further elaborated as follows:

"The following documents should not be signed electronically, as there would be doubt as to the legal validity of the document:

1. Deeds. Deeds are excluded from the scope of the ET Act. The exclusion applies because of the operation of clause 5(f) of the Electronic Transactions Regulation 2017, which excludes documents that are required to be witnessed.
2. Documents to give effect to the transfer or a registered lease of land.
3. Statutory Declarations. Similar to Deeds, this class of document requires a witness to observe the maker sign the document, and then also sign the document as a witness. Failure to meet the witness requirements will at this time mean the document will not be legally valid.
4. Formal determinations by the Secretary in relation to salaries and conditions of employment e.g.: Teaching Service Act 1980, section 13.
5. Instruments of Delegation, whereby the Secretary formally delegates powers to other officers of the Department.

Based on this explanation, there are notable resemblances in the utilization of Electronic Signature in the State of NSW Australia and Indonesia. In both regions, it is not permissible to electronically sign documents that are considered deeds. While electronic signatures are acceptable for the trade sector in NSW, documents pertaining to notaries still require direct or face-to-face signatures between the parties involved in the agreement.

As previously mentioned, the role of a Notary in Indonesia and Australia shares a common function, which is to witness the signing of documents in accordance with the respective laws of both countries. While performing their duties, notaries from both nations are currently unable to fulfill their responsibilities electronically as witnesses to document signing. Instead, notaries in Indonesia and Australia are required to be physically present and provide wet signatures when signing documents.

In relation to contracts for business activities, it is also stated in the data uploaded on the official website, namely :

"Can I use an electronic signature for external business transactions?

The same general principles about the validity of electronic signatures apply to external transactions.

In relation to major transactions, it will be prudent to obtain specific legal advice. In general, the more materially significant the transaction (in terms of monetary value, length of term, extensiveness of compliance obligations), the more consideration will be appropriate as to whether, and if so, how a digital signature may be applied.

For more minor transactions, digital signatures can be utilized if the above four requirements (identification, intention, reliability and consent) are met."

So as long as the electronic signature can accommodate the conditions set out in the NSW law governing the requirements of electronic signatures, then the signature can be used and has legal implications in NSW.

Based on this explanation, it can be inferred that although the roles and responsibilities of Notaries in Indonesia, Australia (specifically in the State of NSW), and the United States (specifically in the State of California) differ significantly, there is a notable similarity regarding the utilization of electronic signatures in their professional practice. The commonality lies in the fact that electronic signatures are not yet accepted in the execution of notarial duties in these three countries. In all three nations, notaries are required to conduct face-to-face interactions and utilize wet signatures for both

signing deeds and acting as witnesses. Electronic signatures, on the other hand, are currently limited to business activities such as cooperation contracts.

5. CONCLUSION

After thorough research and discussion, it is concluded that both Australia and Indonesia lack explicit regulations concerning the effectiveness and supervision of electronically signed deeds in trade or sale contracts. In Australia, the focus is on deeds related to contract creation rather than authentic deeds. Similarly, in Indonesia, there is no practice of creating authentic deeds through electronic signatures. The absence of regulations necessitates parties to physically appear before a notary, indicating that electronic signatures cannot replace authentic deeds. Therefore, regulations addressing the protection, implementation, and supervision of electronically signed deeds must be explored, considering legal certainty, security, and benefits for all involved parties. The strength and validity of electronically made deeds are still under careful consideration in both countries, with concerns about vulnerability to forgery. Despite not receiving explicit state recognition, electronically signed deeds are practically applied in public contracts, especially in business collaborations.

To broaden the scope of services in trade and investment, the government should explore regulating the technical implementation, supervision, and development of electronically signed deeds. Given the diverse nature of transactions in the era of free trade, a suitable regulatory model needs to be formulated collaboratively by the Government and the House of Representatives of Indonesia. This involves improving norms or rules to complement the protection system for electronically signed deeds. With the enactment of Law Number 13 of 2022, allowing electronic formation and signing of legislation, there is an opportunity for the Government and the House of Representatives to revise UUJN and UUITE, enabling the use of electronic signatures in notarial activities in Indonesia in the future.

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THE LEGAL PROTECTION FOR VICTIMS OF CRIMINAL ACTS IN BINOMO TRADING FRAUD (Case Study on Decision Number: 1240/PID.SUS/2022/PN.TNG)

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Abstract

The objective of this study is to analyze the recovery of assets and the protection of victims in cases of Binomo trading fraud under Indonesian criminal law. The research methodology employed is normative legal research, utilizing a literature-based approach. The findings of this study reveal that the decision made by the Panel of Judges in case number 1240: Pid.Sus/2022/PN.Tng was deemed unjust for the victims, leading to an appeal hearing resulting in decision number 117/Pid.Sus/2022/PT.BTN. According to this court decision, the confiscated evidence in the Indra Kenz case was to be returned to the victims through the United Indonesian Traders Association. However, the process of returning the evidence encountered complications due to internal conflicts among the victim association members. As a result, there is currently no clarity regarding the completion of the restitution of the victims' losses. The government, through the LPSK, regulates the restitution of victims' losses as stipulated in Perma Number 1 of 2022. Nevertheless, the LPSK is not involved in the process of returning the victims' losses, which is instead handled by the United Indonesian Traders Association.

Keywords: *Trading, Binomo, Return of Assets, Legal Certainty*

1. INTRODUCTION

Currently, trading has become a highly favored investment option among the general public. The widespread advertisements on social media have portrayed trading as a rapid pathway to wealth and success. This notion is further reinforced by numerous influencers who proudly proclaim their immense riches. These influencers often share stories about the sources of their wealth, captivating the attention of many individuals who aspire to emulate their success. One such influencer, Indra Kusuma, also known as Indra Kenz, hailing from Medan, has garnered significant attention in national news, serving as a prime example of a wealthy individual who has captivated the public's interest.

Indra Kenz's Binomo case first became public in February 202 when the victims reported it to the authorities (detik.com, 2022), the case went viral because it turned out that there were 144 victims with losses totaling up to IDR83,365,707,894. According to the Director of Special Crimes at the National Police Headquarters, Indra Kenz promotes Binomo through his social media where Indra Kenz promotes Binomo by showing how to play Binomo which has actually been manipulated so that he always wins and gets profits, of course this is attractive to the people who watch. Then in order to convince potential victims, Indra Kenz also said that Binomo was legal in Indonesia when in reality it was not (Arbi, 2022).

On August 12, 2023 Indra Kenz was tried in the Tangerang District Court with a judge's verdict lighter than the prosecutor's demands, namely a 10-year prison sentence. Then the Panel of Judges also had the opinion that the trader in this case was a gambling

player under the guise of Binomo trading, and the Panel of Judges ordered that the evidence from the criminal offense in the Indra Kenz case must be confiscated to the state. Then an appeal hearing was held at the Banten District Court where it was decided that the evidence number 220 to 258 which was previously confiscated by the state was returned to the victim.

The partiality of Indonesian law towards victims then becomes an issue that must be considered in the implementation of Indonesian law, where the Preamble of the 1945 Constitution (UUD 1945) has stated that the Indonesian government protects the entire Indonesian nation. However, if we look back at many cases that have occurred, the existence of the law focuses more on punishing the perpetrators of criminal acts rather than protecting victims.

To sum up, as we delve into the complexities of the Indonesian criminal system, it becomes clear that we must carefully consider the plight of victims. Victims, who are directly impacted by criminal offenses, endure hardships and losses that require recognition and resolution. Understanding the significance of addressing these issues, our research focuses on the legal protection for victims of Binomo trading fraud, specifically examining Decision Number: 1240/Pid.Sus/2022/PN.Tng. Our exploration is limited to unraveling the intricacies of the legal safeguards provided to victims in this particular context and understanding the regulatory framework for asset restitution in Binomo trading fraud cases under Indonesian criminal law. Through this research, we aim to provide valuable insights that not only shed light on the existing challenges but also pave the way for improved legal mechanisms to safeguard the rights and interests of those who have suffered from such criminal activities.

2. RESEARCH METHODS

Research is undertaken in order to obtain systematic, methodical, and coherent solutions to inquiries. The nature of research varies depending on the specific scientific domain being investigated. In this particular study, normative legal research is employed. Normative legal research is also referred to as doctrinal legal research (Amiruddin & Asikin, 2019). The research methodology employed in this study is library research, which involves the examination of literature or secondary data exclusively. The primary aim of this approach is to identify the fundamental concepts and principles within the realm of law (Soekanto & Mamudji, 2016).

3. RESULTS AND DISCUSSION

3.1. Legal Protection for Victims of Binomo Trading Fraud in Decision Number: 1240/Pid.Sus/2022/PN.Tng

The judge's decision in the judicial process should aim to achieve both legal certainty and a sense of justice and expediency. However, it is commonly observed that prioritizing legal certainty may compromise the sense of justice. Conversely, if too much emphasis is placed on the sense of justice, it may undermine legal certainty. It is worth noting that legal certainty is generally applicable to all, whereas the sense of justice is subjective to individuals (Indrawan & Munandar, 2022). Therefore, striking a balance between these two aspects is crucial in order to yield favorable outcomes (Margono, 2020).

As in the criminal case registered with Number: 1240/Pid.Sus/2022/PN.Tng and was tried on November 14, 2022. Where in this case Indra Kesuma Als Indra Kenz has been proven legally and convincingly guilty of committing the crime of spreading false and misleading news that results in consumer harm in Electronic Transactions and Money Laundering as regulated in Article 45A Paragraph (1) Jo Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Article 3 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

At the hearing, one of the things that attracted public attention was the verdict read out by the Panel of Judges, where the Panel of Judges decided that evidence 220 to 258 was confiscated by the state. This was with the consideration that the victims were involved in gambling. The decision then caused an uproar among the community, especially the victims. If the Panel of Judges decided that the victim Indra Kenz was involved in gambling, but in the verdict read out by the Panel of Judges it was not read out that Indra Kenz violated the gambling article.

Yenti Ganarsih as a TPPU expert does not agree that the victims of the Binomo Indra Kenz case are categorized as gambling offenders. She said that in criminal law the footing is always mens rea or the intention of the perpetrator and victim. From the beginning, the intention of the perpetrators was to trade, not gambling (Suwanti, 2022). Instead of being called gambling players, the victims of Binomo Indra Kenz are more accurately called victims of fraud. The crime of fraud is regulated in Article 378 of the Criminal Code, namely "Whoever, with the intention of unlawfully benefiting himself or others, by using a false name or false dignity, by deception, or a series of lies, moves others to deliver goods to him, or to give debts or write off receivables, is punishable by fraud with a maximum imprisonment of four years".

The victims through the Public Prosecutor finally filed an appeal hearing which was then held on January 10, 2023 at the Banten District Court. Where the decision of the hearing decided that the evidence with numbers 220 to 258 was returned to the victim witnesses to be distributed proportionally through the United Indonesian Traders Association (Deed of Establishment Number 21 Dated September 26, 2022 before Notary PPAT Musa Muamarta, S.H).

If we look at the decision of the first instance trial conducted by the Tangerang District Court, it can be seen that the current law is still too focused on punishing the perpetrators of criminal acts in the form of punishing the perpetrators. Whereas at present the meaning of punishment has shifted, if in the past punishment was considered as an effort to take revenge and torment the perpetrators of criminal acts, now the purpose of punishment is to correct public dissatisfaction (especially victims of criminal acts) as an effort to prevent criminal acts in the future. Another purpose of punishment is to obtain legal certainty. Where the existence of the principle of legal certainty is a form of protection for justice seekers against acts of arbitrariness, which also means that a person will and can obtain something that is expected in certain circumstances (Mertokusumo, 1999).

The disparity in decisions between the court of first instance and the level of appeal has created a breath of fresh air for the victims of Binomo Indra Kenz, where in the appeal hearing conducted by the Banten High Court a decision was made that evidence numbers 220 to 258 were returned to the victims. Where this evidence is then expected to be a substitute for the losses suffered by the victims. Indeed, the decisions made by judges

must reflect justice by not overriding the existing legal certainty. Decisions made by judges must actually reflect legal certainty in it, as well as the establishment of justice in society. because legal uncertainty will later cause chaos in people's lives.

3.2. Regulation of Returning Victims' Assets in the Crime of Binomo Trading Fraud under Indonesian Criminal Law

The discussion related to asset recovery will not be far from the discussion of eradicating corruption, where usually the discussion of asset recovery is on the return of assets by the perpetrators of corruption crimes to the state. However, if we look at the economic losses experienced by victims as a result of crimes with economic motives other than state losses, then people who are not state officials have the potential to suffer economically. Usually people are involved in fraud, embezzlement and money laundering and other criminal acts.

Like Indra Kenz's Binomo fraud case which was decided on January 10, 2023 with Number: 117/PID.SUS/2022/PT.BTN. Where the trial decision decided that the evidence with numbers 220 to 258 was returned to the victim witnesses to be distributed proportionally through the United Indonesian Trader Association / Association). So Indra Kenz's assets, which were previously confiscated to the state, were then returned to the victims and the return of evidence numbers 220 to 258 to the victims of Indra Kenz's criminal acts is an effort that can be made by the state to restore the material losses experienced by the victims of Indra Kenz's criminal acts. Because when the victim gets back his property in accordance with the amount of loss he experienced is one form of recovery to the victim (Karmen, 2001).

