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Editorial Office

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

 081-123-1-666

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

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SUBPOENA AS A FORM OF DEVELOPER'S LEGAL EFFORT TO CONSUMERS IN CANCELING PROPERTY RESERVATIONS

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Abstract

This study aims to investigate whether subpoenas can serve as a legal recourse for developers in the cancellation of property reservations and to comprehend the process of issuing subpoenas to consumers for canceling property reservations in Badung Regency. The research methodology employed is empirical legal research without statutory approaches, relying on factual analysis. Primary information was gathered through interviews with respondents and informants, while secondary data sources included literature, journals, and internet legislation. Data collection techniques involved documentation studies, and analysis was conducted through descriptive analysis. The research findings indicate that subpoenas can be utilized as a legal remedy by developers for consumers canceling property orders. Subpoenas are issued by delivering appeals and warnings through familial and economic approaches regularly. This legal effort aims to prevent financial losses for developers in the Badung district resulting from consumer order cancellations.

Keywords: *Subpoena, Cancellation, Consumer, Property*

1. INTRODUCTION

Property sales conditions in the post-pandemic period began to increase, the increase was marked by the recovery of post-pandemic conditions. Based on the results of the government's residential property survey, the market price increased by a limited 1.72%, in the first three months of 2022. The increase is very limited if you reflect on the previous condition, namely 1.77%, then the third is still experiencing an increase of 1.53% and it is estimated that the increase will continue in the fourth month of 2022 (Haryono, 2022).

The primary market showed a limited increase in property sales in the second quarter of 2022. The increase was 15.23% in the second quarter of 2022. The increase indicates that the property experienced growth. The growth had also contracted in the previous quarter by 10.11% in 2022. This growth is considered a positive growth in the property world. This positive growth is also supported by banks as the main source of financing to develop development in the next quarter of 2022. Financing in the second quarter from banks amounted to 64.82% of the total capital requirements for housing project development originating from internal funds. On the consumer side, financing from banks by providing public housing credit facilities is still the main choice in purchasing residential property with a share of 74.97% of total financing (Departemen Komunikasi, Bank Indonesia, 2022).

The impact of this positive growth is experienced by property companies in Badung Regency. Consumer demand for property is perceived to be increasing. The increase can be seen from the existence of property orders from consumers. As experienced by PT Mitra Kencana Properti, PT Siligita Properti, PT Bali Mitra Investa and PT Griya Properti. Property orders at property companies began to be felt to increase after the

pandemic. Such conditions have led to increased economic growth and development in Badung.

Booking property is inseparable from the existence of the consumer economy. Consumers who initially have the capital to buy a property unit, then place an order for the desired property. Furthermore, the property order from the consumer is processed by making the binding by the property company and the consumer. Consumers enter into an agreement with the property company.

The binding is regulated "Article 1313 of the Civil Code is an act in which one or more people bind themselves to one or more other people" (Hanaya & Sarjana, 2019). This definition determines that there is an act of binding. Furthermore, "Article 1338 of the Civil Code determines that all agreements made legally apply as laws that make it" (Hanaya & Sarjana, 2019). In connection with the property booking agreement, the agreement made by the property company to the consumer is binding and constitutes the law for the company and the consumer. Thus, everything stipulated in the binding agreement becomes law for the company and consumers. If the agreement regulates the cancellation of the reservation, then all the consequences of the reservation that arise become legal consequences of the action. Cancellation of a property booking has legal consequences for the agreement made and the legal consequences have been determined in the agreement.

Cancellation of bookings from consumers has a loss impact on property companies. The loss arises because the booking has been kept in advance by the company (Vatriska & Purwanto, 2018). The units for sale are not offered by the company to the public because the property units have been reserved. If the public wants to buy a property unit, then the choice is another unit, not a unit that has been booked. Booking the unit, where the property company is given an advance payment in advance. The down payment is a binder between the consumer and the company and also a binder to the ordered property unit. With the down payment, the unit ordered by the consumer is not allowed to be sold or transferred to other consumers. In other words, if the property unit has been ordered, it means that the consumer has paid an advance payment to the property company.

In fact, the consumer suddenly canceled the property booking that had been agreed upon with the company. Even though the consumer has paid a down payment, it is still canceled. The cancellation, by the company, is considered detrimental because the ordered unit is considered to have been sold, but suddenly the consumer canceled the order. Therefore, units that were previously considered sold, become canceled or unsold. Such conditions are very detrimental to property companies. Faced with this situation, the company made a subpoena as an effort not to cancel the property purchase. The down payment given by the consumer provides certainty that the consumer has agreed to buy the property and the down payment is considered to be the initial payment for the property, therefore the ordered property is considered sold (Jayadinata, 2020). On that basis, the cancellation resulted in losses for the property company.

State of the art of this research is done by comparing this research with previous research. As for previous research, first Yulia Dewitasari, and Putu Tuni Cakabawa Landra with the title Legal Effects on the Parties in the Agreement in the Event of Cancellation in the Agreement. The problem is how are the terms of cancellation in the agreement regulated in the Civil Code? and how are the consequences of canceling the agreement? (Dewitasari & Landra, 2015). Second, LP. Suci Arini, and Made Gde Subha

Karma Resen entitled Legal Consequences of Unilateral Agreement Cancellation Against Food Delivery Service Providers in Indonesia. The formulation of the problem is how the regulation of unilateral agreement cancellation by consumers against food delivery service providers in Indonesia and what are the legal consequences of unilateral agreement cancellation by consumers against food delivery service provider agreements in Indonesia (Arini & Resen, 2021). The third study, by Ida Ayu Putu Krisna Yanti, and I Wayan Novy Purwanto with the title Legal Analysis of Cancellation of Kebaya Lease Agreement in Denpasar City. The formulation of the problem is how the implementation of the kebaya lease agreement in Denpasar City and how to solve the problem of unilateral cancellation by the tenant in the lease agreement in Denpasar City (Yanthi & Purwanto, 2019). These three studies, of course, have differences with this research. The difference lies in the research location. The previous studies used as research locations were Indonesia and Denpasar City, while this study chose a location in Badung Regency. Another difference is in the object of study, where the subpoena, while the previous research was on the object of canceling the agreement, food delivery service providers and kebaya rental. In addition to differences, there are also similarities, namely in the agreement and cancellation of the agreement. Although there are similarities, this research is still far different from previous research and is also different from the formulation of the problem and its discussion.

This study aims to gain knowledge about the use of subpoenas as a legal solution for developers when canceling property reservations. It focuses on two main questions: the feasibility of using subpoenas as a remedy and the procedural aspects of issuing subpoenas to consumers in the Badung Regency for property reservation cancellations. The journal seeks to understand how developers can utilize subpoenas in the cancellation process and gain insight into the procedures involved in issuing subpoenas to consumers in relation to property reservation cancellations in the Badung Regency.

2. RESEARCH METHODS

The research method of this journal chooses empirical legal research. This research is based on the gap between das sollen and das sein. Empirical research is field research because it obtains data directly in the field (Sumantri, 2013). The intended field is the location of this research in Badung Regency, by taking samples at PT Mitra Kencana Properti, PT Siligita Properti, PT Bali Mitra Investa and PT Griya Properti. Furthermore, the types of approaches used are statutory approaches and factual approaches. Primary data sources are obtained from interviews with respondents and informants, while secondary data sources use legislation, literature, journals and the internet. Data collection techniques use document studies and data processing is done by descriptive analysis.

3. RESULTS AND DISCUSSION

3.1. Subpoena as a Form of Legal Remedy for Developers in the Cancellation of Property Reservations

Subpoena is defined as a warning from a person based on his position either as a creditor or as a first party (Sriartini & Purwanti, 2013). A reprimand is the same as a warning addressed by the first party in the agreement. The first party is allowed to issue a summons to the second party or debtor, while the second party is not allowed to issue a summons to the first party. So, in the subpoena, only the first party is allowed to issue a subpoena.

Based on Article 1243 of the Civil Code, reimbursement of costs and losses due to non-fulfillment of "obligations to the obligation, when there is negligence from the debtor in the fulfillment of its obligations, but if something that is obliged to be given is not given at the expiration of the agreed time (Sriartini & Purwanti, 2013). This article provides an understanding of losses and reimbursement of costs incurred and required. The reimbursement of costs and losses occurs if the debtor fails to carry out his obligations or fails to comply with his agreement. This provision is the legal basis for giving a warning or summons based on the agreement between them.

In connection with the negligence committed, the negligence gives rise to an obligation to the debtor. The legal consequences of negligence to fulfill the property reservation agreement are carried out by requesting compensation to the customer or the second party on the basis of canceling the reservation of the property unit. With the negligence made, the benefits of the developer are lost. The previously agreed engagement is denied by the prospective buyer. Thus, there is an unlawful act from the prospective property buyer to the developer.

The property booking agreement made, has been agreed between the developer and the customer. However, during the payment of installments, it turned out that the customer had not paid several installments, so the buyer was given a warning first. Based on its provisions, it determines "The debtor is negligent, if he is declared negligent by warrant or by a deed of the same kind or by his own obligation if this stipulates that the debtor must be deemed negligent by the lapse of the specified time." The definition that gives the meaning that gives the meaning that the debtor has been negligent in fulfilling his obligations or has been negligent due to the passage of time specified in the agreement. In connection with the property order agreement, the ordering party has been declared negligent or default, if it does not fulfill its obligations as stated in the agreement. With this negligence, it is obliged to give a warrant or warning letter to repay the debt. This warning letter is called a summons.

Article 1238 of the Civil Code provides an understanding that the property owner or the debtor has been declared negligent. However, before being declared negligent, the customer must be given a warning first. Warnings or warnings to pay are made by the debtor (developer) to the buyer by being sued in court by the developer. Thus, the subpoena is given before the court process is taken by the developer because of the non-performance of the performance or mistakes that have been made by the buyer.

J.Satrio's opinion, that "the debtor can be blamed if the debtor cannot carry out or fulfill his promises and everything he should do" (Satrio, 2012). All the blame lies with the debtor for reneging on the promises that have been made. "Default as the performance of obligations that are not on time or are not carried out according to the appropriate,

giving rise to the obligation for the debtor to provide or pay compensation (*schadevergoeding*), or in the event of default by one party, the other party can demand the cancellation of the agreement" (Satrio, 2012). In essence, the agreement that has been made by the developer with the buyer only.

Default has several forms as a development of various kinds of defaults. The forms of default, in general, are:

1. Not performing the performance at all; 2. Performing but not on time (late); 3. Performing but not as promised; and 4. The debtor performs what according to the agreement should not be done (Satrio, 2012).

The developer, as the party harmed by the buyer's default, can demand fulfillment of the agreement, cancellation of the agreement or request compensation from the buyer. The compensation can include costs that have obviously been incurred, losses incurred as a result of the default, and interest. If there has been a default, the step that can be taken is to make a subpoena for the act of breaking the promise. This subpoena is useful to remind the party who has defaulted on the obligations that must be fulfilled according to the agreement.

Cancellation of an agreement from the buyer, then the buyer must be negligent first (Endrayani & Putra, 2016). According to Mr. Nyoman Sutami, Operations Manager of PT Mitra Kencana Property, said that the negligence occurred because of the buyer's fault, not the developer's fault. By not carrying out the obligations of the agreement. In order to make the buyer in a state of negligence, the developer must first give a warning or subpoena to the customer with the aim that the customer wishes to continue his installments. Usually the warning given by PT Mitra Kencana Property is in the form of a written warning or an official warning from the company in the form of a warning letter addressed to the customer. (Interview on June 7, 2022).

The official letter given by PT Mitra Kencana Property, in doctrine and jurisprudence, is called a summons. Summons that is not fulfilled by the customer without valid reasons will bring the customer into a state of default and from that moment all the legal consequences of default begin to apply to the prospective buyer. With the occurrence of a state of default experienced by the buyer, the developer has the right to demand the cancellation of the agreement and ask for compensation to the prospective buyer. However, PT Mitra Kencana Property does not directly submit the cancellation of the unit reservation agreement because the cancellation must go through the court. PT Mitra Kencana Property is more likely to prevent the cancellation of the engagement by giving a summons to the customer coupled with negotiations. (Interview on October 4, 2022).

Based on an interview with Mr. I Wayan Yudhana, as Marketing Supervisor at PT Mitra Siligita Property, said that in practice, the summons is generally submitted three times, namely the first summons, second summons and third summons. The first subpoena is generally in the form of a warning or warning containing that the customer has been in arrears or the customer has not paid the down payment installments twice. The first summons is carried out, because PT Mitra Siligita Property usually still believes that with this warning the debtor will voluntarily carry out the contents of the summons. If the first summons is ignored or ignored by the customer, or responded to but still does not pay, then PT. Mitra Siligita Property sends a second summons, this second summons is given firmly by giving assertiveness to the customer to immediately pay and if he does

not pay the installments, then within the period specified in the agreement has arrived, the customer will be prosecuted in court in accordance with the agreement. This second summons is stricter than the first one. The first one can still be considered soft or reminder in nature. (Interview on October 4, 2022).

Furthermore, if the second summons is ignored, then PT Mitra Siligita Property issues a third summons. This third summons was given because the customer did not provide a satisfactory solution, PT Mitra Siligita Property's threat became very firm. This third summons, PT Mitra Siligita Property only gives two options, namely paying the debt during arrears or paying part of the debt or being sued. So the choice is, pay the debt or get sued. If the third summons does not provide a solution, PT Mitra Siligita Property contacts a lawyer to sue the customer in court. The lawsuit aims to cancel the agreement that has been made by PT. Mitra Siligita Property with the customer. In addition, it also sues for losses suffered by PT. Mitra Siligita Property during the course of the property engagement and also at the same time demands the costs that have been incurred along with the interest that PT. Mitra Siligita Property should get from the customer.

Cancellation of house reservations, related to Article 13 paragraph (1) Permen PPJB which determines that in the event of cancellation of the agreement, all payments, by PT. Mitra Siligita Property are returned to prospective buyers. Thus, if PT Mitra Siligita Property, PT Mitra Kencana Property and PT Bali Mitra Investa file for cancellation through the local court, then they are obliged to return all costs received during the binding of the sale and purchase. Thus, the subpoena can be a tool to prevent the cancellation of the sale and purchase agreement (Sulistiawati et al., 2019). If the subpoena does not prevent the annulment, then the court is the one to invoke the annulment.

In relation to that, Article 13 paragraph (2) of Permen PPJB states that in the event of cancellation of the house reservation after the signing of the PPJB due to the negligence of the buyer, then:

a. if the payment has been made by the buyer at a maximum of 10% (ten percent) of the transaction price, the entire payment becomes the right of the development actor; or b. if the payment has been made by the buyer more than 10% (ten percent) of the transaction price, the entire payment becomes the right of the development actor; or

if the payment has been made by the buyer more than 10% (ten percent) of the transaction price, the development actor is entitled to deduct 10% (ten percent) of the transaction price.

Refunds are made by the developer to the buyer. In accordance with the above provisions, the payment of 10% of the house price must be returned in full by the developer to the buyer. If the payment exceeds this amount, the first party has the right to give a deduction.

Based on this article, the developer has the right to deduct costs that have been incurred by consumers or bookers. The deduction, of course, must go through a subpoena first. Thus, a summons can be used as a legal remedy for developers in canceling property orders made by consumers. The new developer can deduct if it has given a summons first to the consumer. The consumer can carry out his obligations by giving a partially paid down payment to the developer. Even though the down payment is paid in installments, while the installment of the property down payment has only been paid for 10% of the agreed down payment, the developer still has the right to take 10% of the down payment paid by the consumer.

3.2. Developer's Legal Efforts to Resolve Cancellation of Property Reservation in Badung Regency

Giving a summons to consumers is a legal effort made by the developer. Legal efforts made by the developer in overcoming negligence or default in ordering property, namely by providing an official letter containing a warning or summons. Subpoena is given if the customer has committed an act of not paying the installments. If the customer does not pay installments in just one month, an official warning is given by PT Bali Mitra Investa. Unlike PT Mitra Kencana Property, where in giving a summons if the customer has made arrears the second time. After two installments have not been paid, then the summons is just started or officially issued. This action has become a habit at PT Mitra Kencana Property. Whereas at PT Mitra Siligita Property, if the customer does not pay once, then the customer will be called and then asked the reason for not being able to pay. Then, an opportunity is given to pay in the next month with the consequence of double payment. After the customer does not pay twice, then the customer is not only telephoned but visited to his house. If the customer is still unable to pay, then the buyer is required to sign a letter of willingness to pay next month. Furthermore, if the customer is unable to pay next month, then an official summons is issued from PT Mitra Siligita Property. (Interview on October 4, 2022).

An official summons given by PT Mitra Kencana Property to the customer as a form of legal action taken by PT Mitra Siligita Property to the customer. Summons that is not fulfilled by the customer without valid reasons will bring the customer into a state of default. Default is the non-performance of performance either due to intent or negligence (Wiraputra et al., 2018). From the moment the default occurs, all legal consequences of the default begin to apply to the customer.

Each of the property companies mentioned above, has a variety of legal actions taken in dealing with customers who default or neglect to pay their debts. Based on an interview with Mr. I Wayan Yudhana, as Marketing Supervisor at PT Mitra Siligita Property, said that in practice, the summons is generally submitted three times, namely the first summons, second summons and third summons. The first summons is generally in the form of a warning containing that the customer has been in arrears for two installments or the customer has not paid the installments twice. The first summons was carried out, because PT Mitra Siligita Property was ignored by the customer or responded but still did not pay, then PT Mitra Siligita Property sent a second summons, this second summons was given firmly by giving assertiveness to the customer to pay immediately and if he did not pay the installments, the prospective buyer would be prosecuted in court in accordance with the agreement. This second summons is stricter than the first one. The first one can still be considered soft or just a reminder. (Interview on June 3, 2022).

Furthermore, if the second summons is ignored, then PT Mitra Siligita Property issues a third summons. This third summons was given because the customer did not provide a satisfactory solution, PT Mitra Siligita Property's threat became very firm. This third summons, PT Mitra Siligita Property only gives two options, namely paying the debt during arrears or paying part of the debt or being sued. So, the choice is, pay the debt or get sued. If the third summons does not provide a solution, PT Mitra Siligita Property contacts a lawyer to sue the customer in court. The lawsuit aims to cancel the agreement that PT Mitra Siligita Property has made with the customer. In addition, it also sues for losses suffered by PT. Mitra Siligita Property during the sale and purchase agreement of

the property was carried out and also at the same time demands the costs that have been incurred along with the interest that PT. Mitra Siligita Property should get from the customer.

In contrast to PT Mitra Kencana Property, if the buyer defaults on the agreement, an appeal is given first. According to Nyoman Sutami, as the Operations Manager at PT Mitra Kencana Property said that the appeal was conveyed verbally via telephone. Appeal to try to pay the debt. Despite the pandemic conditions, you still have to try to pay your debts. The appeal was conveyed politely and in good faith to the customer. If the first appeal is ignored, then PT Mitra Kencana Property contacts again via telephone, by providing an overview of the amount owed for two months and encouraging the customer to pay his debt. If the customer does not heed the second appeal, then PT Mitra Kencana Property gives another appeal verbally. This third appeal has only started to be held since after the pandemic. Previously, this third appeal did not exist or never carried out the third appeal. The third appeal exists because of the pandemic, where PT Mitra Kencana Property provides a policy in the form of tolerance to house bookers in order to get leeway to pay their debts. After the third appeal was issued, a summons was issued. This issued subpoena is the first subpoena.

The first subpoena was delivered not verbally, but in writing through an official letter signed by the Director of PT Mitra Kencana Property complete with a company seal. If the first summons is ignored, then the next legal action is to give a second summons. This second summons is also delivered officially by affixing the signature of the Director of the company and the company seal. This second summons contained the buyer's ability to pay his debts by summoning the buyer to the office. This summons was made to invite the buyer to try to find the best solution according to his financial capacity. If these efforts are deadlocked, then PT Mitra Kencana Property issues a third summons, which provides a time limit for the latest debt to be paid. Payment of the buyer's debt can be made by paying part or half and can also pay in full. The third summons provides time limits that must be met by the buyer. The legal efforts of PT Mitra Kencana Property can be described as follows:

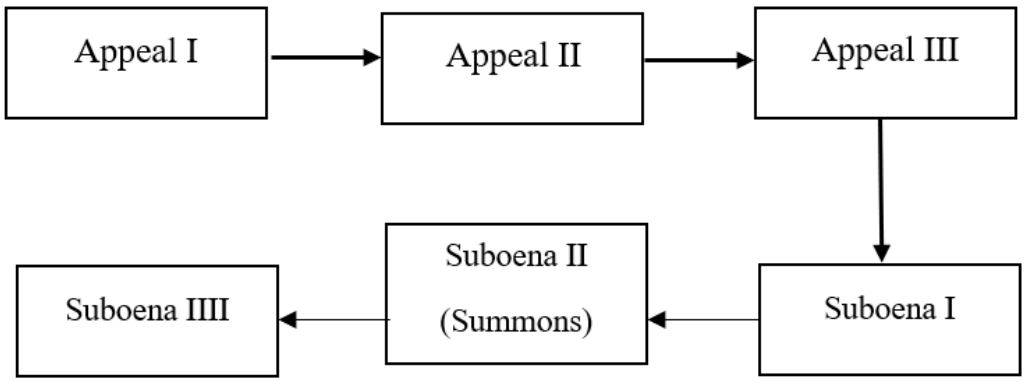

Figure 1. The legal efforts of PT Mitra Kencana Property

Based on the picture above, PT Mitra Kencana Property took action to give three appeals and three subpoenas. These appeals were conveyed verbally by telephone only, not through an official letter such as a summons. However, in the second summons, a summons was made to the buyer who made a default. The summons aims to invite the

customer to dialogue so that the customer can still pay his debt. By calling the customer, PT Mitra Kencana Property hopes that there will be a solution that can make the customer have the ability to pay the debt and interest, either partially or completely.

The legal efforts taken by PT Bali Mitra Investa have differences with PT Mitra Kencana Property and PT Mitra Siligita Property. The difference lies in the summons given, namely if the customer does not pay the installment once, then PT. Bali Mitra Investa directly gives an official summons to the prospective buyer. The first summons contained a warning to immediately pay last month's arrears. If the summons is ignored, then PT Bali Mitra Property sends a second summons. This second summons is also made officially directly from the company. In this second summons, PT. Bali Mitra Investa did not send the summons by post or courier but brought it directly to the buyer's house. The purpose of delivering the summons to the customer's home is to meet with the buyer and invite the prospective buyer to discuss the debt. If the discussion does not find a solution, then PT Bali Mitra Investa sends a third summons the following month. The third summons is also delivered by PT. Bali Mitra Investa to the prospective buyer's house with the aim of discussing again. If it has not found a solution, then PT. Bali Mitra Investa provides a solution to the prospective buyer as a way out. The solution offered by PT Bali Mitra Investa is a win win solution and the prospective buyer must consider it. If the offered solution is rejected by the customer, then the customer is obliged to issue a solution with all his efforts in order to continue paying the mortgage. The desired solution is a solution for the benefit of PT Bali Mitra Investa and the interests of the buyer. In connection with the legal action taken by PT. Bali Mitra Investa can be described as follows.