When referring to the concept of justice which according to Sarjono Soekanto in his book that the problem of applying the law cannot be separated from the problem of justice which is the mouth of the law itself (Soekanto, 2011). The victims will feel that they have received justice when finally, the evidence number 220 to 285 can be returned to the victims. This is related to the process of returning the losses suffered by the victims as victims of the criminal offense that occurred. This can be seen as a form of state responsibility for its citizens in the form of legal protection. The legal protection of victims of crime is part of the protection of the community, which can be realized in various forms, namely the provision of restitution and compensation, medical services and legal assistance (Yulia, 2021).

After the victims finally managed to get access to regain the losses they experienced by returning assets, the problem that arose later was the process of returning assets to each victim. Asset recovery is a theory that explains the legal system based on the principles of social justice that gives the ability, duty and responsibility to the state to provide protection and opportunities to the community in achieving welfare (Yanuar, 2007). In the case of Indra Kenz's Binomo case, in accordance with the judge's decision that the process of returning Indra Kenz's assets was fully submitted to the United Indonesia Trader Association. The judge's decision is expected to be able to compensate for all forms of material losses suffered by victims as a result of criminal acts committed by Indra Kesuma Als Indra Kenz.

However, it has been several months since evidence numbers 220 to 58 were handed over by the Tangerang District Attorney to the victims through the United Indonesian Traders Association, the process of returning the victims' losses has not been completed. In fact, in November 2023, news broke in the news related to the victims who later joined

the United Indonesian Traders Association / Association finally reported each other to the Police. This began with the suspicion of the association members (who later claimed to be the new management) against the old management regarding the alleged lack of transparency in the sale and distribution of the evidence. Not to mention some assets that have been sold and it is felt that the results of the sale are unclear and the assets that have not been sold are not clear who the buyer is. For this reason, the new PTIB management finally took over the management of PTIB and reported the old PTIB management to the authorities.

The unfortunate occurrence of PTIB members, who are both victims of Indra Kenz's criminal fraud, reporting each other is indeed regrettable. This incident poses significant disadvantages for the victims, as it hampers the process of selling assets that would have been utilized for compensation. Consequently, the only party that suffers from this situation is the victim themselves. The already time-consuming refund process, which involves discussions and asset sales, will now be further prolonged due to this dispute.

Reporting from Voi.co.id, LPSK has provided input for LPSK's involvement in returning victims' losses. This was conveyed by LPSK Deputy Chair Achmadi in his official statement to reporters. Achmadi said that victims can apply for protection to LPSK for an assessment of their losses (VOI.ID, 2022). Because according to the rules the victims should have submitted an application first to LPSK. As stated in Article 20 of PP No. 44/2008 that the application to obtain Restitution as referred to in paragraph (1) is submitted by the victim, the victim's family, or their attorney with a special power of attorney.

However, in the process of returning Indra Kenz's assets, LPSK was not involved, this refers to the results of the court decision read out at the appeal hearing at the Tangerang High Court on January 10, 2023. Where the Panel of Judges read out the verdict that the evidence with numbers 220 to 258 was returned to the victim witnesses to be distributed proportionally through the United Indonesian Trader Association (Deed of Establishment Number 21 dated September 26, 2022 before Notary PPAT Musa Muamarta, S.H).

Rules related to the compensation mechanism are regulated in Supreme Court Regulation Number 1 of 2022 concerning the Procedures for Settling Requests and Providing Restitution and Compensation to Victims of Crime. Article 2 Paragraph (1) states that this Supreme Court Regulation applies to "requests for restitution in cases of serious human rights violations, terrorism, trafficking in persons, racial and ethnic discrimination, crimes related to children, and other crimes determined by LPSK Decree as referred to in laws and regulations".

The LPSK Decision is elucidated in Article 1 Paragraph 14, wherein it is expounded that the said decision is formulated by the LPSK and encompasses an account of the computation of damages as well as the quantum of restitution and/or compensation for the application put forth by the applicant in conformity with the stipulations of the prevailing laws and regulations. Consequently, the Supreme Court Regulation can be invoked in instances where the applicant (in this scenario, the victim) lodges an application with the LPSK.

The absence of LPSK involvement in the process of returning Indra Kesuma Als Indra Kenz's criminal assets indicates that the victims did not make any request to the LPSK, as concluded by the author. However, if the assets were returned to the victims through a third party with the authority, such as the LPSK as part of the government, it is

possible that the conflict within the United Indonesian Trader Association could have been prevented.

If the victims of Indra Kesuma Als Indra Kenz's fraudulent activities wish to seek assistance from the government in recovering their compensation, they have the option to submit an application to LPSK. This provision is outlined in Article 20 of the LPSK Law, which allows for restitution requests to be made either prior to or following the perpetrator's conviction as determined by a court decision that has attained permanent legal validity.

4. CONCLUSION

The recent approval and hearing of the appeal in the Indra Kesuam Als Indra Kenz case highlights the government's ongoing efforts to ensure legal protection for victims of criminal acts. Despite a lengthy process, the victims of Indra Kenz's crime will finally receive full compensation, setting a precedent for similar cases. In Indonesian law, the compensation provided by the perpetrator of a criminal offense to the victim is referred to as restitution. This concept is outlined in Law Number 31 of 2014, which amends Law Number 13 of 2006 on Witness and Victim Protection. The implementation of this law is further regulated by Supreme Court Regulation No. 1 of 2022, which outlines the procedure for settling requests and providing restitution and compensation to crime victims. Additionally, Government Regulation No. 44/2008 addresses the provision of compensation, restitution, and assistance to witnesses and victims.

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SOCIALIZATION OF REGIONAL REGULATION NO. 11 OF 2017 REGARDING EMBANKMENTS IN THE SARI BARUNA FISHERMEN'S GROUP OF BANJAR KHUBUR, KETEWEL VILLAGE, GIANYAR

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Abstract

The purpose of this socialization is to educate and inform the Sari Baruna Fishermen Group of Banjar Khubur Ketewel Village, Gianyar about Regional Regulation Number 11 of 2017 regarding Bendega. It is crucial for the fishermen to understand this regulation as it addresses the problems they face. The Regional Government is committed to preserving and protecting Bendega, which is an integral part of Balinese culture. By safeguarding the ethical, moral, and civilizational values of Balinese customs, the government ensures the continuity of these traditions. Bendega holds significant economic, social, cultural, and religious importance in the indigenous communities of Bali's coastal areas. To protect and preserve Bendega, various strategies are implemented, including the continuous application of Tri Hita Karana principles, enhancing the skills and knowledge of Bendega personnel, and empowering Bendega through economic activities rooted in local wisdom. Additionally, the strengthening of Bendega institutions and financial support are provided. It is essential to socialize these efforts to the fishermen groups so that they can fully comprehend the protection offered by the Regional Government. This understanding will enable the fishermen to exercise their rights and responsibilities as coastal fishermen.

Keywords: *Socialization, Fishermen, and Local Regulations*

1. INTRODUCTION

The *Krama Bendega* Forum plays a crucial role in upholding Regional Regulation Number 11 of 2017, which focuses on *Bendega* (Bisnis Bali. (n.d.). This forum holds immense strategic importance as it represents the interests of coastal communities in safeguarding Bali's marine ecosystem for generations to come. In order to enhance the well-being of these fishing communities, it is essential to raise awareness and educate the Bendega groups about their responsibilities.

Bendega, as an institution within Bali Province's coastal communities, deserves the same recognition as traditional institutions. Bali has become a popular choice for investors looking to develop tourism. The coastal areas, in particular, attract many investors for business opportunities. Without proper regulations, such as those set by the Regent, conflicts in the coastal areas are bound to arise every year (Adonara, 2016). These conflicts often involve clashes between investors and fishermen groups. Therefore, it is crucial to establish a clear position and role for fishermen, as they are the ones at the forefront of protecting the coastal areas.

Coastal conflicts are a common occurrence, especially in places like Ketewel village, where fishermen are facing restricted access to the beach due to buildings owned by investors (Ahmad, 2002). The root cause of this issue lies in the absence of a legal

framework that allows fishermen in Bali to claim their territory. Despite the long-standing presence of these fishermen groups, the entire coastline of Bali lacks a solid legal foundation. In response to this, the All Indonesian Fishermen Association has established the Bendega Forum, aimed at safeguarding the rights of fishermen (Balipuspanews.com. (n.d.). Through regional regulations, the Wanasari fishermen group now has a legitimate basis to ensure their access to coastal areas. Just as rice fields have the subak institution and villages have traditional village institutions, the sea has the Bendega institution to protect the interests of fishermen.

According to the Marine Product Management Law No. 27/2017, coastal communities are referred to as "local communities with local wisdom." It is crucial that we increase the awareness of Regional Regulation No. 11/2017 on Bendega among the people. Every individual in Bali should comprehend that this regional regulation is in place to safeguard the livelihoods of coastal fishing communities. The advantage of this regulation is that it provides assistance to qualified Bendega krama, enabling them to educate fishermen and preserve the values of local wisdom. Nowadays, beaches have become popular tourist destinations, but we must not overlook the potential conflicts that may arise if they are not adequately protected.

Artana, the Chairman of the All Indonesian Fishermen Association in Bali, revealed that Bali is home to a staggering 900 fishermen groups, comprising a total of 4,500 dedicated members. Additionally, the coastal region of Bali boasts an impressive count of 150 Segara temples. Prior to the implementation of the Bendega regulation, our organization functioned akin to a subak organization, with existing responsibilities and duties. However, with the introduction of this regional regulation, the well-being of both the local community and the fishermen along the coastal areas of Bali can now be effectively safeguarded.

The Bendega Wanasari community is a vibrant group located along the coast of Badung Regency. They actively engage in various economic, social, cultural, and religious activities. Unlike the fishermen community groups who solely focus on economic activities to sustain their livelihoods, the Bendega Wanasari group is a unique traditional institution deeply rooted in the marine and fisheries sector of the indigenous Balinese communities. Throughout history, Bendega has thrived and evolved in harmony with the rich Balinese culture and local wisdom.

According to I Gusti Putu Budhiarta, the Chairman of the Special Committee (*Pansus*) of Bendega in Bali Province, Bendega holds great significance as it encompasses Parahyangan (*Pura Segara*), Pawongan (*krama bendega*), and Palemahan (a place for livelihood). It is crucial to acknowledge and safeguard the existence of Bendega through local regulations. Just like other socio-cultural organizations in Bali, such as Subak and Pakraman Village organizations, Bendega deserves legal recognition and protection. Despite its existence since ancient times, Bendega has not yet received the recognition and protection it deserves through local regulations. Therefore, it is essential to strive for the legal rights of Bendega, along with Subak and Desa Adat, to fully realize the three traditional institutions in Bali, aligning with the Hindu philosophy concept of Segara-Gunung.

The implementation of the Bendega Local Regulation will bring about significant changes in various aspects of the fishing community's life. The establishment of the Bendega Group serves as an organized effort to safeguard the local wisdom, encompassing social, economic, and cultural traits, along with the noble values that shape

the community's way of life. Moreover, it ensures a comprehensive understanding of the boundaries and relationships concerning the rights, responsibilities, obligations, and authorities of all parties involved with Bendega. Ultimately, it guarantees the community's protection and legal assurance during the implementation of Bendega.

The implementation of Regional Regulation No. 11/2017 on Bendega has not been fully embraced, leading to suboptimal results. Consequently, fishermen's rights are not adequately protected, particularly with the shrinking coastal areas due to the influx of tourism. This pressing issue was recently addressed in a thought-provoking webinar titled "Regional Regulation Number 11 of 2017 concerning Bendega as the Implementation of Nangun Sat Kerthi Loka Bali, namely Segara Kerthi." The webinar, organized by the Mandhara Research Institute Foundation in collaboration with the All Indonesian Fishermen Association (HNSI), took place at Warung 63 in Denpasar on Thursday, March 25, 2021.

I Nengah Manumudhita, the Chairman of DPD HNSI, emphasized the importance of considering various factors to protect the livelihood of fishermen and ensure the sustainability of marine resources. Unfortunately, coastal areas have been shrinking due to the rapid development of tourism, which has limited the space for fishermen to carry out their activities. This issue arises from a lack of clear understanding about bendega. However, it is crucial to recognize that tourism development and the preservation of bendega can go hand in hand. In Bali, bendega activities can be integrated into cultural tourism, offering a unique attraction for visitors. Therefore, the implementation of Regional Regulation No. 11/2017 regarding bendega is of utmost importance (Ridwan, 2006).

Broadly speaking, the regional regulation encompasses various aspects such as safeguarding and empowering communities, preserving cultural heritage, fostering harmony, providing oversight and guidance, and allocating resources (Huda, 2015). Nevertheless, the execution of this regulation has not reached its full potential, thus necessitating additional efforts in raising awareness and promoting understanding among the public (Djindang, 1989).

In reality, there has been a lack of socialization from the beginning until now (Amanwinata, 1996). Without proper socialization, the fishermen group is unaware of what needs to be done. Numerous obstacles have arisen in the field regarding the implementation of the Bendega Regional Regulation (Kusumaatmadja, 2012). One of these obstacles is the lack of coordination between Subak, Desa Adat, and Bendega regulations. To address this, the Faculty of Law at Udayana University will continue to collaborate in the harmonization process of these three local regulations. Our aim is to effectively socialize Local Regulation No. 11 of 2017 concerning Bendega.

The problem at hand involves understanding Regional Regulation No. 11/2017 on Bendega within the community and exploring the role of the Sari Baruna Banjar Khubur Fishermen's group in Ketewel Village in preserving Bendega. The objectives of the activity are twofold: firstly, to advance understanding in the legal field, particularly the science of law related to the process of scientific exploration, focusing on the Regional Regulation on Bendega (Atmasasmita, n.d.). Secondly, it aims to gauge the comprehension of the Bendega Sari Baruna Group in Banjar Khubur, Ketewel Village, towards the mentioned regulation and to assess the community's awareness regarding Bendega protection in Bali. The anticipated benefits encompass theoretical contributions to legal science, especially in community protection, and practical advantages such as

aiding government efforts in socializing and informing the public about Bendega. The overall purpose is to enhance public understanding of Bendega and promote its protection through community service activities.

2. RESEARCH METHOD

The community service activity conducted in Banjar Khubur Fishermen Group, Ketewel Village, Gianyar, focused on the socialization of Regional Regulation No. 11 of 2017 concerning Bendega. Various methods were employed to ensure effective dissemination of information and knowledge regarding the protection and preservation of Bendega (Fuady, 2009).

Firstly, the socialization process involved counseling sessions and lectures, where participants were educated about Bendega and its significance. These sessions aimed to raise awareness about the importance of protecting and preserving Bendega.

Secondly, the lecture method was implemented in a structured manner, utilizing interactive delivery techniques. This approach involved multiple stages of presentation, allowing for active reflection and engagement from the participants. Visual aids such as pictures, news articles, and relevant regulations were incorporated to enhance understanding and facilitate discussions.

Furthermore, interactive discussions were conducted to encourage in-depth exploration of the topic. Participants were encouraged to ask questions and actively participate in the exchange of ideas. This interactive approach fostered a deeper understanding of the subject matter.

Additionally, to supplement the lectures and discussions, extension materials in the form of printouts were distributed to the participants. These materials contained relevant information and the Regional Regulations on Bendega, serving as a reference for further study and reinforcement of the socialization process.

To ensure the success of this community service activity, the involvement of lecturers from the Faculty of Law was crucial. They served as a team of facilitators, providing expertise and guidance to the participants. Their involvement helped participants understand the significance of socializing Regional Regulation No. 11 of 2017 concerning Bendega and the rights and obligations associated with it, particularly in relation to the protection of fishermen groups.

In order to encourage active participation, participants were given the opportunity to ask questions related to the socialization or counseling material. This interactive approach fostered a collaborative learning environment, enabling participants to gain a comprehensive understanding of the subject matter (Marzuki, 2012; Mertokusumo, 1996).

3. RESULTS AND DISCUSSION

The community service activity "Socialization of Regional Regulation No. 11 of 2017 concerning Bendega at Sari Baruna Fishermen Group Banjar Khubur Ketewel Gianyar Village", was carried out at the Sari Baruna Fishermen Group Hall Banjar Khubur Ketewel Gianyar Village.

Regarding the schedule of this activity, it is organized systematically and carried out in several stages including:

1. Meeting with all service members discussing the implementation of this community service;
2. Approaching the location of community service to apply for the implementation of community service to the Head of the Sari Baruna Fishermen Group Banjar Khubur Ketewel Gianyar Village.
3. Preparing and organizing extension materials including duplicating materials, and preparing materials about Bendega.
4. Conducting community service activities using the socialization method which is divided into several meetings considering the Health Protocol.
5. Evaluating activities and reporting 70% of community service implementation activities.
6. The last stage is the stage of completing the report on the results of community service activities.

During the counseling session, the Fishermen Group displayed great enthusiasm as they attentively listened to the presentation delivered by the educator/instructor. They maintained an orderly and serious demeanor throughout the entire activity. However, it is concerning that the community and the fishermen group of Sari Baruna Banjar Khubur Village Ketewel Gianyar are still unaware of the existence of Regional Regulation No. 11 of 2017 regarding Bendega. According to them, there has been no knowledge or understanding of the contents and protection provided by this regulation. Even Mr. I Wayan Rujawan, the head of the Sari Baruna fishing group, admits that their group is completely unaware of any local regulations pertaining to Bendega. This includes regulations at the provincial, regional, or village level, which have failed to address the existence of Bendega.

The Sari Baruna Fishermen Group of Banjar Khubur Ketewel Village Gianyar has recognized that the lack of communication from the legal authorities responsible for this matter has contributed to their current situation. Additionally, they admit that they themselves have a limited understanding of what is protected by the state in terms of the rights of Bendega and Fishermen Group. It is crucial for the community to understand the significance of preserving and protecting Bendega, especially in Banjar Khubur Ketewel Village Gianyar. This village holds a strategic location, being in close proximity to fishermen groups from Lebih, Purnama, Gumicik Gianyar, as well as the cities of Denpasar, Sanur, and Padanggalak.

The main goal of this service is to raise public awareness about the significance of safeguarding the rights of fishermen communities. Moreover, it is expected that through the dissemination of Regional Regulation No.11 of 2017, the sari Baruna Banjar Khubur fishing group in Ketewel Village, Gianyar will gain knowledge about the protection and conservation of Bendega in the Bali Province area. They will also be encouraged to promptly establish *awiig-awig* (traditional regulations) in line with the guidelines of the Regional Regulation. Consequently, it is anticipated that the fishermen group will become more confident in asserting their existence, knowing that they are supported by the Bali Provincial Government within the Ketewel Gianyar Village community.

During this community service initiative, the primary targets include the Bendega Management or Fishermen's Group, the Chairman of the Fishermen's Group, Fishermen's Group Members, as well as several krama wives of the Fishermen's Group and representatives of the local banjar (traditional community organization). The activities are

conducted through engaging discussions and thorough question-and-answer sessions, ensuring that the objectives of this endeavor are successfully accomplished.

The community service initiatives currently in progress have demonstrated significant benefits not only for the team responsible for their implementation, but also for the management and members of the Sari Baruna Fishermen Group in Banjar Khubur Ketewel Gianyar Village.

4. CONCLUSION

In conclusion, the Sari Baruna Banjar Khubur Fishermen Group in Ketewel Gianyar Village lacks a comprehensive understanding of Regional Regulation No. 11 of 2017, which focuses on the protection and preservation of Bendega. The community's minimal awareness stems from insufficient socialization efforts on Bendega protection and preservation. The Fishermen's Group serves as a key organization in Bendega-related matters, with its chairman disseminating information, addressing conflicts, and actively seeking data on Bendega protection and preservation.

Recommendations based on these findings include a more assertive role for the Gianyar Regency government in disseminating and enforcing Regional Regulation No. 11 of 2017 for Bendega protection. Additionally, empowering the Village Head or Bendesa to educate and create regulations (*Perarem* or *awig-awig*) regarding Bendega is advised. Broadening community service activities to increase socialization about Bendega regulations among various fishermen groups is crucial for enhanced awareness. Lastly, it is suggested that similar community service initiatives be extended to other villages in Bali to facilitate a comprehensive understanding and optimal implementation of Bendega protection and preservation efforts.

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IMPLEMENTATION OF ELECTRONIC TICKET SANCTIONS FOR TRAFFIC VIOLATORS IN BONE DISTRICT

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Abstract

The transportation system is very important in a city, both in big cities and small cities. There are so many traffic violations that occur on the highway caused by road users who do not obey traffic rules, this can cause congestion and can even cause traffic accidents. With the E-Tilang service, the implementation of traffic tickets is faster than manual tickets, besides that there is transparency or openness in its implementation. The method used in this research uses a qualitative research method with a literature study approach to explain the application of e-Tilang sanctions in Bone Regency. The application of e-Tilang sanctions in Bone Regency has not been implemented optimally because the socialization carried out by law enforcement officials has not been maximized so that there are still people who do not know about the implementation of e-Tilang and the community still does not fully support e-Tilang because of the high costs that must be incurred.

Keywords: *Application of Sanctions, Electronic Ticketing, Traffic Violators*

1. INTRODUCTION

The transportation system is a very important thing in a city, whether in a large or small city. There are many traffic violations that occur on the roads caused by road users who do not obey traffic rules, this can result in traffic jams and even cause accidents Traffic (Setiyanto et al., 2017). This provides innovation for the National Police traffic corps to use electronic ticketing which is said to be very effective for people who want to handle the ticketing process (Chusminah et al., 2018; Siadari, 2020).

E-Tilang came into effect on Friday, December 26 2016 throughout Indonesia, while E-Tilang has been implemented in Bone District since 2020. With the implementation of E-Tilang, people can immediately find out how much fine they have to pay. With the E-Tilang service, ticketing is implemented faster than manual ticketing, besides that there is transparency or openness in its implementation (Anggi Maulana, 2021) Implementing electronic tickets is an effective option to simplify the sanctions process carried out by traffic violators (Apriliana, 2020; Peng et al., 2020)

The elimination of manual fines on orders from the Police Chief does not seem to make people more orderly in traffic. Even though many ETLE cameras spy on traffic violations, in reality violations still exist and are increasing. Apart from that, people actually falsify the existence of these electronic tickets so as not to be caught by ETLE's cameras. They want if their number plate is not recognized, they can walk freely without penalty, even if they violate it (Kurnia Wahyu & Tukiman, 2022). Apart from that, there are still problems related to the implementation of electronic ticketing in Bone Regency, namely that some people do not understand the program, because there is still minimal socialization from the police to the public regarding the e-Tilang program. Technology is currently developing very fast so there are many new applications available. published, the application created is certainly very useful for everyone (indonesia.go.id, 2019).One

of the applications issued by the National Police traffic corps is the E-Tilang application. The aim of creating this application is to reduce traffic violations and to make it easier for people to process the ticketing process.

Several previous studies have been conducted related to this topic. Research by (Chaerani Nur, 2021) Usually the process for resolving traffic violation cases cannot be implemented. This is due to the reluctance of traffic violators to attend court. Violators prefer to entrust a sum of money to law enforcement authorities who should not be entitled to receive the fine (Harja & Paparang, 2022; Lee et al., 2020)efforts to eradicate traffic violations on the highway have been carried out by giving a ticket to every motorized vehicle driver who commits a traffic violation as intended in Law Number 22 of 2009 concerning Traffic Traffic and Road Transport. Regarding the findings during the investigation carried out by the police, anyone who is ticketed should go through a trial process in court. Due to current technological advances, legal subjects who violate traffic no longer need to attend court because the E-Tilang system helps or is a form of digitization of the manual ticketing process (Anggi Maulana, 2021; Seeley, 2019)

A habit, what this means is that there are still many people who do not understand the E-Tilang itself, and on the other hand, many people are still reluctant to solve the problem of ticketing, where people are more likely to solve the problem at the ticketing location by paying (bribing) the police. are on duty to be free from fines themselves. (Lu et al., 2021; Sabadina, 2020) However, in reality the use of the E-Tilang Application in the Magelang Police Legal Area is still relatively minimal compared to the use of manual tickets, even though in fact e-Tilangs are more make it easier for violators to resolve the legal problems they face with effective bureaucratic reform and legal certainty regarding ticket fines received by violators (Apriliana, 2020) fines from cases carried out by receiving notifications via SMS, so that the public or violators do not understand what the use of the e-Tilang application means (Setyawati & Capah, 2019)

Based on the explanation of the literature review, it examines the point of view regarding the performance of e-Tilangs which have not yet functioned well among the public, even though e-Tilangs are easier to apply to manage the process of resolving legal violations compared to manual ticketing. However, there have been no researchers who have discussed the application of electronic E-Tilang sanctions for traffic violators, where the focus of this research is how to disseminate technological developments to the public because as is known, the main factor inhibiting the implementation of the E-Tilang application is a lack of knowledge. people about technology, especially about the E-Tilang application which has been implemented in several areas so that this application can run well.

Electronic ticketing or often called e-Tilangs is a ticketing process that utilizes technology. With the existence of e-Tilangs, it is hoped that the ticketing process will be more effective and can also help the police in the administrative process (Lu et al., 2021; Setiyanto et al., 2017). With this ticket application, violators only pay according to the article they violated through a bank account. (Apriliana, 2020) There are three main functions of a ticket, namely: As a summons to the District Court; As an introduction to pay fines to the Bank / Cashier; and As a sign of confiscation of confiscated evidence, such as driver's license, vehicle registration, or vehicle.

2. RESEARCH METHODS

The method used in this research uses qualitative research methods with a literature study approach to explain the application of e-Tilang sanctions in Bone District. Qualitative research is a type of research whose findings are not obtained through statistical procedures or other forms of calculation (Subekti, 2022). The data sources for this research come from trusted and credible national and local online news portals such as kompas.com, CNN Indonesia, Republika, Tribun Bone, as well as relevant journal articles. The data analysis technique in this research uses descriptive. The stages in data analysis are data collection, data selection, inter-variable analysis and data verification, as well as interpretation and drawing conclusions, (Al-Hamdi et al., 2020).

3. RESULTS AND DISCUSSION

3.1. Implementation of e-Tilang sanctions in Bone District

The e-Tilang application is an innovation from Korlantas Polri in improving IT (Information Technology) based traffic violation fine payment services, creating an integrated e-Tilang application with related agencies which has been agreed upon and coordinated between the Indonesian Police Traffic Corps (Korlantas), the Court. Supreme Court of the Republic of Indonesia., Attorney General of the Republic of Indonesia., and PT. Bank Rakyat Indonesia (Persero) Tbk. Several technical obstacles arose during the implementation of the application, because the exchange of information between authorities was not optimal. These obstacles make it difficult for the prosecutor's office to take action and report traffic ticket violations. After analyzing and evaluating ticket requests, there have been developments and changes in ticket management since 2017. To make it easier, simpler and user friendly so as to improve services to the community (Sukur et al., 2021). With the implementation of e-Tilangs, it will really help the public (violators) to pay fines for fines through banking services (ATM, teller, e-banking) and will make it easier to manage traffic violation/ticket case data both for the National Police, the Supreme Court of the Republic of Indonesia., and the Indonesian Prosecutor's Office (Apriliana, 2020).