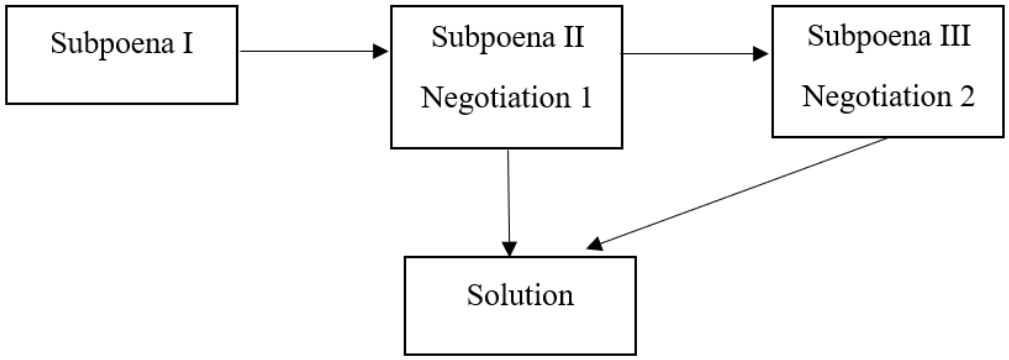

Figure 2. Developer's legal efforts

The legal efforts of PT Bali Mitra Investa are very different from the legal efforts taken by PT Mitra Kencana Property and PT Mitra Siligita Property. the efforts taken by PT Bali Mitra Investa are simpler and firmer and are familial in nature, namely by going directly to the buyer's house by inviting discussions until they find a solution.

Looking at the legal efforts taken by PT Bali Mitra Investa, PT Mitra Kencana Property and PT Mitra Siligita Property, none of them took the court route. In overcoming defaults from prospective buyers, developers are more likely to make negotiation efforts. The negotiation effort is taken if the prospective buyer has made arrears on his debt. As soon as it is in arrears, the developer quickly takes legal action, namely giving appeals and giving warnings. All these efforts are made so that there is no cancellation of the sale and purchase agreement. Every company, does not want a cancellation or avoid

cancellation because if there is a cancellation, then based on Article 13 paragraph (2) Permen PPJB requires the developer to return the down payment that has been received previously. The return of the down payment is what the developer does not want. The developer does not want the return because the partial down payment received previously has been used up for construction costs and others. So, it is very difficult to return the down payment. Therefore, it is very risky for the developer to return the down payment received earlier. The developer has spent money to build, then once the money used to build it has been used up, suddenly requested back by prospective buyers due to default, then the company cannot return the down payment that has been used. Thus, the legal effort taken by the developer to overcome the property order in the reservation agreement is to make negotiation efforts through a summons.

4. CONCLUSION

Subpoena can be a legal effort for developers in canceling property bookings in Badung Regency. Legal efforts that can be taken by the developer or property seller to resolve defaults from the customer are by giving a warning in the form of an official summons from the company and in giving the second summons, negotiation actions are taken between the developer and the customer to prevent the cancellation of the booking agreement. In addition, the actions taken by the developer are to offer the best solution for the interests of the developer and the interests of prospective buyers.

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ANALYSIS OF LEGAL PROTECTION FOR ONLINE SHOPPING CONSUMERS

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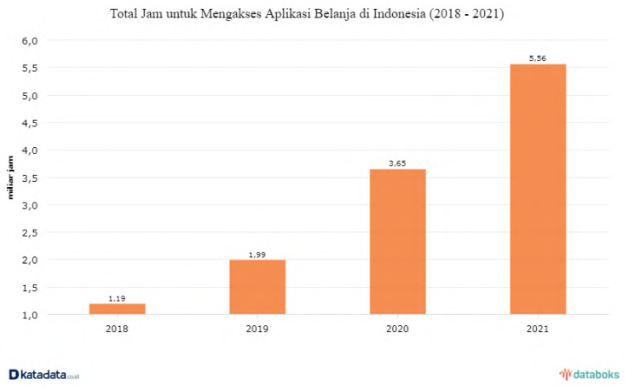
Abstract

The study aimed to examine the legal safeguards provided to consumers engaged in online shopping. This study utilized a normative juridical approach with a descriptive qualitative method. Secondary data was collected through a literature review, encompassing various sources such as journals, books, laws, and regulations. The analysis was descriptive in nature, leading to a generalization of the research problem. The findings revealed that consumer protection is regulated by Law no. 8 of 1999 on Consumer Protection, with the ITE Law, specifically Law no. 19 of 2016 on Information and Electronic Transactions, also being applicable to online shopping transactions. Disputes arising from online shopping can be resolved through instant claims (negotiation, mediation, etc.), seeking assistance from the Consumer Dispute Settlement Agency, or resorting to legal action. Furthermore, the study highlighted the importance of consumer awareness and education in understanding their rights and responsibilities when engaging in online shopping. It also emphasized the need for e-commerce platforms to implement transparent and fair practices to protect consumers from fraudulent activities.

Keywords: *Consumer Protection, Online Shopping, Criminal Law*

1. INTRODUCTION

Human activities are shifting to the digital realm and shopping is no exception as technology is progressing more and more rapidly. Nowadays, many people prefer to shop online instead of coming directly to the store. This is because most consumers feel that shopping online can save time and money. Indonesia is one of the countries with citizens who are starting to switch to online shopping activities. Data released by Databooks (2021), shows that Indonesians spend up to 5.56 billion hours accessing e-commerce applications or websites for the purpose of online shopping in 2021. This figure is very high and has increased from the previous year.

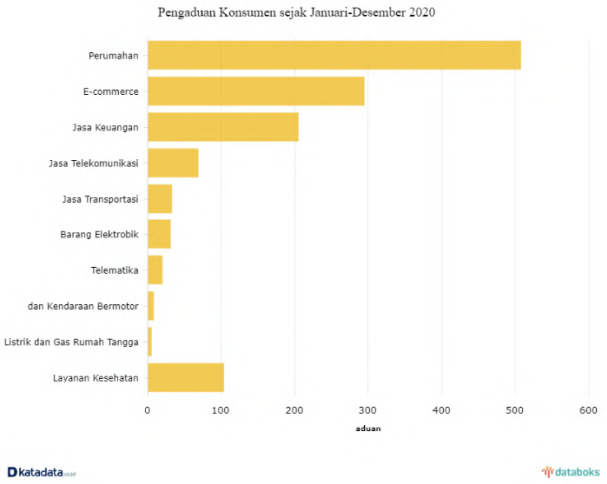


Source: Databooks, (2021)

Figure 1. Chart of Total Access Time of E-Commerce Consumers in Indonesia

Based on the graph above, it can be said that there is a significant increase every year, so it can be interpreted that consumers are increasingly accessing online shopping applications from year to year. In 2018, the total access time was only 1.19 billion hours. Furthermore, it increased by almost 50% in 2019 with a total of 1.99 billion hours. The increase was even higher in 2020 with data on the total hours of access to online shopping applications amounting to 3.65 billion hours. However, the most significant increase can be seen from 2020 to 2021 by 52% to 5.56 billion hours. This figure is greater than other countries. For example, Singapore experienced an increase of 46% and Brazil of 45%, in contrast to Indonesia which increased by 52%. Data released by Databoks also shows that in 2021 US citizens accessed shopping applications for 2.96 billion hours, which is only 50% of the total time of Indonesians, which reached 5.56 billion hours (Databooks, 2021).

Although online shopping application users are increasing every year, it does not mean that all consumers have the same satisfaction. There are several obstacles and complaints when making online shopping transactions. Databooks (2020) released data on the number of consumer complaints to the Consumer Protection Agency.



Source: Databooks, 2020

Figure 2. Number of consumer complaints in January-December 2020

Data shows that in 2020, the Consumer Protection Agency received 295 complaints related to e-commerce and this number is the second largest complaint after complaints related to housing. The number is quite high and it can be interpreted that complaints related to e-commerce are received almost every day (Databooks, 2020). From these data, it is necessary to have regulations governing consumer protection, especially e-commerce users, if unexpected things happen in the future. The law that has regulated consumer protection in Indonesia is contained in Law No. 8 of 1999. The law explains that consumer protection in Indonesia basically adheres to the principles of justice and balance. Both principles are intended to be applied in the interests of buyers, sellers and other related parties.

The law has regulated the importance of consumer protection, but the shift in people's behavior, especially in online shopping, makes it necessary to examine the regulations further. In this digital era, where online shopping is getting higher, research is conducted to analyze the legal protection of online shopping consumers. The formulation of the problem includes questions about legislation, criminal law aspects, and

dispute resolution mechanisms. The purpose of writing involves understanding the legislation, analyzing aspects of criminal law, and analyzing dispute resolution mechanisms related to online shopping consumers.

2. RESEARCH METHODS

This research uses a method that includes a type of research that is normative legal research. Normative legal research is basically defined as a type of juridical research that examines aspects in this case aiming to solve legal problems. In line with the type of research, the method used is a normative juridical method (Benuf & Azhar, 2020). The type and method of research used are considered suitable because this research will examine the law related to protection for online shopping consumers. In this research, the data sources obtained come from secondary data in the form of literature, regulations on legislation and other reading sources that are related to the research topic. Research sources of journal articles that assist in this research are obtained from Google Schoolar sources with the keywords Consumer Protection and Online Shopping. Furthermore, the technique used in analyzing data is literature review, namely reviewing existing literature in order to answer the formulation of research problems to form a generalization or research conclusion. The approach used is a descriptive qualitative approach. Thus, researchers look for data sources, analyze them and make descriptive explanations related to the findings of the literature study.

3. RESULTS AND DISCUSSION

3.1. Legal Protection to Online Shopping Consumers

a. Law No. 8 of 1999 on Consumer Protection In this law, the term consumer protection is defined as a form of activity that secures parties who conduct legal buying and selling transactions and is recognized by the government as a shield or protector. Article 1 also explains that there is an institution that directly guarantees consumer protection, namely the National Consumer Protection Agency. Furthermore, it also explains the principles applied to regulations related to consumer protection, namely legal certainty, fairness, balance, safety and benefits. In the law, especially Article 3, the objectives of consumer protection are regulated in detail, including (1) as a basis for consumers to protect themselves and be able to increase awareness and prudence in transactions, (2) being able to become the basis for avoiding consumers from the negative excesses of a buying and selling transaction, (3) it can empower consumers and uphold their rights to demand, choose and determine, (4) a means for consumers to obtain information and also access in seeking a protection system, (5) able to make sellers more careful and apply an honest attitude because of the legal certainty system in transactions, (6) able to guarantee the ongoing process of buying and selling goods and services.
b. Law No. 19/2016 on Electronic Information and Transactions
c. This ITE-related law can be a legal protection for consumers, especially in relation to online shopping transactions. In the Law, especially Article 1, the definition of online shopping or electronic transactions is explained, namely every activity that utilizes networks, computers and electronic media in any form. Furthermore, Article 40 also emphasizes that the government supports by providing facilities in the

implementation of safe online transactions in the form of laws and regulations. This is one of the government's efforts so that its citizens can be protected from the misuse of digital information and uphold the interests and public order.