This is a new breakthrough in revolutionizing traffic laws from previously conventional to more modern, using CCTV cameras distributed on various roads. One of the changes and reform steps taken by the Indonesian Government to improve the public service system for traffic violations is the implementation of the E-Tilang application. This ticketing system is considered effective in reducing the number of traffic violations committed by road users. This is of course very helpful for the traffic police in Bone Regency to increase the discipline of road users.

The electronic ticket camera used for the e-Tilang system is capable of capturing various types of traffic violations committed by road users, ranging from road marking violations, cell phone use while driving, helmet use, and other violations. Apart from being able to detect various types of violations, the camera This system can also identify and analyze vehicle types and vehicle data that commit traffic violations (Muhammad, 2022). This system has been implemented in the hope of minimizing the occurrence of things that deviate from the provisions of traffic regulations. Apart from that, the government hopes that the implementation of this system can increase public trust, fair public services, transparency and efficiency, and bring benefits to (Kurnia Wahyu & Tukiman, 2022). In this case, the community legal culture factor is a factor that is related

to the environmental conditions of the community where the law is applied. In this case, these factors are related to the Community's status as a legal motor vehicle operator (Harja & Paparang, 2022).

With the introduction of electronic ticketing, the Bone District Police Area will definitely have its own system. The ticketing mechanism itself is when the police create a ticket manually (by writing on the ticket form) then the police re-enter the information into the E-Tilang application which is on the police cellphone with the guard at that time and will be integrated into the online ticketing server of the National Police Traffic Corps (Mabes). National Police) according to the information provided by the perpetrator, including the ticket number (Sabadina, 2020).

The ticket enforcement mechanism has 5 (five) stages, namely in the first stage, the device automatically catches traffic violations via supervisory monitors and sends recorded evidence of the violation to the ETLE back office at RTMC Polda Metro Jaya. In the second stage, officers identify the violator's vehicle data using Electronic Registration & Identification (ERI). The third stage, the officer sends a confirmation letter regarding the violation committed to the address of the motor vehicle owner according to the address registered on the owner's STNK for notification and request confirmation of the violation that occurred. The fourth stage, the vehicle owner confirms via the website provided or comes directly to the Sub Directorate of Law Enforcement office. In the fifth stage, officers issue tickets for verified violations via BRIVA which include the articles violated, the date of the incident, the location of the violation as well as a confirmation website link and trial date (Sentosa, 2021).

It can be seen that the implementation of electronic ticketing is more effective than manual ticketing, whereas manual ticketing has several obstacles, namely: Conventional implementation of ticketing has obstacles in implementation in the field, namely as follows: Firstly, it is vulnerable to abuse of authority for personal interests such as Collusion, Corruption and Nepotism (KKN); secondly, in implementing conventional ticketing, we can only take action against visible violations; third, the number of personnel on standby at the ticketing location is very limited; fourth, operational hours for implementing conventional ticketing can only be applied from 08:00 – 17:00 WIB (Yola, 2022).

Considering the increasingly massive implementation of electronic ticketing in Bone district, it is important for residents to know the amount of the fine if they are caught on camera committing a traffic violation. This sanction refers to the driving speed provisions regulated in Government Regulation Number 79 of 2013 concerning Road Traffic and Transportation Networks (LLAJ). According to Kompas TV, the following is the amount of the electronic ticket fine according to the type of violation: first, Violating traffic signs and road markings, the electronic ticket fine is IDR 500,000 or 2 months imprisonment. Second, not wearing a seat belt will result in an electronic ticket fine of IDR 250,000 or 2 months in prison. Third, driving while operating a smartphone is fined IDR 750,000 or 3 months in prison. Fourth, breaking the speed limit will result in an e-Tilang fine of IDR 500,000 or 2 months in prison. Fifth, using a fake number plate will result in an electronic ticket fine of IDR 500,000 or 2 months imprisonment. Sixth, driving against the flow is fined IDR 500,000 or a maximum of 2 months. Seventh, Running a red light, an e-Tilang fine of IDR 500,000 or 2 months in prison. Eighth, not using a helmet or the helmet being used does not comply with Indonesian National Standards

(SNI), an electronic ticket fine of IDR 250,000 or a maximum of 1 month in prison. Ninth, riding with more than 3 people will result in an e-Tilang fine of IDR 250,000 or 1 month in prison. Tenth, if motorbikes do not turn on their lights during the day, they will be fined IDR 100,000 or imprisoned for 15 days (Kompas.com/akbar bhayu tatomo, 2022).

How to check E-Tilang fines for Bone Regency, South Sulawesi or electronic tickets allows us to check online by visiting the Bone Regency - South Sulawesi police website then look for the ticket menu or a third party site such as cektilang.com, type No E-Tilang / No Blank / No BRIVA You then click Check to find out how much fines and fees you have to pay. If you check via the application, please visit Playstore and download the official application from the government or state prosecutor's office. Violators no longer need to attend a ticket hearing at the Bone Regency district court, just open the Case Tracking Information System (SIPP) then type in the vehicle number and E-Tilang Number, to pay the ticket fine and collect evidence, just come to the Bone Regency District Prosecutor's office. If the traffic ticket number has been decided or not by the South Sulawesi district court and is not on the list according to the decision date determined by the district court, you can directly contact the relevant party (police or DLLAJ).

How to pay for e-Tilangs in Bone Regency - South Sulawesi can be done through the prosecutor's office. If via ATM, the method is as follows: first, please enter your ATM Debit card and PIN. Second, select or click the Other Transactions menu -> Transfer -> To Another Bank Account. Third, first select the bank code you want to transfer, for this case the E-Tilang uses BRI Bank, then enter the BRI bank code, namely number 002, followed by the 15 digit E-Tilang Payment Number. Example 002123456789012345. Fourth, look at the receipt you got from the e-Tilang then enter the nominal payment amount according to the fine that must be paid. E-Tilang transactions will be rejected if the payment does not match the amount of the E-Tilang fine deposited. Fifth, then follow the next instructions in the ATM menu to complete the transaction. Sixth, save the E-Tilang transaction receipt as proof of payment. Note: Electronic ticket fines are paid after a court hearing and a decision has been received from the court. If on the 4th day of the trial date it has not been paid, the E-Tilang / Briva Number will automatically change (Rules can change at any time) (Cektilang.com, n.d.). The ticketing process like the flow above has been widely used in various countries, resulting in efficiency and effectiveness in the implementation of E-TLE (Electronic Traffic Law Enforcement) for traffic users and police officers.

3.2. The Impact of E-Tilang on the People of Bone Regency

The number of traffic accidents in Bourne Regency (Sursel), South Sulawesi in 2020 decreased compared to 2019. According to data from the Bone Police Traffic Unit, in 2020 there were 388 accidents. This figure is down from 2019 which reached 487 accidents. "The number of accidents this year has decreased by 99 cases or approximately 20.3 percent compared to last year," said Bone Police Chief, AKBP Try Handako, Wednesday (30/12/2020). He said the number of deaths due to traffic accidents had also fallen. In 2020, 34 people died, while in 2019 there were 56 people. Meanwhile, 169 people suffered serious injuries due to traffic accidents in 2020 and 426 cases of minor injuries (Anwar, 2020) This is mostly caused by road user factors and natural factors.

It is hoped that the e-Tilang application can have a positive impact on the implementation of law enforcement in discussions of duties and authorities of the police.

In this case there are also duties and authorities. Exercise or exercise of power by personnel of the Unitary State Police of the Republic of Indonesia is clearly regulated.

provisions of Article 1 Article 15 of the National Police Law Number 2 of 2002 of the Republic of Indonesia (Mahrani, Ismail, 2020) Legislative regulations are basically made so that they can be implemented as well as possible because essentially before the law (equality before the law) everyone is considered without distinction. Failure to implement sanctions for violations of the law results in the ineffectiveness of regulations. The inefficiency of these laws can be caused by unclear laws, inconsistent mechanisms, or the public not supporting law enforcement. Indonesia as a state of law (rechtstaats) continues to provide law enforcement authority/power to carry out its powers in accordance with established legal processes (Alvarie Norindra Leonita, Islah, 2022).

Several obstacles in the implementation of electronic ticketing in Bone Regency which hinder the implementation of the program are: first, there has not been maximum socialization carried out by the implementing agency so that there are still people who do not know about the implementation of e-Tilanging. secondly, the lack of people carrying out the e-Tilang resolution process and people who are late in carrying out the ticketing process and there are those who do not follow the e-Tilang process. This is also influenced by still having problems in the process of identifying vehicle data because the vehicle has changed ownership or the vehicle has been bought and sold. but the name change has not been carried out, this will also create difficulties in the electronic fine administration process. Third, the economy does not yet support the implementation of e-Tilanging optimally due to the high costs of implementing e-Tilanging and the e-Tilanging budget which is still provided by (Manso et al., 2022). Fourth, there is not yet optimal coordination between the Police, District Court, District Prosecutor's Office and Bank Rakyat Indonesia (BRI) as the agency directly involved in the E-Tilang program. Fifth, lack of public awareness to learn and find out about the E-Tilang program in the process of resolving traffic violation cases (Alvarie Norindra Leonita, Islah, 2022). Sixth, the facilities and infrastructure when taking action against traffic violations via E-Tilang have been properly fulfilled. Seventh, the legal culture has always been that there has never been direct supervision for officers who take action against traffic violations, both before and after the implementation of E-Tilangs. Eighth, officers who take action against traffic violations via E-Tilang are less professional because they still offer violators to pay the E-Tilang fine on the spot and are willing to accept payment of the fine on the spot. Ninth, officers who take action against violations are immoral because the fines paid on the spot by the officers are manipulated by the violation article so that it becomes a minimum fine and makes a profit (GUSTI AYU KOMANG NOVIANI & ASTUTI, 2018).

The advantages of implementing E-Tilangs are: first, there is no need to write manually, the action time is faster. Second, it does not require a ticket form. Third, traffic ticket data is directly connected to the back office, so that accurate data is obtained as the filling and recording system can be linked to the TAR and merit system. Fourth, Connect with the bank for payment of traffic fines. Fifth, connected to the court to hear/impose fines. Sixth, officers can attach evidence of violations in the form of photos/films/recordings as attachments to the trial. Seventh, violators can be subject to a demerit point system for violations committed. Eighth, as a basis for the driver's license testing system, education and other traffic police programs. Tenth, can provide actual

information as a portrait and even an index of orderly traffic culture. Tenth, Avoiding the practice of extortion by unscrupulous officers in the field (Liputan6, 2021).

Apart from the advantages of implementing e-Tilangs in Bone district, it also has weaknesses such as: first, E-TLE has a weakness for vehicles with non-B plates (DKI Jakarta), so it will not be detected, meaning that if there is a non-B plate vehicle that violates, then law enforcement cannot be carried out. Then how will the police monitor vehicles with non-B plates, which are still in large numbers in circulation. Second, the implementation of ETLE should not just be a trial/temporary project, but must become a permanent program to strengthen the implementation of ERP (Electronic Road Pricing). If the E-LTE technology used has not been fixed, the continuity of E-TLE could stop halfway. Third, it would be better if the bank where E-TLE payments are made is not only BRI, but also multiple banks, with the aim of facilitating access for people to pay traffic fines. Fourth, for people who own motorized vehicles, both cars and motorbikes, who have not yet received their names; It's best to change your name immediately. Because an ELTE violation letter will be issued and sent by post, in the name of the owner listed on the vehicle's STNK and BPKB (Fadhliansyah, 2018).

The implementation of the electronic ticketing system has had a positive impact on society, including the existence of an e-Tilang system for road users, with indicators namely helping road users to be more orderly in traffic, facilitating the process of paying ticket fines, facilitating the process of returning confiscated vehicle documents, helping anyone anyone who has difficulty dealing with traffic fines, helps anyone who has difficulty getting confiscated vehicle documents back, helps minimize bribes during the ticketing process, and overall is beneficial for (Irawan & Sekarsari, 2022) However, not all people can follow the E-Tilang procedures provided by the police. Especially for ordinary people who don't understand technology. The E-Tilang system that is implemented provides attention to the public. The E-Tilang system has a good impact on people who are familiar with technology. However, for people who are less familiar with technology, it is difficult to keep up with developments in this technology (Syifawaru et al., 2022).

It can be seen that ETLE monitors the road 24/7 to detect traffic violations passing through it. This proves that the ETLE implementation system always exists. Violators caught on camera will then receive a confirmation letter and pay the appropriate fine. If you have confirmed but do not immediately pay the specified ticket fine, there are sanctions that can be imposed on violators, namely blocking the Vehicle Registration Certificate (STNK). It is understood that this can provide a deterrent effect for people who violate traffic and after that they cannot commit any further violations. Where the hope of the implementing party is that the public knows and feels that they are always under the supervision of the authorities and do not repeat the mistakes made (Syaputri, 2023).

4. CONCLUSION

The implementation of the electronic ticketing system has had a positive impact on society, including the existence of an electronic ticketing system for road users whose indicators help road users to travel more regularly, make it easier to pay fines, simplify the process of returning confiscated vehicle documents which helps everyone, including those who are struggling with fines. The implementation of e-Tilang sanctions in Bone

Regency has not been implemented optimally because the socialization carried out by law enforcement officials has not been optimal so there are still people who do not know about the introduction of electronic tickets and the public still does not fully support e-Tilangs because of the high budget for paying ticket sanctions. electronic electronics provided by the government.