3.2. Criminal Law Aspects of Consumer Protection

Consumer protection is basically something that requires legislation so that consumers can protect themselves with the help of trusted parties. In fact, the law governing protection and also the law on consumers are very closely related. Protection law has a certain form that shows that the law can be a shield and ensure security for parties who need protection in any case. Furthermore, consumer law has a special form as well whose rules are more inclined to the economy, goods, services and their relationship between one another. Both are inseparable and become a whole unit where economic actors have their own rules in carrying out economic activities and still feel safe because of the protection law (Soleh, 2020).

Criminal law in consumer protection is needed to provide a deterrent effect on the perpetrators of online transaction crimes. Basically, criminal law enforcement is an effort to uphold justice in relation to realizing social benefits. The main function in law enforcement, especially in consumer protection, is to actualize rules to direct or framing human behavior due to threats in the form of law (legislation) (Rahmanto et al., 2019). In consumer protection law, the most important aspect is that consumers are guaranteed comfort. This guarantee must be directly able to avoid legal risks or even increase the awareness of economic actors in transactions. With the existence of laws and regulations that contain protection for consumers, it is hoped that in doing business they will be more careful and maintain the responsibility and quality of their business. The criminal law that is applied if the business actor violates consists of legal sanctions so that the perpetrator is deterred and becomes a protection for the injured party.

3.3. Online Shopping Dispute Resolution Mechanism

Online shopping disputes can occur as a result of violations related to transaction agreements between consumers and sellers in terms of obligations, prohibitions and so on. According to Susanti (2017), disputes that occur between sellers and buyers are caused by two main factors, namely: (1) violation of legal obligations by the seller based on laws and regulations, (2) violation of the contents of the agreement by the seller or buyer (Susanti, 2017). Based on Law Number 8 Year 1999, there are three ways that consumer disputes can be resolved, namely:

a. Consumer disputes resolved with immediate demands (mediation, conciliation, negotiation, etc.)
b. Consumer disputes resolved with the help of the Consumer Dispute Resolution Agency
c. Consumer disputes resolved through the courts (UU No. 8 Tahun 1999)

Furthermore, for online shopping cases where transactions do not occur directly but digitally, the ITE Law also applies. Basically, Law No. 8/1999 has very clearly controlled consumer protection when conducting transactions with sellers but has not been able to explain digital transactions whose activities are more complex. If examined further, Article 18 of the ITE Law explains that in online buying and selling transactions, both parties have the same right to determine and choose the applicable law and the type of

settlement either through the court or other settlements. This is because digital transactions are not limited by region. Consumers can buy goods without any regional restrictions and even across countries. Thus, the applicable law overlaps between one country and another. Therefore, the ITE Law gives freedom to the perpetrators of online shopping transactions to determine the applicable law when a dispute occurs (UU No. 19 Tahun 2016).

Freedom in determining the law for dispute resolution is also supported by international law. In Susanti's journal (2017), it is explained that there are three types of jurisdiction in international law, namely jurisdiction in the context of establishing laws, enforcing laws and making demands (Susanti, 2017). Jurisdiction in international law enforcement is also flexible when the dispute is trans-national or involves two or more parties with different nationalities. International law provides various methods to resolve disputes peacefully, and adheres to a system of equality which means that no one is favored over the other. The mechanisms are non-binding, meaning they do not continue to pressure either party. Settlements under international law include direct negotiations between the parties and the involvement of third parties through good offices, mediation, investigation, and conciliation. These international legal mechanisms have been approved by all countries in the world so they can be applied anywhere. One justification is that all states parties to the relevant treaty have effectively consented to the exercise of jurisdiction by the courts of other states parties in the event that offenses covered by the treaty are committed by their nationals or within their territory. However, when the court applies these provisions, there is an issue regarding the state party to the alleged offense. However, this is not a serious problem if both parties agree or are unanimous in determining the law to be used (Hovell, 2018).

4. CONCLUSION

Consumer protection law is basically made to provide protection and a sense of security to consumers in conducting economic transactions. In relation to criminal law, the laws and regulations made are expected to be able to avoid risks and make business actors aware of running a business honestly and not harming others. Law No. 8 of 1999 has regulated consumer protection law that can provide legal sanctions for criminals in buying and selling transactions in the context of consumer protection. Furthermore, Law No. 19 of 2016 concerning ITE also applies in relation to online shopping transactions that are carried out digitally. The most important aspect in the application of these two laws and regulations is to ensure consumer convenience. If there is an online shopping dispute, it can be resolved through consumer dispute mediation institutions, courts or even friendly negotiations. and so on.

Based on the findings, it is advisable to strengthen and enhance awareness of consumer protection laws, particularly in the context of online transactions. It is crucial to continuously educate and disseminate information to both consumers and business actors to ensure compliance with the existing regulations. Moreover, considering the ever-changing nature of the digital environment, it is important to regularly update and amend the laws to address emerging challenges and effectively safeguard consumers. Collaboration between government agencies, law enforcement, and online platforms is vital in establishing a strong framework for monitoring and enforcing consumer protection laws in the digital realm. Additionally, promoting the utilization of consumer dispute mediation institutions and alternative dispute resolution mechanisms can

contribute to faster and more efficient resolution of online shopping disputes, thereby fostering a reliable digital marketplace. In conclusion, a comprehensive approach that encompasses legal, educational, and collaborative efforts is recommended to uphold consumer rights in the evolving landscape of online commerce.

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CURATOR'S LEGAL EFFORTS AGAINST BANKRUPTCY ESTATE (BOEDEL) ASSETS SEIZED IN CRIMINAL CONFISCATION OF CORRUPTION CASES

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Abstract

This paper aims to analyze the legal aspects of the general seizure and criminal seizure in Indonesian positive law, as well as to understand the legal efforts of the curator towards the assets of bankrupt estates placed under criminal seizure for corruption and economic crimes. The method used in writing this article is the normative legal research method, which starts from the normative problem of conflict of norms, and the results of this journal article are to determine the position of general seizure and criminal seizure based on the principle of legal preference, namely the principle of lex superior derogat legi inferiori, lex posterior derogate legi priori, and lex specialis derogate legi generalis, and the legal efforts that can be taken by the curator when the assets of bankrupt estates are placed under criminal seizure is by filing an objection to the Corruption Court and by filing a pretrial against the seizure actions carried out by the corruption investigators. The legal status of general attachment and criminal attachment can be determined by the principles of legal preference, including lex superior derogat legi inferiori, lex posterior derogate legi priori, and lex specialis derogate legi generalis. In most cases, general attachment takes priority over criminal attachment, except in cases of corruption (tipikor). In such cases, neither general nor criminal attachment can take precedence over the other. If criminal attachment is imposed on a bankrupt estate, the Curator can file an objection with the Corruption Court within two months of the court decision.

Keywords: *Bankrupt Estate, Criminal Seizure, Legal Efforts*

1. INTRODUCTION

Bankruptcy or *pailit* refers to a situation where a debtor is unable to fulfill their debt obligations. The term "*pailit*" is another word for bankruptcy and includes the idea of financial instability. This term originated from a historical event where a debtor couldn't meet their creditor's demands, leading to the creditor's anger and destruction of chairs in the debtor's place. In French, "*pailit*" comes from "*failite*," which means a halt or delay in payment, while in English, it is known as "failure (Tirayo & Halim, 2019). According to M. Hadi Shubhan, bankruptcy is a debtor who does not have the ability to fulfill all payments to creditors. This state of inability to pay is caused by the condition of the debtor's business which is experiencing a setback and the debtor's finances are not good (financial distress) (Subhan, 2008).

In Indonesian positive law, the definition of bankruptcy can be found by examining Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law) that:

"Bankruptcy is a general confiscation of all assets of a bankrupt debtor, the management and management of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law."

Based on the provisions of Article 1 number 1 of the KPKPU Law, it can be understood that the importance of bankruptcy is to manage and dispose of all the assets of the bankrupt debtor. In connection with this, the Curator is the party who carries out the management and settlement supervised by the Supervisory Judge. Referring to Article 1 number 5 of the KPKPU Law, it is stipulated that:

"A curator is the Estate Office or an individual appointed by the Court to manage and settle the assets of a Bankrupt Debtor under the supervision of a Supervising Judge in accordance with this Law."

The duties of the curator are explicitly regulated in Article 69 of the KPKPU Law that:

"(1) The Curator's duty is to manage and/or administer the bankruptcy estate.
(2) In carrying out its duties, the Curator:
a. it is not required to obtain the consent of or give prior notice to the debtor or one of the Debtor's organs, even though in circumstances outside bankruptcy such consent or notice would be required;
b. may make loans from third parties, only in order to increase the value of the bankruptcy estate."

In line with his duties, the Curator has several authorities in managing and/or administering bankruptcy assets which are regulated in the KPKPU Law as follows:

a. The Curator is authorized to act independently in the implementation of his duties (see Article 73 paragraph (3) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
b. May obtain loans from third parties as long as it is for the purpose of enhancing the bankrupt estate (see Article 69 paragraph (2) letter b of the Bankruptcy and Postponement of Debt Payment Obligations Law).
c. Has the authority to encumber collateral, pledge, or other security rights with the approval of the Supervising Judge (see Article 69 paragraph (3) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
d. The Curator may approach the court with the approval of the Supervising Judge, except for specific matters (see Article 69 paragraph (5) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
e. The authority to sell collateral from separate creditors after 2 (two) months of insolvency (Article 59 paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law) or the Curator sells movable property during the stay period (Article 56 paragraph (3) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
f. Initiating legal actions based on the legal institution of action pauliana (Article 41 in conjunction with Article 47 paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law).
g. Verifying debts and creating a list of debts (see Article 116 in conjunction with Article 117 of the Bankruptcy and Postponement of Debt Payment Obligations Law).
h. The Curator is authorized to sell the assets of the bankrupt estate for the purpose of liquidation (Yuhelson, 2019).

Related to the administration and/or liquidation of the bankrupt estate conducted by the Curator, it is a logical-juridical consequence of the legal event where a debtor is declared bankrupt based on a court decision. The decision declaring bankruptcy results in the debtor losing the right to control and manage the assets included in the bankrupt estate, where all the debtor's wealth is automatically placed under public seizure. Subsequently, in accordance with the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), administration and/or liquidation will be carried out by the Curator. However, in reality, legal issues arise when criminal seizure is also imposed on the assets of the bankrupt estate in cases of corruption. One notable publicized case is "Case Number 16/Pdt.Sus-GGL/2017/PN Niaga Jkt.Pst. j.o Number 88/Pdt.Sus-PKPU/2015/PN Niaga Jkt.Pst," which illustrates that PT. Meranti Maritime and Henry Djuhari, on August 22, 2016, were declared bankrupt by the Commercial Court at the Central Jakarta District Court based on Decision Number: 88/Pdt.Sus.PKPU/2015/PN.Niaga.Jkt.Pst. After the declaration of bankruptcy, all assets of Henry Djuhari (In Bankruptcy) were placed under public seizure by the curator. However, the Deputy Attorney General for Special Crimes, acting as the Investigator, seized and blocked the bankrupt estate assets, including Building Rights Certificate Number 2628, Ownership Rights Number 4395, and Number 3617, which were suspected to be obtained through corrupt practices by Henry Djuhari (Ruswati, 2022).