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DESIGNING DIRECT REGIONAL HEAD ELECTIONS BY THE GENERAL ELECTION COMMISSION AMIDST THE COVID-19 PANDEMIC

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Abstract

This study aims to understand the challenges faced in the implementation of direct regional elections by the General Election Commission amid the COVID-19 pandemic in Indonesia in 2020. The research method used is empirical juridical with a field research approach. Data were obtained through interviews with election coordinators and document analysis related to the implementation of elections. The results showed that the implementation of local elections in Indonesia in 2020 faced challenges due to disruptions caused by the COVID-19 pandemic, such as ensuring compliance with health protocols, poor internet quality, violations related to the procurement of Personal Protective Equipment (PPE), public concerns about the spread of COVID-19, disruption of the election process due to delays in resources and infrastructure, and candidate partners (paslon) who often ignore health protocols during their campaigns. Overcoming these challenges requires effective coordination and communication among election coordinators, strict implementation of health protocols, adjustments to schedules, stages, programs, and budgets, and increased community participation. The government also needs to pay attention to the availability of sufficient funds to ensure the smooth implementation of the election.

Keywords: *Covid-19 Pandemic, Direct Pilkada System, General Election Commission*

1. INTRODUCTION

Law Number 2 of 2020 on the Third Amendment to Law Number 1 of 2015 on the Stipulation of Perpu Number 1 of 2014 on the Election of Governors, Regents, and Mayors has postponed the implementation of regional election voting from September to December 2020. This is because the elections must still be held even in the conditions of the Covid-19 pandemic. In KPU Regulation Number 6 of 2020 concerning the Implementation of the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors Simultaneously in Conditions of Non-Natural Corona Virus Disease 2019 (Covid-19) Disaster, the KPU has ensured that all nine stages of the 2020 Election will be carried out by implementing strict health protocols. The nine stages include the formation and work procedures of PPK, PPS, KPPS, and PPDP; updating data and preparing voter lists; nomination; campaign implementation; campaign reports and funds; voting and counting; recapitulation of vote count results and determination of election results; socialization, voter education, and community participation; and securing election equipment.

Designing direct regional elections by the General Election Commission amid the COVID-19 pandemic has presented several challenges. The implementation of local elections in Indonesia in 2020 faced challenges due to disruptions caused by the pandemic, including economic and community order (Kusadarini et al., 2023). The Medan City elections also faced challenges in ensuring a smooth democratic process

while implementing health protocols (Auzan, 2022). However, the COVID-19 pandemic has not significantly affected democracy in Indonesia, as elections are direct, open, public, secret, honest and fair (Wisnaeni & Nugroho, 2023). Alternative patterns for filling the positions of regional heads during the pandemic were explored, including the appointment of acting or temporary executives, indirect elections, and the use of electronic voting systems (Pirmansyah et al., 2022). Simultaneous regional elections in Indonesia were held in December 2020, with the implementation of health protocols (Musyafa'ah et al., 2022). Even so, the government continues to implement Pilkada strictly and pay attention to health protocols at every stage, such as at registration, organizer meetings, limited meetings of teams and candidate pairs. The issuance of Government Regulation in Lieu of Law (Perppu) Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law on May 4, 2020 by the President of the Republic of Indonesia is the basis for holding simultaneous elections in 2020.

The organizers of the Regent and Vice Regent Elections have experienced many unprecedented events as a result of the Covid-19 pandemic. These circumstances necessitated a re-evaluation of the approach to the election process, as the prevailing conditions were very different from previous elections. The Election Commission faced several challenges when engaging directly with communities. After visiting individual residences to gather information, the Commission experienced significant difficulties due to fears of residents contracting Covid-19. The Covid-19 pandemic had a major impact on voter turnout. The level of community engagement before and after the onset of Covid-19 has been greatly affected. In 2015, public participation exceeded 92%, while in 2020, the figure reduced to only 89%. While this figure remains relatively high, there has been a noticeable decline in citizen engagement in the electoral process during the Covid-19 pandemic.

The Legal Basis for the General Election Commission's Regulations is Law Number 1 of 2015, which relates to the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors, and has undergone many changes. The latest amendment was made through Law Number 6 of 2020, which relates to the Stipulation of Government Regulation Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors. In addition, the work order of the General Election Commission, Provincial General Election Commission, and Regency / City General Election Commission is regulated by PKPU Number 8 of 2019 (BN RI 2019 Number 320), which has been amended by PKPU Number 3 of 2020 (BN RI 2020 Number 201). Furthermore, the implementation of the elections for Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor in the midst of the Covid-19 non-natural disaster is regulated by PKPU 6 of 2020 (BN RI 2020 Number 716), which has also been amended by PKPU Number 10 of 2020 (BN RI 2020 Number 981). The government's insistence on pursuing the agenda of democratic political parties during the pandemic, despite the various hardships faced by the people and the ongoing battle against the Covid-19 outbreak, gives the impression that the government lacks empathy and humanity. It is worrying that the government has taken unilateral steps that seem to prioritize other things over the safety of the people.

2. RESEARCH METODS

This research uses empirical juridical methodology, which is commonly known as field research. The purpose of this approach is to investigate the practical application of legal provisions in society (Arikunto, 2006). The main focus is to understand actual events related to regional head elections (Pilkada) in the midst of a pandemic. Empirical juridical research is a form of legal research that examines the enactment or implementation of normative legal provisions in action on certain legal events that occur in society (Muhammad, 2004)In simpler terms, this research is research conducted on the real situation that occurs in society with the aim of understanding and finding the facts and data needed. After the necessary data is collected, the research continues with problem identification, which ultimately leads to problem solving (Waluyo, 2002).

3. RESULT AND DISCUSSION

In response to the non-catastrophic events of the Corona-19 virus, President Jokowi quickly issued Government Regulation in Lieu of Law Number 2 of 2020 which postponed the Governor, Regent, and Mayor Elections until December 2020. This decision triggered the issuance of General Election Commission Regulation (PKPU) Number 5 of 2020 which is the Third Amendment to General Election Commission Regulation (PKPU) Number 15 of 2019 concerning Stages of Programs and Schedules for the Implementation of Elections for Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors. In addition, Circular Letter Number 20 of 2020 concerning the Implementation of Simultaneous Elections of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors in 2020 under conditions of non-natural disasters, Corona Virus Disease 2019 (Covid-19). These guidelines prioritize health and safety standards by complying with health protocols, implementing measures to prevent the spread of the Corona virus, and establishing methodologies for conducting elections during the pandemic.

President Jokowi has taken important steps in dealing with non-catastrophic events caused by the Corona-19 virus. One of the steps taken was to issue Government Regulation in Lieu of Law Number 2 of 2020. This regulation aims to postpone the Governor, Regent, and Mayor Elections until December 2020. This decision was taken to ensure public safety and health in the face of this pandemic. In addition, this decision also encourages the issuance of General Elections. This aims to give people the opportunity to elect leaders who are considered most capable of overcoming the current crisis. These elections are expected to provide legitimacy to the elected leaders and strengthen democracy in Indonesia.

Furthermore, Commission Regulation Number 5 of 2020 has also been issued. This regulation is t he Third Amendment to General Election Commission Regulation Number 15 of 2019. This regulation explains the Stages of the Program and Schedule for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors. With this regulation, it is hoped that the election process can run smoothly and orderly. Circular Letter Number 20 of 2020 has also been issued. This circular letter regulates the Implementation of the 2020 Simultaneous Elections of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors under conditions of non-natural disasters, namely Corona Virus Disease 2019

(COVID-19). The circular emphasizes the importance of health and safety standards in organizing elections.

The coordinators of the 2020 regional elections face a unique challenge. In the midst of the Covid-19 pandemic, they have to work with hope and serious concerns in dealing with the spread of this virus. The current political situation encourages us to unite and fight earnestly to break the chain of transmission of this virus. In addition, this political situation also reminds us to collectively hope that Indonesia has the ability to overcome this pandemic quickly. This is a hopeful political choice and should be recognized as such.

There are four key areas that need attention: increasing public participation, maintaining strict health protocols, improving the voting system, and providing comprehensive assistance to voters. The implementation of strict health protocols is crucial to ensure that the election does not compromise the safety and health of voters exercising their right to vote.

The KPU and Bawaslu have designed a program that involves various partners in the 2020 Pilkada. These partners include universities, media, government agencies, private organizations, CSOs (Civil Society Organizations), NGOs (Non-Governmental Organizations), persons with disabilities, religious leaders, community leaders, and women leaders. In this network, virtual communication has proven effective in disseminating information and educating voters. However, during the Covid-19 pandemic, family and community forums have also become very important networks for voter education and socialization.

Regional Head Elections (Pilkada) are an example of the popular sovereignty system adopted by the Indonesian government, which embodies a government of the people, by the people, and for the people. The rationale underlying the implementation of regional head elections (Pilkada) is to elect leaders who are able to protect, nurture, and manage the people to achieve a just and prosperous Indonesian society (Nuna & Moonti, 2019). Elections in Indonesia are a constitutional obligation that allows Indonesians to exercise their right to vote every five years. This election not only includes the election of the president and vice president, but also includes regional head elections at the provincial and district / city levels, in accordance with Article 5 of the General Election Commission (KPU) Regulation Number 6 of 2020 which states that the holding of simultaneous elections during the Covid-19 pandemic must prioritize the safety and health of organizers, participants and voters. This includes the implementation of rapid tests for all members of the KPU RI, regional KPU, PPK, PPS, and PPDP, as well as the use of personal protective equipment such as masks. In addition, hygiene measures, including the availability of hand sanitizers, regular cleaning and sanitation, internal body temperature monitoring, and maintaining a physical distance of one meter, are also enforced. These standards are adjusted according to the number of participants, with stricter measures implemented as the number of participants increases.

In the 2020 General Election that took place amid the Covid-19 pandemic, there are five important factors that must be considered so that the direct election process is safe, harmonious, healthy, legally sure, and profitable. These factors include decision validity, voter attendance (citizens/community), election participants (political parties/individuals), election organizers (KPU and Bawaslu), and budget readiness (Marisa et al., 2020).

Regulations that allow the postponement of simultaneous regional elections, which can be a legitimate justification for the postponement under the Bill in Lieu of Government Regulation (PERPPU), must be enacted immediately. The KPU must make the necessary adjustments, particularly on matters relating to the working hours of the Sub-District Election Committee (KDP) and the Voting Committee (PPS), the registration of candidate pairs, the finalization of the PTUN/MA decision, and the campaign. All these aspects must be harmonized, especially in terms of schedules, stages, programs, and budgets.

Despite the Covid-19 pandemic, Parti Demokrat has made a commitment to follow health protocols for both general and regional elections. However, the participation of various political parties in democratic parties remains limited, given the willingness of potential partners to comply with and implement health protocols in their activities (Hilman et al., 2020).

For election coordinators or organizers overseeing in-person elections, a key challenge lies in ensuring consistent adherence to health protocols by election officials throughout the electoral process. Effective coordination and communication among election coordinators can be hampered by poor internet quality, violations related to the procurement of Personal Protective Equipment (PPE), community concerns about the spread of Covid-19 leading to decreased voter turnout at polling stations, and disruption of the election process due to delays in resources and infrastructure. In addition, candidate partners (paslon) often ignore health protocols during their campaigns (Hamdani & Fauzia, 2021).

Article 71 paragraph (1) of the General Election Commission Regulation (P-KPU) Number 6 of 2020 states that the number of participants at the polling station must meet the limit set by the polling station, ensuring a distance of one meter and compliance with health protocols as a measure to prevent the spread of the Covid-19 virus. Before entering the polling station, KPPS members are expected to measure the internal body temperature of voters using tools to minimize direct contact.

A major challenge in organizing elections lies in the availability of funds. Insufficient funds can lead to cuts in reserve funds, which can jeopardize the quality of work. Extraordinary funds, without budget reductions, need to be made available by the state (Habibi et al., 2023). Inaccuracies in the spending plan can be attributed to the diversion of funds to address the Covid-19 situation. The planned utilization of the reserve fund has become a significant issue in the election, particularly on 9 December 2020, despite coordination between the Minister of Finance and the Minister of Home Affairs regarding changes to the election fund budget (Darmastuti, 2020).

4. CONCLUSSION

The results of the analysis can be concluded that the implementation of direct regional elections by the General Election Commission in the midst of the COVID-19 pandemic requires serious attention in ensuring the safety, health, and compliance with health protocols for all parties involved in the election process. Challenges faced in the implementation of Indonesia's 2020 regional elections due to disruptions caused by the COVID-19 pandemic include ensuring consistent adherence to health protocols by election officials, poor internet quality, violations related to the procurement of Personal Protective Equipment (PPE), public concerns about the spread of COVID-19, disruption

to the election process due to delays in resources and infrastructure, and candidate partners (paslon) who often ignore health protocols during their campaigns.

Overcoming these challenges requires effective coordination and communication among election coordinators, strict implementation of health protocols, adjustments to schedules, stages, programs, and budgets, and increased community participation. It is also necessary to improve the voting system and provide comprehensive assistance to voters. The government also needs to pay attention to the availability of sufficient funds to ensure the smooth implementation of the election.