In light of the existing legal issues, the Supreme Court in 2022 established Supreme Court Regulation Number 2 of 2022 on Procedures for Resolving Good-Faith Third-Party Objections to Decisions of Confiscation of Non-Defendant Property in Corruption Cases (Perma 2/2022) as a strategic measure to address legal problems arising from the conflict of norms between Article 31 of the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), which essentially determines that public seizure terminates all other seizures, and Article 39 paragraph (2) of the Code of Criminal Procedure (KUHAP), which stipulates that criminal seizures can be made against bankrupt estate assets. Consequently, questions arise regarding the status of public seizure and criminal seizure post the enactment of Perma a quo, particularly concerning the fundamental legal issue of prioritization. Furthermore, a legal aspect that requires further analysis is related to whether, after the enactment of Perma a quo, the Curator can pursue other legal actions against the assets of the bankrupt estate that are subject to criminal seizure, in addition to filing objections with the Corruption Court as stipulated in Perma a quo.

Based on the results of the researcher's search, there are several journal writings that have the theme of legal issues similar to this paper such as a legal journal written by Lukman Ilman Nurhakim and Efa Laela Fakhriah (Nurhakim & Fakhriah, 2020) which focuses on the discussion of the curator's right to file a pretrial in the event that the bankruptcy estate assets that the investigator wants to manage and/or manage are placed under criminal confiscation. Furthermore, Siti Hapsah Isfardiyana (Isfardiyana, 2016) which discusses the position of general confiscation which should precede criminal confiscation in the administration of bankruptcy property. The difference between this article and the two articles with similar themes described previously is the novelty of this article, which examines the basis of Perma 2/2022, whereas when the two articles were written, the Supreme Court had not yet enacted the Perma a quo. In addition, this research specifically examines the legal efforts that can be made by the Curator of bankruptcy

estate assets that are placed under criminal cases of corruption (*tipikor*) confiscation after the enactment of Perma 2/2022.

2. RESEARCH METHODS

This paper uses a normative legal research method that departs from the problem of norms in the form of conflict of norms from the regulation of general confiscation (vide Article 31 of the KPKPU Law) with criminal confiscation (vide Article 39 of the Criminal Procedure Code) by examining also from the perspective of Perma 2/2022. The sources of legal materials contained in this writing consist of primary legal materials including the KPKPU Law, KUHAP, and related legislation as well as secondary legal materials including various books and scientific journals that can help to analyze primary legal materials. Furthermore, the document study technique is used as a legal material collection technique in this writing. The overall legal material collected will be analyzed qualitatively-normatively by interpreting and constructing statements contained in legislation using a statute approach and conceptual approach.

3. RESULTS AND DISCUSSION

3.1. Legal Aspects of the Position of General Confiscation and Criminal Confiscation in Indonesian Positive Law

The term confiscation terminology comes from the Dutch language, namely "*beslag*" and in Indonesian "*beslah*" where the raw term is called *sita* or confiscation. According to M. Yahya Harahap, the definition of confiscation can be described into several definitions as follows:

1. "Forced custody actions are carried out officially based on a court order or judgment;
2. The act of forcibly placing the defendant's wealth under custody (to take into custody the property of a defendant);
3. The determination and custody of seized items persist throughout the examination process until there is a legally binding court decision that validates or invalidates the seizure action; and
4. The items placed under custody include disputed property, but may also include items intended for use as a means of payment or debt settlement by the debtor or defendant, achieved through the sale by auction (executorial verkoop) of the seized items. (Harahap, 2017)"

Furthermore, Wildan Suyuthi also conveyed his understanding of *sita* (*beslah*), namely "as a legal action of the court on the movable and immovable objects belonging to the Defendant at the request of the Plaintiff to be monitored or taken to ensure that the Plaintiff's claim / Plaintiff's authority does not become empty (Prabowo, 2021). In other words, confiscation is the taking or withholding of a person's property which is carried out by stipulation or order of the President of the Court or the President of the Assembly as its basis." Regarding the types of confiscation itself include:

1. Marital seizure or *maritale beslag* is a seizure intended to ensure that the seized property cannot be sold, thus freezing the assets during the court examination of the divorce dispute between the petitioner and the opposing party.

2. Replevin seizure (*revindicatoir*) is a seizure requested by the owner of movable property that is in the possession of another person, either verbally or in writing, to the court chairman where the person holding the property resides.
3. Conservatory seizure (*conservatoir beslag*) is a security seizure against the debtor's property to ensure the enforcement of a civil judgment by liquidating or selling the seized property to meet the plaintiff's claims.
4. Adjustment seizure (*vergelijkende beslag*) is a seizure applied to property that has been placed under seizure in accordance with Article 436 Rv.
5. Execution seizure (*executorial beslag*) is a seizure of the wealth of the party defeated in a civil case, whether movable or immovable property, to enforce the final and legally binding judgment of the court.
6. Criminal seizure is a seizure carried out by investigators for the purpose of evidence in investigations, prosecutions, and trials.
7. Public seizure is a seizure directed at the entire assets of the debtor, both present and future, where the proceeds from the sale of the assets will be distributed fairly and proportionally among the creditors.

Delving deeper, theoretically, public seizure is a form of attachment recognized in civil law, particularly in bankruptcy law, which governs private relationships between individuals. The legal basis for the existence of public seizure in bankruptcy law is explicitly defined in Article 1, paragraph, of the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), which stipulates that:

"Bankruptcy is the public seizure of all assets of the bankrupt debtor, the administration and liquidation of which are carried out by the Curator under the supervision of the Supervising Judge as regulated in this Law."

According to Hadi Shubhan, the essence of general confiscation is "aimed at the debtor's property where the intention is to stop the action against the seizure of bankruptcy property by its creditors and to stop the transaction traffic on bankruptcy property by the debtor which is likely to harm its creditors (Subhan, 2008). Public seizure terminates individual seizures and executions carried out by creditors, requiring creditors to submit collectively (*consursus creditorium*)." Examining the Bankruptcy and Postponement of Debt Payment Obligations Law (KPKPU Law), public seizure, capable of concluding all other forms of attachment, is regulated in Article 31 of the KPKPU Law. From another perspective, under the public law regime, specifically criminal law, there is also a form of seizure known as criminal seizure. Criminal seizure involves a series of investigative actions to take over and/or secure movable or immovable property, tangible or intangible, for the purpose of evidence in investigations, prosecutions, and trials (see Article 1, number 16, Code of Criminal Procedure). Furthermore, based on Article 42, paragraph (1) of the Code of Criminal Procedure (KUHAP), it is stipulated that:

"(1) Investigators have the authority to instruct individuals in possession of seizable assets to surrender those assets for examination, and a written acknowledgment must be provided to the person surrendering the assets."

As further referred to in Article 39 of the Criminal Procedure Code, the items that can be subject to confiscation are also determined, namely:

"a) Property or claims of the suspect or defendant, entirely or partially alleged to have been obtained from a criminal act or as a result of a criminal act,
b) Assets that have been directly used to commit a criminal act or to prepare for it,
c) Assets used to obstruct an investigation,
d) Assets specially created or intended for committing a criminal act,
e) Other assets directly related to the criminal act."

The KUHAP determines the forms of confiscation which can be divided into three forms, namely ordinary or general confiscation, confiscation in necessary and urgent circumstances and confiscation in circumstances of being caught red-handed. Looking back at the provisions of Article 31 of the KPKPU Law with Article 39 of the Criminal Procedure Code, it creates a conflict of arrangements related to which confiscation takes precedence, to make it easier to understand the existing conflict of arrangements, it is further described in the form of a comparison table as follows:

Table 1. Comparison of Conflicts between General Confiscation and Criminal Confiscation Arrangements

KPKPU Law	KUHAP (Criminal Procedure Code)
Article 31 states that: (1) "The bankruptcy declaration decision results in the immediate cessation of all execution orders by the Court against any part of the Debtor's assets that have commenced before bankruptcy, and from that moment, no judgment can be executed, including or also by detaining the Debtor. (2) All seizures that have been carried out are considered null and void, and if necessary, the Supervising Judge must order their removal. (3) Without prejudice to the provisions of Article 93, a Debtor who is currently in custody must be released immediately after the bankruptcy declaration decision is pronounced."	Article 39 states that: (1) "Subject to confiscation are: a. Property or claims of the suspect or defendant, entirely or partially alleged to have been obtained from a criminal act or as a result of a criminal act; b. Assets that have been directly used to commit a criminal act or to prepare for it; c. Assets used to obstruct the investigation of a criminal act; d. Assets specially created or intended for committing a criminal act; e. Other assets directly related to the committed criminal act. (2) Assets subject to seizure in civil cases or bankruptcy may also be seized for the purposes of investigation, prosecution, and adjudication of criminal cases, as long as they meet the provisions of paragraph (1)."

In determining the position of public seizure and criminal seizure, especially regarding the fundamental question of which seizure should take precedence, it can be examined based on the principle of legal preference, namely the principles of *lex superior derogat legi inferiori*, *lex posterior derogate legi priori*, and *lex specialis derogate legi generalis*, which are further elaborated in the form of a comparative table as follows:

Table 2. Analysis of Legal Preference of General Confiscation vs Criminal Confiscation

General Confiscation	Criminal Confiscation
General confiscation is specifically regulated in the KPKPU Law.	Criminal confiscation is generally regulated in the Criminal Procedure Code (KUHAP)
Analysis based on the principle of lex superior derogat legi inferiori: Because general confiscation and criminal confiscation are both regulated in the legal product of the Act, general confiscation and criminal confiscation have the same legal position.	
KPKPU Law has been enacted since 2004.	The Criminal Procedure Code has been enacted since 1981
Analysis based on lex posterior derogate legi priori: Because the legal product governing general confiscation is more recently enacted than the Criminal Procedure Code, general confiscation should take precedence. However, for criminal confiscation in special cases such as criminal confiscation of tipikor cases, the criminal confiscation of tipikor cases takes precedence considering that the legal basis was promulgated in 2019 through Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (Tipikor Law).	
General confiscation is regulated in a special law, namely the KPKPU Law.	Criminal confiscation is regulated in general rules, namely the Criminal Procedure Code (KUHAP).
Analysis based on lex specialis derogate legi generalis: Because the legal basis for general confiscation, namely the KPKU Law, is more specific than the criminal confiscation regulated in the Criminal Procedure Code, general confiscation should take precedence. However, especially in criminal confiscation in special criminal offenses such as tipikor, general confiscation does not necessarily take precedence considering that the Tipikor Law is a special rule.	

Based on the analysis in table 2 above, it can be understood that general confiscation should take precedence over criminal confiscation. The exception to this precedence only occurs when the criminal confiscation carried out is confiscation in a special criminal case. In criminal confiscation of *tipikor* cases, general confiscation cannot take precedence, on the other hand, criminal confiscation also cannot be prematurely interpreted as taking precedence (Herawati & Widjaja, 2021). In relation to this conflict of norms, the existence of Perma 2/2022 cannot actually be used as a basis for consideration in deciding that criminal confiscation must take precedence over general confiscation. This is because general confiscation is based on a legal product at the level of a law that specifically regulates the field of bankruptcy, while Perma 2/2022 is a regulation at a level below the law. Although Perma 2/2022 cannot provide legal certainty in answering which confiscation must take precedence, at least after the enactment of Perma 2/2022 there has been a clear procedural procedure in filing an objection to the criminal confiscation of *tipikor* placed on the bankruptcy estate assets.

3.2. Curator's Legal Efforts Against Bankruptcy Trust Assets Confiscated by Corruption Crimes

Legal effort is the recourse provided by the law to an individual or legal entity to take certain actions in order to challenge a court decision, serving as a venue for parties dissatisfied with the decision due to its non-alignment with their desires (Hsb, 2015). Theoretically, legal remedies can be dichotomized into ordinary legal remedies and extraordinary legal remedies where ordinary law includes resistance/*verzet*, appeal, cassation while extraordinary legal remedies include judicial review (request civil) and third party resistance (*denderverzet*) against execution seizure (Sari et al., 2017). Then related to bankruptcy assets themselves are assets belonging to individuals or entities that experience bankruptcy or bankruptcy and have been declared by law. Legal efforts against bankruptcy estate assets placed in criminal confiscation of *tipikor* can be interpreted as an effort given by the law to fight against criminal confiscation that has been placed on bankruptcy estate assets due to the interests of investigation, especially in proving tipikor cases and / or as a result of additional punishment in the form of confiscation determined by the Tipikor court so that the assets cannot be cleaned up for the good of the creditors (Hutabarat et al., 2022). Looking into the provisions of Article 69 paragraph (1) of the KPKPU Law, it is explicitly regulated regarding the duties of the Curator that:

"The task of the Curator is to manage and/or administer the bankruptcy estate"

In carrying out his duties as mandated by Article 69 paragraph (1) of the KPKPU Law, the Curator may appear in court in accordance with the provisions of Article 69 paragraph (5) to ensure that the curator has not committed any errors or omissions in carrying out the management and/or administration duties that have caused losses to the bankruptcy estate.

ased on these provisions, the Curator has the legal basis to make various legal efforts regarding the management and/or administration process. Specifically, the legal effort that can be taken by the Curator when the bankruptcy estate assets are placed under criminal confiscation is to file an objection to the Corruption Court. Article 1 point 1 of Perma 2/2022 defines the definition of objection as:

"An objection is a request submitted by a third party in good faith to the court against a court decision that imposes forfeiture of goods not belonging to the defendant in a corruption case."

Furthermore, relating to applicants who have legal standing is regulated through Article 1 number 2 of Perma 2/2022 that:

"The Applicant is the owner, guardian, guardian of the owner of the goods, or curator in a bankruptcy case as a Third Party in Good Faith who submits a request for Objection as regulated in this Supreme Court Regulation."

Then the definition of the party referred to from the party in good faith is given in Article 1 number 3 of Perma 2/2022 that:

"A Third Party in Good Faith is a party who can prove to be the legal owner, guardian, trustee of the owner of the goods, or curator in a bankruptcy case for goods that are not legally related to the process of corruption."

Based on the provisions of Article 1 number 3 of Perma 2/2022, it can be understood that the Curator is included as a third party in good faith who can act as a petitioner for objections to bankruptcy assets that are placed under criminal confiscation in a tipikor case. Looking deeper into Perma 2/2022, related to the submission of objections itself, the procedure has been regulated according to Part Two of Perma 2/2022 that:

Article 3 Perma 2/2022

(1) "Goods or companies declared confiscated to become state property or for destruction can be objected to in writing by a Third Party of Good Faith.
(2) The third party eligible to submit an objection as mentioned in paragraph (1) is the owner, caretaker, guardian of the goods, or curator in bankruptcy cases of a property, whether in its entirety or partially subjected to confiscation.
(3) Objection requests may be submitted by the curator if the bankruptcy declaration is pronounced before the commencement of the investigation.
(4) Objections can be filed both before and after the requested object undergoes execution.
(5) An objection submitted before the execution does not impede the prosecutor at the Prosecutor's Office, the military judge at the military court/military high military court, or the Corruption Eradication Commission from carrying out the execution.
(6) In the event that an objection is raised after the executed object, the objection shall also include the Minister of Finance as a Co-Respondent."

Article 4 Perma 2/2022

a) "Objections must be submitted within a maximum period of 2 (two) months after the court decision in the Principal Case is pronounced in a public hearing.
b) In the event that the decision on the Principal Case is an appellate or cassation decision, objections must be submitted no later than 2 (two) months after the excerpt/copy of the decision is notified to the public prosecutor, defendant, and/or announced on the court notice board and/or electronically.
c) Objections can only be filed once by the same party.
d) The court clerk at the place where the objection is filed, within a maximum of 3 (three) days from the registration of the objection application, notifies the panel of judges adjudicating the Principal Case at the appellate and/or cassation level of the existence of the objection application.
e) The court announces every content of the verdict in corruption criminal cases through the Court Information System.
f) Objections are submitted in writing through electronic or conventional means to the corruption court at the district court or military court/high military court that adjudicates the Principal Case."

Referring to the provisions of Article 3 to Article 4 of Perma 2/2022 above, it can be understood that "an objection request can be submitted by the Curator if the bankruptcy declaration decision is pronounced before the commencement of the investigation and the objection can be submitted before or after the object requested for execution as long as it is submitted no later than 2 (two) months after the court decision on the main case is pronounced in a session open to the public. In addition, objections can only be filed 1

(one) time by the Curator." Basically, the examination process in the objection petition refers to the applicable procedural law, which is carried out with the first stage being the opening of the trial. Second, the examination of the identity of the Applicant and Respondent. Third, the reading of the objection. Fourth, the reading of responses to objections. Fifth, the applicant's evidence. Finally, the agenda is the pronouncement of the decision (vide Article 9 of Perma 2/2022). Specifically, a new objection request can be granted if the objection submitted meets the provisions of Article 12 of Perma 2/2022, namely:

"(1) The objection is granted if the Applicant can prove that:

a) *The applicant obtains the right to the object of the application before the investigation and/or confiscation is carried out;*
b) *The applicant obtained the rights to the object of the application based on good faith;*
c) *The object of objection is goods that are confiscated or destroyed in a corruption case; and*
d) *The applicant is not related to the criminal act of corruption committed by the defendant."*

On the determination of objections that have been decided by the Panel of Judges of the Corruption Court, it is still possible to take further legal action, namely by submitting a cassation application. This is expressly regulated in the Fifth Section on Legal Remedies Article 15 that:

"(1) The Applicant, Respondent and/or Co-Respondent may file a cassation appeal against the ruling on the objection.

(2) An application for cassation shall be filed no later than 14 (fourteen) days after the Determination is pronounced in an open session for the public or after the determination is notified to the absent party."

In another perspective, after the enactment of Perma 2/2022, the legal remedies that can be taken by the Curator have increasingly reflected legal certainty where before the enactment of Perma 2/2022 there was often confusion in practice regarding the terminology of legal remedies taken to the Corruption Court for the placement of criminal confiscation of bankruptcy estate assets along with its procedural legal aspects. However, even though the filing of objections to criminal confiscation of corruption has now been regulated in Perma 2/2022, this still does not make the Curator only able to take this legal effort in providing resistance to bankruptcy estate assets that are placed in criminal confiscation of corruption cases.

Another legal effort that can be taken is to file a pretrial against the seizure action taken by the tipikor investigator. If during the trial process the Investigator cannot prove the reason for the criminal confiscation of the bankruptcy estate, the judge has the right to order the Investigator to return the disputed object to the Curator and to manage and organize the bankruptcy estate. Thus, the curator can argue that the action of the Investigator in placing a criminal confiscation on the bankruptcy estate without seeking the approval of the supervisory judge is considered not to fulfill the provisions of the Legislation considering that there is a legal relationship (*Rechtsbetreeking*) between the object and the bankruptcy institution regulated in the KPKPU Law (Nurhakim & Fakhriah, 2020).

4. CONCLUSION

Determining the legal status of general attachment and criminal attachment can be examined based on the principle of legal preference, namely the principles of *lex superior derogat legi inferiori*, *lex posterior derogate legi priori*, and *lex specialis derogate legi generalis*. Based on the analysis, it can be understood that general attachment should take precedence over criminal attachment. The exception to this preference arises only when the criminal attachment pertains to the seizure in cases of specific criminal offenses. In cases of corruption (*tipikor*), general attachment cannot be prioritized over criminal attachment; conversely, the criminal attachment cannot be prematurely construed as having precedence. Legal recourse available to the Curator, if criminal attachment is imposed on the assets of a bankrupt estate, involves filing an objection with the Corruption Court. The Curator may submit an objection if the bankruptcy declaration is pronounced before the commencement of the investigation, and such objection can be filed either before or after the requested object undergoes execution, provided that the objection is submitted within a maximum period of 2 (two) months after the court decision in the principal case is pronounced in an open public hearing. Another legal effort that can be pursued is filing a pretrial motion against the actions of attachment conducted by the corruption investigator.

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SETTLEMENT OF SEXUAL VIOLENCE AGAINST CHILDREN BASED ON BALINESE CUSTOMARY LAW

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Abstract

This study aims to examine and analyze related to the settlement of crimes of sexual violence against children based on positive law in Indonesia and Balinese customary law. This study uses normative legal research methods with factual approaches, statutory approaches, case approaches, and legal concept analysis approaches. The results of this study explain that arrangements related to sexual violence against children are regulated in Article 81 and Article 82 of the UUPA, regarding their settlement according to the criminal justice system according to the provisions of the Criminal Procedure Code. As well as the settlement of criminal acts of sexual violence against children in Balinese customary law is translated into two approaches to justice, namely criminal sanctions with a retributive approach or criminal sanctions with a restorative approach. And if the settlement is through a restorative approach, the rights of the victim need attention because the victim is an interested party who should have a (legal) position in the settlement process. However, in the criminal justice system in general, it is suspected that victims do not receive equal protection from the authorities in the criminal justice system, so that the true interests of victims are often neglected and even if they do exist, they are only fulfilling the criminal justice administration or management system.

Keywords: *Settlement, Sexual Violence, Children, Balinese Customary Law*

1. INTRODUCTION

The term violence appears in several regulations, according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in Article 1 paragraph 1 of this Law what is meant by "Domestic violence is any act against a person, especially women, which results in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household". Domestic violence is not only experienced by women, but children are often victims of domestic violence.

Article 1 point 4 of the Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 01 of 2010 states explicitly that "Violence against children is any act against children that results in physical, mental, sexual, psychological misery or suffering, including neglect and ill-treatment that threatens the bodily integrity and degrades the dignity of children".

Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia. Number 1 of 2010 Article 1 point 2 explains that "Violence is any unlawful act with or without the use of physical and psychological means that causes danger to life, body or deprives a person of their freedom". Furthermore, Article 1 point 3 of the Regulation of the State Minister for Women's Empowerment and Child Protection of the Republic of Indonesia Number 1 of 2010 explains "Violence against women is any act based on gender differences that results in or may result in

physical, sexual or psychological misery or suffering of women, including threats of certain actions, coercion or arbitrary deprivation of liberty, whether it occurs in the public sphere or in private life".

There are various domestic violence, one of which is child sexual abuse. An example can be seen in the case of sexual abuse of children in Sudaji Village, Sawan District, Buleleng. Where a biological father who impregnated his child with the threat if not served then threatened to stop school, the child had refused but the father continued to force and threaten so that the child could not refuse.(Wicaksono, 2015a)

This case was resolved in the traditional manner by the dadia Kubukili of Sudaji Traditional Village. The settlement was marked by a ceremony to return the oath as is customary in the village. The Legal Aid Institute of the Indonesian Women's Association for Justice (LBH APIK) Bali urged the police to immediately process the case. Because even though it has been resolved in customary law by the dadia, his actions have not been accounted for in positive law.(Wicaksono, 2015b)

Cases like this are regulated in Law No. 23 of 2002 concerning Child Protection (PA Law) regarding sexual abuse of children, especially in the provisions of Article 82 "Every person who deliberately commits violence or threat of violence, forces, deceives, a series of lies, or induces a child to commit or allow obscene acts to be committed, shall be punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million rupiah)". 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million rupiah)".