As a suggestion, the government and all parties involved in the implementation of regional head elections must prioritize public safety and health in every stage of the election. In addition, it is necessary to conduct more intensive education and socialization to the public about the importance of implementing health protocols during the implementation of elections. The government also needs to pay attention to the availability of sufficient funds to ensure the smooth implementation of elections

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JURIDICAL REVIEW OF THE CLAUSE OF WITHHOLDING THE ORIGINAL DIPLOMA OF WORKERS BY THE COMPANY IN THE EMPLOYMENT AGREEMENT

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Abstract

The purpose of this research is to understand the aspects of legal certainty related to the Retention/Submission of Original Diplomas Clause in the employment contract applied by the Company and this research also aims to find out the legal protection efforts given to workers who agree to the retention of diploma clause in their employment contract, especially in the context where the Company is considered negligent in maintaining the original diploma belonging to its workers. The research method is normative legal research with an approach to legislation. The results of this study show that in the implementation of employment contracts that include diploma retention/submission clauses, there are no explicit statutory provisions that allow or prohibit the practice. However, regarding the legal requirements of agreements in employment contracts, this is regulated by the Civil Code. Therefore, the legal vacuum regarding whether or not the withholding of diplomas can cause this practice to occur as a result of customs in the world of work, and when related to RI Law No. 39 of 1999 concerning Human Rights is contrary to the principles of human rights because it hampers workers' rights to get better jobs and improve their quality of life. In addition, in the legal protection efforts for workers who agree to the clause of withholding/submission of diplomas in their employment contracts, there are preventive and responsive legal protections. This shows that there are measures to prevent and respond to potential violations of workers' rights in the context of such clauses.

Keywords: *Agreement, Withholding, Diploma, Legal Protection*

1. INTRODUCTION

With 260 million people living in this vast country, Indonesia is the fourth most populous country in the world, after the United States (328 million), China (1.42 billion) and India (1.37 billion). Currently, more than 68 percent of Indonesia's population is of productive age, which is the demographic bonus period that Indonesia is experiencing. The sizable proportion of individuals who are in the productive age also affects the need for survival, and one approach that can be taken to achieve a satisfying and high-quality standard of living is to have an established job. Education and employment are closely linked and for specialized and strategic positions in both the private and government sectors, the prerequisites for employment must be commensurate with academic qualifications. A competent education, reflected by an adequate grade point average, is a crucial aspect in detailing one's qualifications. This principle is not only an essential requirement, but also the main basis for prospective workers to apply in accordance with their respective expertise and discipline.

In today's modern world of work, most companies require applicants to attach the original diploma as the main requirement in the selection process. This is not just a formality, but a mechanism to ensure that applicants meet the qualification standards required by the company. However, an increasingly common phenomenon is that there are companies that have strict policies to keep the original certificates of the employees

they accept, citing the seriousness of the task and reflecting a high commitment to work. So here a work agreement is needed which aims to obtain legal certainty regarding what is promised, both parties must fulfill their respective rights and obligations. Employment agreements must not violate the law, the parties must agree and must not be forced. The contents of the employment agreement must also be clear, so that there is no misunderstanding in the future which results in default.

In the context of employment agreements, it is important to recognize that such agreements have a coercive characteristic, known as a "dwang contract". The concept of "freedom of contract" applied in the law of engagement cannot always be realized in employment agreements, given the different positions between the parties involved.

This condition results in the parties, especially employees, not being able to fully determine their wishes in the agreement. This situation tends to disadvantage employees, who are often in a weak position due to the need for work. In this dynamic, the employment agreement can be a more favorable instrument for the employer, given its more dominant position. Therefore, it is often found that there is a clause containing a guarantee on the original diploma of the employee, which is pledged to the employer. The guarantee requested by the employer aims to provide a sense of trust to the employer. With this, it is expected that workers will be more careful in carrying out their work, especially in positions where workers are entrusted with managing money, products, or equipment worth billions, and carrying the company's good name. For example, in the retail sector such as stores, outlets, or minimarkets, if workers commit fraud such as taking large amounts of goods or money, the diploma can be used as collateral. Therefore, while withholding a diploma may be considered a serious step in demonstrating an employee's commitment, it should not be the main aspect in assessing an employee's quality or commitment to their job. More importantly, the assessment of an employee's ability and dedication should be based on his or her performance and responsibilities, so as to create a trusting and productive work environment.

Law enforcement is very important to ensure the achievement of the benefits (efficiency) of these rules. Without strict law enforcement, these normative rules will not have significant meaning, especially in the field of labor. The Labor Law has provided a legal umbrella in Indonesia with the issuance of Law Number 13 of 2003 concerning Manpower. This Labor Law is presented to guarantee the basic rights of workers and ensure fair employment opportunities and treatment without discrimination based on anything. The main objective is to realize the welfare of workers and their families, while taking into account the development of the business world. However, it is important to emphasize that this law still has shortcomings related to the lack of clarity in allowing or prohibiting the use of diploma retention clauses in employment contracts between employees and employers. Therefore, law enforcement is crucial to ensure that the regulations are implemented and provide effective protection of workers' rights (Dini, 2019).

1.1. Problem Formulation

Based on the explanation above, the authors formulate 2 problem formulations from this journal, namely:

a. How is the retention of a worker's original diploma regulated by Indonesian law?
b. What is the legal protection for workers who agree to the clause of withholding certificates in their employment contracts?

1.2. Purpose of Writing

The purpose of writing this journal is:

a. Knowing the provisions of retaining the original certificate of workers based on the applicable laws in Indonesia.
b. Knowing the legal protection of workers who agree to the clause of withholding diplomas in their employment contracts.

2. RESEARCH METHODS

This research uses normative research methods. Normative legal research is a research process to examine and study the law as norms, rules, legal principles, legal principles, legal doctrines, legal theories and other literature to answer the legal problems under study. The type of approach used in this research is the Statute Approach This approach is used by examining all laws and regulations related to the legal issues being discussed (studied). Legal materials used in this research are primary legal materials, namely legal materials consisting of laws and regulations and secondary legal materials, legal materials consisting of law books, legal journals containing basic principles (legal principles). The legal material analysis technique used in this research is by performing description and argumentation techniques (Muhaimin, 2020).

3. RESULTS AND DISCUSSION

3.1. Provisions for Withholding Workers' Original Diplomas Under the Law

The clause of withholding/submission of workers' original certificates in employment agreements is a practice that is often carried out by companies as a condition of hiring their employees, this is often found in agreements (PKWT) for a certain period of time. This practice is carried out so that workers do not resign and/or get or look for other jobs during their contract period. However, legally If we look at the definition of work agreement as stipulated in Law Number 13 of 2003 concerning Manpower, Article 1 point 14 explains "Work agreement is an agreement between workers or laborers and employers or employers that contains working conditions, rights and obligations of the parties.

With the existence of a work agreement between employers and employees, a working relationship arises between the two parties so that the practice of withholding certificates must obtain approval from both parties, namely employees and companies. The company is obliged to make an employment agreement explaining that both parties agree to the conditions for withholding the certificate, along with the duration or period of withholding the certificate. In addition to the definition of employment agreement, there is also the definition of employment relationship, as stated in Article 1 number 15 of Law Number 13 Year 2003 "is the relationship between employers and workers / laborers based on employment agreements, which have elements of work, wages and orders." So, it can be concluded that the relationship between employers and workers has a close relationship and needs each other (Wibowo, 2020).

The legal requirements for an employment agreement as stated in Article 1320 of the Civil Code are: first, an agreement to bind themselves; second, the ability to make an agreement; third, the existence of a certain subject matter; and fourth, the existence of a cause that is not prohibited. As long as these conditions are met, the agreement is

considered valid and binding, including if it is agreed to retain the employee's diploma until the end of the contract (Vijayantera, 2017). According to Article 1338 of the Civil Code, agreements that are legally agreed upon by the parties shall apply as laws for those who make them, so that legally, the parties are obliged to comply with the contents of the agreed agreement, including the policy of withholding diplomas which becomes legally valid. In the Civil Code and Manpower Law Number 13 of 2003 and its implementing regulations, there are no provisions that explicitly regulate the withholding of original certificates.

Therefore, the legal vacuum related to whether or not to withhold certificates has resulted in this practice occurring based on custom in the world of work and the principle of freedom of contract. It should be understood that this freedom of contract does not mean freedom without any restrictions. Referring to the provisions of Article 1337 of the Civil Code which states that "a cause is prohibited, if it is prohibited by law, or if it is contrary to good morals or public order" and Article 1339 of the Civil Code which states that "an agreement is not only binding for things that are expressly stated". can be used as a limitation of freedom of contract is that the agreement must not conflict with law, decency, public order, propriety, and custom. Considering that the principle of freedom of contract was born from the realization of human rights, freedom of contract must also be limited by not being allowed to conflict with the human rights of one or the parties to the contract4in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom or law".

The withholding of certificates by the company, when associated with Indonesian Law No. 39 of 1999 concerning Human Rights violates several articles, namely the first, Article 9 paragraph (1) "everyone has the right to live, maintain life and improve their standard of living" meaning that workers have the right to get a better job than before and get a bigger salary in improving their standard of living. workers lose their right to get the opportunity to work in other places that they consider better. Secondly, Article 12 states that "everyone has the right to protection for their personal development in order to obtain education, educate themselves, and improve their quality of life so that they become human beings of faith, devotion, responsibility, noble character, happiness and prosperity in accordance with human rights".

This causes certificate holders who want to continue their higher education to improve their quality of life to be hampered because their certificate is held by the company where they work. Finally, the third is contained in Article 38 paragraph (2) "everyone has the right to freely choose the job he likes and is also entitled to fair working conditions", with the withholding of certificates by companies resulting in workers being unable to use their certificates to get other jobs they want according to the talents they have. From the explanation of the articles above, it is clear that if a company withholds certificates, it means that it has violated the human rights of its workers but until now there is still no explicit rule that allows or prohibits the application of the condition of withholding/submission of certificates in employment contracts carried out by companies (Hidayah, 2018).

3.2. Legal Protection for Workers who Agree to the Clause of Withholding Diplomas in their Employment Contracts

The protection of labor is intended to guarantee the basic rights of workers/laborers and ensure equal opportunities and treatment without discrimination on any basis to

realize the welfare of workers/laborers and their families while taking into account the development of business progress. To protect workers/laborers from discrimination, a work agreement is needed, where the work agreement will regulate the rights and obligations of workers/laborers and employers. Legal protection itself is divided into two, namely, preventive and responsive legal protection:

Preventive legal protection is a protection provided by the government to prevent certain violations before they occur. This has the intention to provide a limitation when performing a certain obligation based on laws and regulations. Preventive legal protection provides legal subjects to file an objection or voice before a definitive decision, this aims to prevent future problems or disputes.

Preventive legal protection can be pursued by making employment agreements that are in accordance with the provisions of the legislation that clearly regulate what is agreed and do not violate what is agreed, including clauses regarding the return of diplomas to workers if both are no longer bound by the agreement. In labor law, preventive legal protection is based on the precepts of a just and civilized humanity alongside social justice for all Indonesian people. The purpose of this protection is expected to cover workers not only at the time of the employment relationship but also when the employment relationship ends. This is in accordance with the Pre-Contractual, Contractual, and Post-Contractual stages in which the employment agreement is balanced, in accordance with the legal requirements of the agreement, and also if a dispute occurs in industrial relations, it can be pursued by consensus based on the precepts of Pancasila (Salsabilah, 2021).

Repressive legal protection: protection that aims to resolve disputes (Ikhsani, 2020). After the existence of a work agreement, a work relationship occurs which can be referred to as a legal event so as to result in a work relationship there are legal consequences, namely rights and obligations for the parties, namely the company and workers, in the work agreement there is an agreement in the absence of coercion, error, fraud and there is also good faith which means that both parties agree to the existence of the work agreement. Work agreements between companies and workers related to the retention of diplomas often occur various kinds of problems, such as the loss of workers' certificates or damage to workers' certificates and also companies that do not want to return workers' certificates according to the work agreement (Agustin & Wahjoeono, 2023).

The loss of a worker's certificate has a big impact on the certificate owner because the certificate can only be issued once and cannot be reprinted. This is an anxiety for workers to submit certificates, and on the one hand prospective workers also want to work in the field of interest. If there is a loss of certificates committed by the company, it can be subject to Article 1365, Article 1366 and Article 1367 of the Civil Code because the company causes harm to other parties. Article 1365 "Every act that is unlawful and brings harm to another person, obliges the person who causes the loss through his fault to replace the loss", The provisions of this article can be used because the company is obliged to be responsible for losses caused by negligence or carelessness. Article 1366 of the Civil Code states that "every person is responsible not only for his actions but also for his negligence and lack of caution", From the provisions of the Article, it is clear that everyone must have the nature of prudence towards others, the company in this case that imposes the withholding of certificates in its work contract must take care of and safely store the certificates entrusted by its employees. Article 1367 paragraph 1 of the Civil Code "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who are his dependents or by goods under his

supervision". This Civil Code argument can be used by workers to make a civil subpoena / lawsuit against the company, when workers are harmed by damage or loss of diplomas committed by the Company. In civil law there are two forms of compensation, namely material and immaterial compensation. In material form, it can be in the form of monetary compensation, and material responsibility in the form of compensation in the form of a certificate replacement letter.

In addition to what has been explained above, the return of certificates belonging to workers after the employment relationship ends is a very important thing, this is an obligation that must be carried out by employers who provide diploma requirements as a guarantee in employment relationships. If in the agreement letter to hand over the worker's certificate, whether it is an integral part of the employment agreement or made separately, it is stated that the work certificate will be returned after the employment relationship ends and in fact the employer does not fulfill its obligations, the worker as a party who is disadvantaged by the withholding of the certificate, can file legal remedies to regain their rights to ownership of the certificate based on a default lawsuit in the general court as Article 1243 of the Civil Code which reads that "Reimbursement of costs and interest for non-fulfillment of an obligation begins to be required, if the debtor, although it has been declared negligent, is still negligent to fulfill the obligation, or if something that must be given or done can only be given or done in a time that exceeds the specified time" (Anggraini, 2022).