Harassment is "deviant behaviour, because it forces a person to engage in a sexual relationship or establishes a person as an object of unwanted attention. This means that sexual harassment can take the form of indecent behaviour, such as touching vital parts of the body, and it can also take the form of indecent words or statements". While the person who is the object of the touching or statement does not like it.(R. Sari et al., 2015)

Based on the laws applied in Indonesia, customary law itself is basically not allowed to conflict with national laws. The case that occurred in Sutaji Village, Sawan Subdistrict, Buleleng, which was only resolved by customary law and not processed through national law, which in this case included the crime of sexual violence, was not a complaint offence and was subject to sanctions in accordance with the Criminal Code, but justice would be difficult to obtain if it only reached customary law without using national law.

Previous research was conducted by Putu Eva Ditayani Antari with the title fulfilment of the rights of children who experience sexual violence based on restorative justice in the Tenganan Pegringsingan community, Karangasem, Bali (Antari, 2021) where the research examines related to the Child Protection Law, child victims of sexual violence are entitled to legal assistance and rehabilitation by authorised institutions, at the central and regional levels. In contrast, in Tenganan Village, children as victims of sexual violence are sanctioned to be forcibly married to the perpetrator and impose social sanctions through the nandan beling tradition on the parents of girls who are victims of sexual violence. Therefore, it is necessary to formulate the customary sanctions by adopting the concept of restorative justice in the Child Protection Law. Meanwhile, the research conducted by the author examines in general terms the regulation of the criminal offence of sexual violence against children in Bali based on positive law in Indonesia and the settlement of sexual violence against children in Bali based on Balinese customary law.

Based on the explanation of the background of the problem, this research aims to find out and analyse the legal arrangements related to the settlement of sexual violence against children based on positive law in Indonesia and Balinese customary law..

2. RESEARCH METHODS

This research uses normative legal research methods, which is research that places the law as a building system of norms. The system in question is about principles, norms, rules from laws and regulations, court decisions, agreements and doctrines (Fajar & Achmad, 2017). This research is conducted by examining existing library materials such as laws and regulations and then conducting research on legal issues. The approaches used in this research are the case approach, the statute approach, the fact approach and the analytical & conceptual approach. The statutory approach is carried out by examining all laws that are in accordance with the issues concerned. The fact approach is used based on facts that occur in society. The legal concept analysis approach is used to understand the criminalisation policy and law enforcement against the crime of sexual violence against children.

3. RESULTS AND DISCUSSION

3.1. Regulation of Criminal Offences of Sexual Violence Against Children Based on Positive Law in Indonesia

Criminal offence is a translation of "strafbar feit", in the Criminal Code there is no explanation of what exactly is meant by strafbaar feit itself. Usually, criminal offence is synonymous with delict, which comes from the Latin word delictum. In the large Indonesian dictionary, it is stated as follows: "An offence is an act that is subject to punishment because it is a violation of the criminal law.".(Rahmanuddin, 2019)

Furthermore, a criminal offence is a basic part of an error committed against a person in committing a crime. So for the existence of an error, the relationship between the circumstances and the actions that cause reproach must be in the form of intent or negligence (Dalimunthe et al., 2021). It is said that deliberation (dolus) and negligence (culpa) are forms of fault while the term from the notion of fault (schuld) which can cause a criminal offence to occur is because the person has committed an act that is against the law so that for his actions he must be responsible for all forms of criminal offences he has committed to be tried and if it has been proven that a criminal offence has been committed, then it can be sentenced to criminal punishment in accordance with the article that regulates it.(Utoyo et al., 2020)

The crime of sexual violence against children in general is contained in the provisions of Law No. 23 of 2002 concerning Child Protection (hereinafter referred to as UUPA) in Article 81 paragraph 1 which explains that "Every person who intentionally commits violence or threat of violence to force a child to have sexual intercourse with him or with another person, shall be punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp 300,000,000.00 (three hundred million rupiah) and a minimum of Rp 60,000,000.00 (sixty million rupiah)". Furthermore, Article 81 paragraph 2 explains that "The criminal provisions as referred to in paragraph (1) shall also apply to any person who intentionally commits deceit, a series of lies, or induces a child t o have sexual intercourse with

him/her or with another person". Article 82 of the UUPA also explains "Any person who intentionally commits violence or threat of violence, forces, deceives, lies, or induces a child to commit or allow obscene acts to be committed, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp 300,000,000.00 (three hundred million rupiah) and a minimum of Rp 60,000,000.00 (sixty million rupiah)".

The elements of a criminal offence are something that is very important to be understood and identified in the resolution of a criminal offence, while the elements of a criminal offence can be divided into:

a. Objective Elements:

1. Act or Action

The existence of act or action

The term "act" of "criminal offence" is an abbreviation of the word "action", which means that there is a person who commits an "action", while the person who commits it is called "petindak" (Eleanora, 2013). There is a psychological relationship between the actor and the act, a relationship between the use of one part of the body, the five senses, and other tools so that an act is realised. The psychological relationship is such that the actor can assess his actions, can determine what he will do and what he will avoid, can also not deliberately perform his actions, or at least by the community views that the action is despicable (Eleanora, 2015). As stated by D. Schaffmeister, N. Keijzer, and Mr E. PH.Sutorius that: "No punishment can be imposed for an act that is not included in the formulation of the offence. This does not mean that a punishment can always be imposed if the act is included in the formulation of the offence. For this reason, two conditions are needed: the act is unlawful and can be criticised.(Erick & Abidin, 2021)

2. Unlawful (no justification)

There is an unlawful nature (Wederrechtelijk)

One of the main elements of an objective criminal offence is the unlawful nature. This is related to the principle of legality implied in Article 1 paragraph 1 of the Criminal Code. In Dutch against the law is Wederrechtelijk (weder = contrary to, against; recht = law). In determining that the act can be punished, the legislator makes the unlawful nature as a written element. Without this element, the formulation of the law would be too broad. In addition, the nature of the offence is sometimes included in the formulation of the offence, namely in the formulation of the culpa offence..(I. Sari, 2021)

To impose a punishment, the elements of the criminal offence contained in the article must be fulfilled. One of the elements in an article is the unlawful nature (Wederrechtelijk) both explicitly and implicitly and explicitly in an article is still under debate, but there is no doubt that this element is an element that must be present or absolute in a criminal offence so that the perpetrator or defendant can be prosecuted and proven in court.(Lubis et al., 2019)

Subjective Element (Maker Element):

1. Accountable

Criminal responsibility in foreign terms is called toekenbaardheid or criminal responsibility in English which leads to the punishment of the perpetrator with the intention of determining whether a defendant or suspect is held accountable for a criminal offence that occurs or not. In order for the perpetrator to be punished, it is required that the act he committed fulfils the elements of the offence specified in the law. From the point of view of the occurrence of a prohibited act, a person will be held accountable for his actions if the act is against the law and there is no reason to justify or negate the unlawful nature of his actions. From the point of view of the ability to be responsible, only a person who is capable of being responsible can be held accountable for his actions.(Tarigan et al., 2021)

The elements of criminal responsibility according to several views are as described below. According to Pompe, criminal responsibility must have the following elements: (1.) The ability to think (psychisch) of the author (dader) which allows him to control his mind, which allows him to determine his actions; (2.) Therefore, he can determine the consequences of his actions; (3.) So that he can determine his will in accordance with his opinion.(Sya'bana et al., 2021)

1. Fault (no excuse)

The basis for the existence of a criminal offence is the principle of legality, while the basis for the criminalisation of the perpetrator is the principle of guilt. This means that the perpetrator of a criminal offence will only be punished if he/she has a fault in committing the criminal offence. When a person is said to have fault. This means that the perpetrator of a criminal offence will only be convicted if he/she is guilty of committing the criminal offence.(Sya'bana et al., 2021)

Based on the above Sudarto, also stated the same thing, that: "It is not enough for a person to be punished if he has committed an act that is contrary to the law or against the law. So even though the act fulfils the formulation of the offence in the law and is not justified (an objective breach of a panel provision), it does not yet fulfil the requirements for the imposition of punishment. For punishment, there is still a requirement that the person who commits the act has guilt or is guilty (subjective guilt). In other words, the person must be accountable for his/her actions or if seen from the point of view of his/her actions, his/her actions can only be accountable to the person". Furthermore, Sudarto stated that the principle of "no punishment without fault" (Keine strafe ohne schuld or geen straf zonder schuld or nulla poene sine culpa) applies here. "Culpa" here is used in a broad sense, including intentionality." Fault is the state of mind of a person who commits an act and the act committed is such that the person is liable to blame.(Hakim, 2019)

In criminal law, there is a principle called the Principle of Legality which is regulated in Article 1 paragraph (1) of the Criminal Code (KUHP) which reads: "An act cannot be punished, except based on the strength of the existing criminal legislation." The principle of legality applies in the realm of criminal law and is famous for von Feuerbach's legendary adage that reads nullum delictum nulla poena sine praevia lege poenali. Freely, the adage can be interpreted as "there is no criminal offence (delict), no punishment without a preceding regulation". In general, von Feuerbach divided the adage into three parts, namely: There is no punishment if there is no law; There is no punishment if there is no crime; There is no crime if there is no punishment based on the law.(Situngkir, 2018)

So, according to positive law in Indonesia, a person can only be convicted if there are rules about the act before the act is committed, this principle is the principle of legality.

In addition, to resolve a criminal offence is also regulated by a systematic Indonesian criminal justice system. Meanwhile, according to Mardjono Reksodiputro, the criminal justice system is a crime control system consisting of police, prosecutors, courts and correctional institutions (Kadri Husin & Budi Rizki Husin, 2022). After the enactment of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), Het Herziene Regement (Stbl. 1941 No. 44) as the foundation of the Indonesian criminal justice system, the basis for the process of resolving criminal cases in Indonesia has been revoked. The components of the criminal justice system that are commonly recognised, both in the knowledge of criminal policy and in the practice of law enforcement, consist of the police, prosecutors, courts, and correctional institutions

a. Police

The police as one of the components of the criminal justice system is an institution that directly deals with criminal offences that occur in society. Law No. 2 of 2002 on the Indonesian National Police defines the police as matters relating to the functions and institutions of the police in accordance with laws and regulations. The function of the police according to Article 2 of the Law is: "one of the functions of state government in the field of maintaining security and public order, law enforcement, protection, protection, and service to the community."

b. Prosecutor's Office

The Public Prosecution Service in the criminal justice system works after a case is handed over from the police. The Public Prosecutor's Office is a government institution in the field of prosecution and other duties determined by law. Article 13 of KUHAP states that: "the prosecutor is a public prosecutor authorised by law to conduct prosecutions and execute judicial decisions."

c. Court

The court is the place where the judicial process takes place while the authority to hold the court itself is in the hands of the judiciary. This is stated in Law No. 48 of 2009 on Judicial Power. The duty of the court is to receive, examine, hear and resolve cases submitted to it. This task includes district courts, high courts, and the supreme court. In addition, the court is also obliged to provide assistance to justice seekers and is obliged to realise a simple, fast and low cost trial in accordance with the judicial principles established by the Criminal Procedure Code.

d. Correctional Institutions

Correctional institution is the last institution that plays a role in the criminal justice process. As the final stage of the criminal justice process, correctional institutions carry out the hopes and objectives of the criminal justice system, which include trying to prevent criminal offenders from repeating the crimes they have committed.

e. Advocate

Advocates are people whose profession is to provide legal services, both inside and outside the court who meet the requirements based on the provisions of the Law. Legal services are services provided by advocates in the form of providing legal consultation, legal assistance, exercising power of attorney, representing, accompanying, defending and conducting other legal bases for the legal interests of clients. With the enactment of Law No. 18/2003 on Advocates, advocates are also part (subsystem) of the criminal justice system, this is

confirmed in Article 5 paragraph (1) of the law, which states that: "advocates have the status of law enforcers, free and independent guaranteed by laws and regulations."