Withholding employee certificates as a form of guarantee to the Company in the employment agreement can also fulfill the elements of the crime of embezzlement in office based on Article 374 of the Criminal Code, which reads: "For embezzlement committed by a person whose possession of property is due to an employment relationship or because of a profession or because he receives remuneration for it, shall be punished by a maximum imprisonment of five years." The perpetrator is aware of his actions that want to own property, either partially or fully, which is still part of or belongs to another person and the method of obtaining the property is carried out legally, not by theft but by embezzling. The perpetrator realizes that the property that he wants to own belongs to another person either partially or wholly, and that his actions will cause harm to that person. This Criminal Code argument can be used by workers to file criminal lawsuits against the company, when workers are harmed by damage or loss of certificates committed by the company (Gde Wiryawan, 2021)

4. CONCLUSION

The clause of withholding the diploma by the Company in the agreement often occurs in the agreement (PKWT) for a certain period of time work agreement, this is done so that the worker does not resign during the contract period, in the Civil Code and Manpower Law No. 13 of 2003 and its implementing regulations, there are no provisions that explicitly regulate the withholding of original certificates. Therefore, the legal vacuum related to whether or not it is permissible to withhold certificates has resulted in this practice occurring based on customs in the world of work and the principle of freedom of contract, however, when related to Indonesian Law No. 39 of 1999 concerning Human Rights, it violates several articles which cause this practice to hamper workers' rights to get better jobs and improve their quality of life so that the practice of withholding original certificates belonging to workers carried out by the company remains contrary to the principles of human rights. The form of legal protection for workers who have

implemented this agreement can be realized through preventive and repressive legal efforts. Preventive legal protection can be sought by making work agreements that are in accordance with the provisions of the legislation that clearly regulate what is agreed and do not violate what is agreed, including clauses regarding the return of diplomas to workers if both are no longer bound by the agreement. Repressive legal protection is sought by filing a lawsuit on the basis of default if the company does not return the worker's diploma in accordance with the employment agreement.

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CAUSALITY TEACHINGS IN PLANNED MURDER CRIMES (Case Study of Murder with Cyanide Poison)

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Abstract

The phenomenon of premeditated murder represents a grave criminal offense involving the intentional taking of another person's life through meticulous planning. At the core of any event lies a causal relationship, a fundamental concept known as causality. Causality, in the context of criminal investigations, refers to the cause-and-effect relationship applied to discern the primary factors leading to specific consequences. This research seeks to address the intricate nature of causality within the crime of premeditated murder, particularly examining the series of events identified by law enforcement officials as indicative of a causal relationship. The central challenge in this research pertains to unraveling the specific series employed by law enforcement as a foundation for establishing causality in cases of premeditated murder. Furthermore, the study delves into the question of how responsibility for the criminal act committed by Jessica Kumala Wongso against Victim Wayan Mirna Salihin is attributed based on the principles of causality. Investigating these aspects will contribute to a more comprehensive understanding of the legal mechanisms used to identify and assign accountability in cases of premeditated murder.

Keywords: *Causality, Crime, Premeditated Murder*

1. INTRODUCTION

1.1. Background

Indonesia is a state of law that upholds human rights and guarantees the position of its citizens in law and government. The purpose of the law itself is as a protection that guides humans to a full personality to become a good society, and together with other communities participate in building a just and prosperous Indonesian society. In addition, the purpose of the law is to regulate the association of human life in peace. This is based on because in their lives, humans always establish relationships with one another based on different characteristics and desires. The function of law is to regulate and balance these different characteristics and desires so that human relations are always in peace.

Criminal law as one of the laws in the State of Indonesia, its regulation is expressly stated in the Criminal Code (KUHP) as one of the positive laws.1 Although the Republic of Indonesia is a state of law with a legal system, regulations, and law enforcement officials, law violations continue to occur. This is due to the idea that humans are wolves for other humans (*homo homini lupus*), always selfish and not concerned with others.2 So it is not impossible for humans to commit mistakes and crimes that can refer to criminal acts. Moeljatno uses the term criminal offense which is defined as an act prohibited by a rule of law which prohibition is accompanied by threats (sanctions) in the form of certain criminal acts, for those who violate the prohibition.

The term criminal offense is used as a translation of the term *strafbaar feit* or delict. *Strafbaar feit* consists of three words, namely *straf, baar,* and *feit,* in *literlijk,* the word "*straf*" means criminal, "*baar*" means can or may and "*feit*" is an action. In relation to the term *strafbaar feit* as a whole, it turns out that *straf* is also translated with the word law.

And it is common that law is a translation of the word *recht*, as if the meaning of *straf* is the same as *recht*. For the word "*baar*", two terms are used, namely may and can. Meanwhile, the word "*feit*" is used in four terms, namely, act, event, offense, and action. 4 Basically, criminal acts are related to behavior or actions that are prohibited by law. Special criminal offenses focus more on issues related to the law, and this discussion does not cover matters regulated by the law. General criminal penalties do not govern these special criminal offenses.

Murder is one of the crimes committed and occurring in society. Murder is seen as a very terrible and inhumane act. The goal of the perpetrator of murder is a person's soul that cannot be replaced. One type of murder is the crime of premeditated murder. Premeditated murder in the Criminal Code is regulated in Article 340:

> *"Whoever deliberately and with premeditation takes the life of another person, shall, being guilty of manslaughter, be punished by death or life imprisonment or a maximum imprisonment of twenty years".*

The premeditated murder was intended by the legislator as a special form of aggravated murder, the formulation of which could be "murder committed with premeditation shall be punished as murder with premeditation". Based on what is described above, it is possible that It can be concluded that by formulating Article 340 of the Criminal Code in this way, the legislator deliberately did so with the intention of it being a stand-alone crime. An event must have a cause, as well as the crime of premeditated murder. The event of cause and effect is called causality.5 In criminal law, the doctrine of causality is intended to determine the objective relationship between human actions and consequences that are not intended by law. The Criminal Code itself does not formulate any provisions on how to determine causation. But in several articles it is explained that in certain offenses it is necessary to have an effect which is the "cause" (causa) of a certain effect.

As in the case of the murder of Wayan Mirna Salihin, which was allegedly caused by cyanide poison found in coffee drinks. The case has a chain that is not easy to determine the act that caused the death of the victim because the act of putting cyanide poison in the coffee was not found. In cases that have a long chain of causes, it can cause difficulties in determining the act that causes death. Therefore it is difficult to determine the criminal liability of the perpetrator. While the criminal code does not explicitly refer to one particular doctrine of causality. Judges are given the discretion to choose between the theories in the causality doctrine, so it does not bind judges to use which causality doctrine in considering their decisions. Based on this background, the author is interested in knowing the extent of the application of the teaching of causality to one of the planned murders committed by Jessica Kumala Wongso by using cyanide poison against her victim, Wayan Mirna Salihin.

1.2. Problem Formulation

1. How is the criminal responsibility for premeditated murder in the 'cyanide coffee' case?
2. How is the series of causal relationships as the basis for law enforcement officials in proving the case of premeditated murder with 'cyanide coffee' poison?

1.3. Research Objectives

1. To discuss and analyze the criminal responsibility of premeditated murder in the 'cyanide coffee' case.
2. To discuss and analyze the series of causal relationships as the basis for law enforcement officials in proving the case of premeditated murder with the poison 'cyanide coffee'.

2. LITERATURE REVIEW

The research method used in this research is qualitative research method. The qualitative research method was chosen because the focus of the research was to understand and explore the point of view of the Mirna Salihin case, as well as to explain the problem based on the viewpoint of the teaching of causality in criminal law(Adami Chazawi, 2000). This qualitative research method was chosen to enable a deeper understanding of the context of the case. Thus, this research method is expected to provide a comprehensive insight into the conflict.

3. RESULT AND DISCUSSION

3.1. Case Chronology

This case occurred on Wednesday, January 6, 2016, at Oliver Restaurant in Grand Indonesia, Kebun Kacang Village, Tanah Abang Sub-district, Central Jakarta. The defendant in this case is Jessica Kumala Wongso and the victim in this case is Wayan Mirna Salihin. Jessica (the defendant) became friends with the victim Wayan Mirna Salihin (Mirna), at the Billy Blue College of Design in Sidney, Australia. In mid-2015, Victim Mirna learned of problems in the romantic relationship between the Defendant and his girlfriend so Victim Mirna advised the Defendant to break up with his abusive and drug-using girlfriend, saying why go out with people who are not good and not capital. Victim Mirna's words apparently made the Defendant angry and hurt so the Defendant cut off communication with Victim Mirna.

The Defendant eventually broke up with his girlfriend and experienced several legal events involving the Australian Police, which made the Defendant even more offended and hurt by Victim Mirna, so to avenge his hurt, the Defendant planned to eliminate Victim Mirna's life. On December 7, the Defendant contacted the Victim through the WhatsApp (WA) application to inform her of the Defendant's whereabouts in Jakarta and invited Victim Mirna to meet. Furthermore, the first meeting between the Defendant and Victim Mirna and the Victim's husband, Arif Setiawan Soemarko at a cafe in the North Jakarta area. The Defendant requested that the Victim Mirna create a WA Group with the name Billy Blue Days which consisted of: Defendant, Victim, Hani (witness), Vera (witness), where in the WA Group conversation, the Defendant took the initiative to invite a meeting and finally agreed on January 6, 2016 at 6:30 pm at Olivier Restaurant, Grand Indonesia.

On Wednesday, January 6, 2016, the Defendant prepared himself to realize his plan by saying that he would treat Victim Mirna, Hani, Vera and told them that the Defendant would come first to Olivier Restaurant to reserve a place. Furthermore, a conversation (chat) took place in Group WA where the Victim said about her favorite Vietnames Iced Coffee (VIC) at Restaurant Olivier, from this conversation the Defendant immediately

took the initiative to order VIC for the victim. At approximately 3.30pm the Defendant arrived at Restaurant Olivier and immediately booked a table for 4 people, after observing the restaurant, in preparation to take the victim's life. At 4:14 p.m. the Defendant returned to the restaurant, chose table 54, and placed the 3 peper bags he had brought with him.

Then went to the bar to order VIC drinks for the Victim and 2 (two) Cocktails and the Defendant went straight to the cashier to pay (close bill). Rangga (witness) made the VIC order for the Defendant, then Agus Triono (witness) delivered the VIC order, shortly thereafter Marlon (witness) delivered 2 (two) Old Cocktail drinks to table 54.

After Marlon (witness) left table 54, then the Defendant sat down, placed the glass containing VIC on his right and arranged 3 peper bags on the table with the intention of blocking the view of the surrounding people so that the act would be carried out to put sodium cyanide poison (Na Cn) into a glass containing VIC drinks that would be served to Victim Mirna. A few moments later the Victim Mirna and Hani (witness) came to the Defendant who was waiting at table 54, the Victim Mirna sat right in front of the glass containing VIC which had been filled with sodium cyanide poison, then the victim asked the Defendant "whose drink is this?" and the Defendant replied "this is for you Mir, you said you wanted it", then the Victim Mirna said "oh, geez, why did you order first, I mean later, just order it, when I come ... thank you for ordering". Then the Victim took the glass containing VIC and drank it, immediately the Victim reacted by saying "it's really bad, this is awful" while waving her hand in front of her mouth due to the stinging heat, 2 (two) minutes later the Victim immediately fainted, Ileng (witness) took the Victim to the Damayanti Clinic, Grand Indonesia Branch, Dr. Andry as a general practitioner at the Clinic saw the Victim's condition as faint, the body was rather stiff.

The victim was taken to Abdi Waluyo Hospital, Dr. Adiyanto (witness) the duty doctor examined the victim who was already in a condition with no palpable pulse, no breath and no heartbeat, but Dr. Adiyano took medical action for the victim in the form of respiratory support and resuscitation (heart-lung pump) but the attempt to help had no results and the victim was declared dead as stated in Abdi Waluyo Hospital Letter No. 004/DIR/RSAW/I/2016 dated January 11, 2016 which contains a Medical Resume. As a result of the actions of the Defendant Jessica Kumala Wongso, Victim Mirna died in accordance with the Visum et Repertum Number Pol. R/007/1/2016 /Rumkit. Bhay. Tk.1 dated January 10, 2016 made and signed by Dr. Arief Wahyono, Sp.F. and Dr. Selamet Poernomo, Sp.F., DFM, concluded: "In the examination of a woman aged 25-30 years, embalming and makeup have been carried out, on external examination no openings were found, bluish inner lips were found. On forensic histopathology examination of gastric preparations, abnormalities caused by corrosive materials were seen. The cause of death of this person awaits the results of the examination from the Forensic Laboratory." And Minutes of Criminalistic Laboratory Examination of Evidence: Remains of drinks and organs of body fluids Number LAB: 086.A/KTTA/2016 on Thursday, January 21, 2016 signed by Dra. Noorhayati, Azhar Darlan, M.Si., Helmiyadi, S.Si., Eti Susanti, A.Md. Farm, and dictated by Dr. Nursamran Subandi, M.Si. as KABID KIMBIOFOR at the Forensic Laboratory Center of the National Police Criminal Investigation Agency.

3.2. Criminal Liability for Premeditated Murder in the 'Cyanide Coffee' Case

Murder is the intentional taking of the life of another person, to take the life of another person, a perpetrator must do something or a series of actions that result in the death of another person with a note that the opzet of the perpetrator must be aimed at the

result in the form of the death of another person. Thus, one cannot talk about the occurrence of a criminal act of murder, if the result of the death of another person has not been realized. In the Criminal Code, criminal offenses that result in the loss of life of another person are:

a. Ordinary murder (Article 338 of the Criminal Code).
b. Murder with aggravation (Article 339 of the Criminal Code).
c. Aggravated murder (Article 340 of the Penal Code).
d. Infanticide by the mother (Article 341 of the Penal Code).
e. Premeditated infanticide (Article 342 of the Penal Code).
f. Murder at the request of the person concerned (Article 344 of the Penal Code).
g. Persuading/assisting a person to commit suicide (Article 345 of the Penal Code).
h. Miscarriage of pregnancy with the consent of the mother (Article 346 of the Penal Code).
i. Miscarriage of pregnancy without the mother's permission (Article 347 of the Penal Code).
j. Death of the fetus with the consent of the woman carrying the child (Article 348 of the Penal Code).
k. Doctor/midwife/druggist who assists in the termination/death of pregnancy (Article 349 of the Penal Code).
l. Death of a person due to negligence (Article 359 of the Criminal Code).

In this research, the author will discuss the premeditated murder committed by Jessica Kumala Wongso against Wayan Mirna Salihin by using the chemical substance cyanide mixed into Vietnames Iced Coffee based on the teaching of causality(Sofian, 2016). This criminal offense is regulated in Article 340 of the Criminal Code. Premeditated murder carries a heavier penalty than the murder penalty found in Articles 338 and 339 of the Criminal Code. In fact, the death penalty, which is the most severe penalty, is listed in premeditated murder, but not listed in other crimes against life(P.A.F. Lamintang & Theo Lamintang, 2012). The reason for the severity of this punishment is that there is prior planning. The perpetrator of premeditated murder can also be sentenced to life imprisonment or for a certain period of time, a maximum of twenty years. Like the actions committed by Jessica Kumala Wongso, who was convicted under the provisions of Article 340 of the Criminal Code, the elements of which are as follows:

1) The element of who

What is meant by the element "Whoever" is always oriented towards humans as legal subjects, supporters of rights and obligations who are capable of being legally responsible. Jessica Wongso as the Defendant who was brought to trial, juridically meets the criteria of this element and the Defendant has confirmed his identity after being questioned by the Panel of Judges. Therefore, the element of "Whoever" has been proven legally and convincingly according to the law.

2) The Element of Intentionally

In criminal law, intent is a form of guilt, namely the relationship between the inner attitude of the accused and the act committed. The requirement for willfulness is wetten en willen (knowing and willing). Based on witness testimony, evidence, and evidence at trial, the Panel of Judges considered and concluded that the cause (motive) for the death

of the victim Mirna was due to an element of hurt or revenge from Jessica, because it has been proven that there was a motive before the criminal incident occurred, the Panel of Judges will prove whether there is an element of intent related to Mirna's death or not. And based on the conscience of the Panel of Judges connected with the relevant legal facts and expert opinions, the act of the element "intentionally" to commit murder has been proven legally and convincingly according to the law (Zulyadi, 2020).

3) The element of premeditation

This element is a continuation of the element of intentionally. This means that the element of intentionally will not be fulfilled, if there is no prior planning as already considered. Based on the facts described in the trial, the Panel of Judges assessed and considered that in order to vent the hurt and resentment to the victim Mirna, it turned out that before the time/event occurred, the Defendant Jessica had deliberately "planned a quiet time to think about the right time to come first to Cafe Olivier on the pretext of not being hit by traffic and finally at around 15.29 WIB the Defendant arrived at Café Olivier." (4) The element of taking the life of the victim is the element of premeditation.

4) The element of taking the life of another person

This element is the result of the actions that have been carried out intentionally and premeditatedly by the defendant Jessica Kumala Wongso.

The four elements are cumulative, meaning that each element must be proven, whether all elements of the offense are proven legally and convincingly according to the law or not. Because the four elements have been fulfilled, the Central Jakarta District Court sentenced Jessica to 20 years in prison. This decision was upheld by the DKI Jakarta High Court. At the cassation level, the Supreme Court upheld the Judex Facti's decision with 20 years in prison.

In the case of taking the life of another person, there will be an unlawful attitude, where a person's actions have unlawfully taken the life of another person. The above is intended that a person in eliminating someone's life, whether intentionally or not, has caused another person to die, so he must be held accountable. A person's motive for committing a criminal offense that results in the loss of life of another person as described is as follows, where the most influential things are the two main factors, namely internal factors and external factors, and based on criminological studies the things that influence a person to commit a criminal offense are divided into several types. Based on the study of criminology, the things that influence a person to commit a criminal offense are divided into several theories, namely, classical theory, neo-classical theory, cartographic/geographic theory, socialist theory, typological theory, lambroso theory, mental tester theory, psychiatric theory, sociological theory and bio-sociological theory. A person who commits a criminal offense that results in the loss of life of another person must be responsible for his actions as regulated by Article 340 of the Criminal Code.

3.3. Series of Causal Relationships as a Basis for Law Enforcement Officials in Proving the Crime of Premeditated Murder with 'Coffee Cyanide' Poison

Basically, every event, whether natural or social, cannot be separated from the series of causes and effects that surround it. The second event that occurs next can also bring about the next effect again, and so on. Not only that, the causality or causal

relationship is also often found in daily life, in every event and in certain events. This is because humans are social creatures who always interact with one another. The causal relationship that occurs between one human being and another does not always produce positive events but sometimes it also causes various uncertain problems.

This uncertain problem will become even more difficult when determining which one is the cause and which one is the effect, especially if there are factors that frame the incident. Causality is a relationship or process between two or more events or states of affairs in which one factor causes another. To take a simple example of a statement of causality: if the light switch is turned up, the light will come on. In criminal law there are several theories of causality, namely:

a. Conditio Sine Qua Non Theory

This theory was proposed by von Burri who argued that every act is the cause of the consequences that arise. All conditions for the occurrence of an effect are the same as causes of effects that cannot be eliminated and must be given the same value. The essence of this theory explains that a cause of a criminal act is a series of events that can be traced back endlessly seen as giving rise to an effect that is valued equally. Because all acts are causes and are conditions for the occurrence of effects, Von Burri's teaching greatly expands the basis of criminal liability. Because actions that are distantly related to the consequences must also be seen as the cause of the consequences, so according to Sofjan Sastrawidjaja, Von Burri's teaching is not used in criminal law. Meanwhile, according to (Moeljatno, 1985), as long as it determines a scientific understanding so separate from the understanding adopted by a law, the theory of condition sine qua non is good as long as it is accompanied or complemented by a theory of error that can regulate it.

b. Causa proxima theory

This theory seeks to make a distinction between conditions and causes. According to this theory, in each event there is only one cause, namely the most decisive condition for the emergence of an effect. This theory looks at all the conditions that exist after the act occurs (post factum) and tries to find one condition that can be considered the most determining condition for the emergence of an effect. The essence of this theory explains that what is understood as the cause of a criminal act is the act that most closely causes the effect. According to G.E. Mulder, this theory is motivated by the idea that cause and effect should not be too far apart.

c. Relevance Theory

The essence of this theory is that the judge can choose the cause (causa) that is most relevant to causing the consequences of an event or legal action. What is meant by the most relevant cause or causa is the cause intended by the legislator. Therefore, Jan Remelink states that the legislator, with regard to maltreatment that causes the death of another person, reconstructs that the injury suffered by the victim, even though it is difficult to foresee it causing death, is still considered as causing the effect.

d. Adequate Theory

The essence of this theory is that the judge determines the cause that is thought to be the most reasonable or fulfills the most common requirements to be the causa that

causes the effect of an act or event in question that may be found in the existing causal chain.

Linking the actions of the Defendant Jessica Kumala Wongso that resulted in the death of the Victim (linking the defendant's series of actions with the consequences). The series of Causality are:

a. Defendant Jessica Kumala Wongso contacted Victim Mirna via WhatsApp (WA) application, that she (Defendant) was in Jakarta and invited Victim Mirna to meet.
b. The Defendant again invited to meet and treat Victim Mirna, Hani, Vera and informed the Victim and her friends that the Defendant would come first to Olivier Restaurant to reserve a place (conversation in the WA Group where the Victim said about her preference for Vietnames Iced Coffee) from this conversation the Defendant immediately took the initiative to order VIC for the victim.
c. The Defendant arrived at Olive Restaurant early and ordered 1 (one) glass of Vienam Iced Coffe for Victim Mirna and 2 (two) glasses of Coktail
d. The victim arrived with Hani and the Defendant invited the victim to sit at table 54 and invited her to drink Vietnames Iced Coffee.

If analyzed using the theory of causality, the act of injecting poison or poisoning the victim with Natriun Cyanide resulting in death is not found, instead the series of actions creates a clue about the existence of an act that causes death. Doctrinally, it is difficult to answer whether the series of actions (calling, conversation on WhatsApp application, inviting to meet at Cafe Olivier, booking a place, ordering a Vietnames Iced Coffee drink and putting cyanide into the drink) is a causal verband. Thus, the causal relationship established to prove the criminal responsibility of the perpetrator is a logic of thinking of the judge in building a series of actions committed by the defendant. This regularity is built by the court so that the regularity is seen in the chain of actions so that the chain is connected into a single unit and is not interrupted.

To assess the withdrawal of logic based on the doctrine of causality, until the decision made by the court results in a decision that fulfills a sense of justice for the convicted person is:

a. Causal 1
   The defendant contacted Victim Mirna via WhatsApp application
b. Causal 2
   The defendant invited Victim Mirna to meet at Olivier Restaurant
c. Causal 3
   The Defendant came first to Olivier Restaurant to order a Vietnames Iced Coffee drink for the Victim.
a. Causal 4
T he defendant put sodium cyanide into the victim's drink which caused the victim to die.

In a series of acts, a causal relationship is established between one act and another. In the fourth causal, putting poison into the drink is a criminal act that can cause death, while the first, second, and third causal are actions that precede it. In the panel of judges' consideration, the "intentionally" element states that if someone dies after eating or drinking anything containing Sodium Cyanide, in a reasonable calculation, Sodium Cyanide is what caused Wayan Mirna Salihin's death. However, further investigation is

needed to find out how much Sodium Cyanide was contained in the drink and whether it could cause death.

The judge was very confident that Mirna died due to the presence of cyanide poison. The judge was of the opinion that based on the available evidence, Jessica was legally proven to have taken Mirna's life. The judge believed that it was the defendant who put the poison in Mirna's coffee on the basis that the coffee was under the supervision of the defendant for approximately 51 minutes. Although until the end of the trial the defendant Jessica did not admit her actions, the judge emphasized that in this case, it is not necessary to have an eyewitness who sees someone commit a criminal act. Judges can obtain circumstantial evidence. Indeed, only the Defendant Jessica knew when the cyanide poison was put into the Vietnamese iced coffee of the victim Mirna.

The Panel of Judges described one by one the events that had been carried out by the defendant Jessica, starting from being the first person to arrive at the Grand Indonesia Mall, then buying hand washing soap, ordering drinks and at the same time buying drinks for her friends and placing 3 paper bags on table 54. According to the Panel of Judges, the things that the defendant did were very unusual. The Panel of Judges considered that some of Jessica's actions were not like people in general, such as paying the bill in advance even though the Olivier cafe did not apply the payment system at the beginning of the order, the Panel of Judges considered that the purpose of the Defendant Jessica to make an advance payment was so that the Defendant could quickly leave the scene (Olivier cafe).

4. CONCLUSSION

Criminal responsibility by the Defendant Jessica Kumala Wongso for the crime of premeditated murder committed against the Victim Wayan Mirna Salihin is based on Article 340 of the Criminal Code, with a prison sentence of 20 years. The criminal offense stipulated in Article 340 of the Criminal Code can be subject to death penalty or life imprisonment or for a certain period of twenty years at most, with the elements as the element of whoever, the element of intentionally, the element of premeditation, the element of depriving the life of another person. The four elements are cumulative, meaning that each element must be proven, whether all elements of the offense are proven legally and convincingly according to the law or not.

Stringing together the actions of the Defendant Jessica Kumala Wongso which resulted in the death of the Victim (linkage of the defendant's series of actions with the consequences). The series of Causality is that the Defendant Jessica Kumala Wongso contacted the Victim Mirna via the WhatsApp (WA) application, that he (the Defendant) was in Jakarta and invited the Victim Mirna to meet. The Defendant again invited to meet and treat Victim Mirna, Hani, Vera and informed the Victim and her friends that the Defendant would come first to Olivier Restaurant to reserve a place (conversation in the WA Group where the Victim said about her preference for Vietnames Iced Coffee) from this conversation the Defendant immediately took the initiative to order VIC for the victim. The Defendant arrived at Olive Restaurant early and ordered 1 (one) glass of Vienam Iced Coffe for Victim Mirna and 2 (two) glasses of Coktail. The victim arrived with Hani and the Defendant invited the victim to sit at table 54 and invited her to drink Vietnames Iced Coffee. There are four causal factors that can be concluded, namely the Defendant contacted Victim Mirna via WhatsApp application (K1), the Defendant invited

Victim Mirna to meet at Olivier Restaurant (K2), the Defendant came first to Olivier Restaurant to order Vietnames Iced Coffee for the Victim (K3), the Defendant put Sodium Cyanide into the Victim's drink which caused the victim to die.

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Acknowledgments (if any)

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

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