Operationally, crime prevention can be done through both penal and non-penal means. As stated by Hoefnagels that crime prevention can be done through penal (criminal law) and non-penal (outside of criminal law) channels. The two means are a pair that cannot be separated from each other, it can even be said that they complement each other in the effort to overcome criminal offences in society.(Pratama & Januarsyah, 2020)

Criminal offence countermeasures through penal means is by using criminal law as the main means, both material criminal law, formal criminal law and criminal implementation law implemented through the criminal justice system to achieve certain goals. Criminal countermeasures using criminal law is the oldest method, as old as human civilisation itself. Seen as a policy issue, there are those who question whether criminal offences should be countered, prevented, or controlled by using criminal sanctions.

Meanwhile, countering criminal offences through non-penal means can mean an atmosphere outside the criminal justice system and without using criminal sanctions. Criminal offence countermeasures through non-penal means can be carried out based on a restorative justice approach. Crime prevention efforts are essentially also part of law enforcement efforts. Therefore, it is often said that criminal politics or criminal policy is also part of law enforcement policy.(Wahyu et al., 2022)

So the settlement of criminal offences according to Indonesian Criminal Law must be an act that is against the law and has the elements of a criminal offence so that the criminal act that has been committed can be tried and if it has been proven that a criminal offence has been committed, then it can be sentenced to criminal punishment in accordance with the article that regulates it. In the case of criminal offences of sexual violence against children, the settlement is usually adjusted to the provisions in the UUPA, while in the criminal justice system used for settlement it is adjusted to the provisions in the Criminal Procedure Code.

3.2. Settlement of Sexual Violence Against Children Under Balinese Customary Law

Customary Law is the law that applies and develops within the community in a region. There are several definitions of Customary Law. According to Hardjito Notopuro, Customary Law is unwritten law, customary law with characteristics that guide people's lives in organising justice and community welfare and are familial in nature (Harahap, 2018). Soepomo, Hukum Adat adalah sinonim dari hukum tidak tertulis didalam peraturan legislatif, hukum yang hidup sebagai konvensi di badan-badan negara (parleman, dewan Provinsi, dan sebagainya), hukum yang hidup sebagai peraturan kebiasaan yang dipertahankan dalam pergaulan hidup, baik di kota mauun di desa-desa (Fadholi & Sari, 2022). According to Cornelis van Vollennhoven, Customary Law is a set of rules about behaviour for indigenous and foreign Easterners on the one hand having sanctions (because it is legal), and on the other hand being in an uncodified state (because it is customary).(Fadholi & Sari, 2022)

Indonesia is made up of various customs and cultures and customary law is recognised and inherent in Indonesian law. One example is the customary law in Bali, before the abolition of customary courts, village justices of the peace had an important

role in resolving cases of customary offences. In today's independent world, village justices of the peace no longer have formal authority. Practically speaking, this does not mean that customary leaders are no longer given a place to play their role in the resolution of customary offences.

In Bali, when a customary criminal offence occurs, the practice is to resolve it through a village meeting or sangkep attended by all village residents (krama), or sometimes it can also be resolved by an institution, consisting of customary village administrators plus several community leaders or customary leaders in the customary village concerned. Which way this is done depends on the severity of the case, the sensitivity of the case, and the potential consequences of the case. The institutionalised custom of resolving adat cases through a meeting or sangkepan is still being implemented. This means that materially, the resolution of cases of violation of customary norms is the authority of the customary village/pekraman or rests on the autonomy of the customary village/as a customary law association.

However, with the dynamics of social life in the future, it is not uncommon for customary cases to occur between pekraman villages. Seeing from these conditions, an institution that has an independent position is needed, namely MDP (majelis desa pekraman) which acts as an institution with the nuances of village pekraman in Bali, stipulating the decision of the main assembly of Bali village pekraman number: 002/Skep/MDP Bali/IX/2011 concerning the implementation guidelines and technical instructions for the settlement of speech. Understanding the position and function of MDP in resolving customary cases, it can be interpreted that the role of MDP is needed in its capacity as an arbiter or mediator in the event of customary cases. Its position as mediator can be accepted by pekraman villages that are in conflict or have problems as regulated in the provisions of article 16 of Bali Regional Regulation No.3 of 2001. Furthermore, in the Bali Regional Regulation No. 4 of 2019, it has also been explained in CHAPTER XI concerning the Indigenous Village Council, the third part of the Duties and Authority of Article 76 paragraph 1 letter b which confirms the duties of the MDA, one of which is "to provide advice, suggestions, and opinions / considerations regarding customary issues and local wisdom to the local government and various parties, both individuals, groups, and institutions".

Customary justice is an empirical fact, which actually exists, lives and is practised in the lives of the customary law communities of Pakraman villages in Bali. The institution that carries out the function of customary justice in Pakraman villages is Prajuru, which is carried out through a deliberation forum (Paruman Prajuru) attended by other institutional elements in Pakraman villages, namely Paduluan (for baliage villages / old villages) and or official village government officials (Head of Hamlet / Village Head) in the area or in the territory of the Pakraman village concerned. Considering that the Paruman Prajuru, actually has other functions besides the judicial function, the local term that is appropriately used to refer to the paruman prajuru in its function of organising justice in the pakraman village is Kertha Desa, which means village court or judge.(Sudantra et al., 2017)

In the case of sexual violence in Sawan Village, if based on the Bali Regional Regulation No. 4 of 2019 in Chapter VI concerning Customary Village Governance article 28 paragraph (3) The decision-making institution as referred to in paragraph (1) consists of: a. Indigenous Village Paruman; and b. Indigenous Village Pasangkepan; it has also been explained in CHAPTER XI concerning the Indigenous Village Council, the

third part of the duties and authority of article 76 paragraph 1 letter b which confirms the duties of the MDA, one of which is "to provide advice, suggestions, and opinions / considerations regarding customary issues and local wisdom to the local government and various parties, both individuals, groups, and institutions". Will fulfil justice based on customary law.

Penyelesaian Dari kasus Ayah Hamili Anak Kandung di Desa Sawan bisa di jabarkan menjadi dua pendekatan keadilan, yaitu sanksi pidana pendekatan pembalasan (retributive) atau sanksi pidana pendekatan pemulihan (restoratif). Teori retributive dalam tujuan pemidanaan disandarkan pada alasan bahwa pemidanaan merupakan "*morally Justifed*" (pembenaran secara moral) karena pelaku kejahatan dikatakan layak untuk menerimanya atas kejahatannya. Asumsi yang penting terhadap pembenaran untuk menghukum sebagai respon terhadap suatu kejahatan karena pelaku kejahatan telah melakukan pelanggaran terhadap norma moral tertentu yang mendasari aturan hukum yang dilakukannya secara sengaja dan sadar dan hal ini merupakan bentuk dari tanggung jawab moral dan kesalahan hukum si pelaku, Teori retributif melegitimasi pemidanaan sebagai sarana pembalasan atas kejahatan yang telah dilakukan seseorang (Jamilah, 2017). Kejahatan dipandang sebagai perbuatan yang amoral dan asusila di dalam masyarakat, oleh karena itu pelaku kejahatan harus dibalas dengan menjatuhkan pidana. Tujuan pemidanaan dilepaskan dari tujuan apapun, sehingga pemidanaan hanya mempunyai satu tujuan, yaitu pembalasan. Penjatuhan pidana kepada pelaku kejahatan dalam teori retributif ini, menurut Romli Atmasasmita mempunya sandaran pembenaran sebagai berikut : Pertama, dijatuhkannya pidana akan memuaskan perasaan balas dendam si korban, baik perasaan adil bagi dirinya, temannya, maupun keluarganya. Perasaan ini tidak dapat dihindari dan tidak dapat dijadikan alasan untuk menuduh tidak menghargai hukum. Tipe aliran retributif ini disebut vindicative. Kedua, penjatuhan pidana dimaksudkan sebagai peringatan kepada pelaku kejahatan dan anggota masyarakat yang lainnya bahwa setiap perbuatan yang merugikan orang lain atau memperoleh keuntungan dari orang lain secara tidak wajar, maka akan menerima ganjarannya. Tipe aliran retributif ini disebut fairness. Ketiga, Pidana dimaksudkan untuk menunjukkan adanya kesebandingan antara beratnya suatu pelanggaran dengan pidana yang dijatuhkan.(Hutajulu et al., 2014)

Sedangkan Konsep sanksi pemidanaan dalam pendekatan restoratif tidak mengenal metode pembalasan tetapi lebih kepada konsep pemulihan untuk tujuan membuat segala sesuatunya menjadi benar. Istilah umum tentang pendekatan restoratif diperkenalkan untuk pertama kalinya oleh Albert Eglash dengan menyebutkan istilah restorative justice. Dalam tulisannya yang mengulas tentang reparation, Albert mengatakan bahwa restorative justice adalah suatu alternatif pendekatan restitutif terhadap pendekatan keadilan retributif dan keadilan rehabilitatif. Pendekatan keadilan restoratif merupakan suatu paradigma yang dapat dipakai sebagai bingkai dari strategi penanganan perkara pidana yang bertujuan menjawab ketidakpuasan atas bekerjanya sistem peradilan pidana yang ada saat ini. Keadilan restoratif adalah sebuah konsep pemikiran yang merespon pengembangan sistem peradilan pidana dengan menitikberatkan pada kebutuhan pelibatan masyarakat dan korban yang dirasa tersisihkan dengan mekanisme yang bekerja pada sistem peradilan pidana yang ada pada saat ini. Di pihak lain, keadilan restoratif juga merupakan suatu kerangka berfikir yang baru yang dapat digunakan dalam merespon suatu tindak pidana bagi penegak dan pekerja hukum.(Pratidina et al., 2020)

Jadi dari dua prospektif penyelesaian kasus ayah hamili anak kandung di desa Sawan lebih memenuhi rasa keadilan menggunakan pendekatan keadilan restributif karena sudah jelas bagaimana rasa efek jera dan memuaskan si korban. Dan jika dalam penyelesaian masalah ini melalui pendekatan restoratif, hak korban perlu mendapat perhatian karena korban adalah pihak yang berkepentingan yang seharusnya mempunyai kedudukan (hukum) dalam proses penyelesaiannya. Namun, pada sistem peradilan pidana pada umumnya, ditengarai bahwa korban tidak menerima perlindungan yang setara dari pemegang wewenang sistem peradilan pidana, sehingga kepentingan yang hakiki dari korban sering terabaikan dan kalaupun itu ada hanya sekedar pemenuhan sistem administrasi atau manajemen peradilan pidana. Pendapat senada dikemukakan oleh Rowland, bahwa kepentingan-kepentingan korban sering bersimpangan dengan kepentingan kepentingan negara. Para pendukung terhadap konsep pelindungan bagi hakhak korban, di antaranya Karmen, juga berpandangan adalah jelas tidak adil bagi korban bila negara lebih mengindahkan kebutuhan-kebutuhan material psikologi, hukum, bagi pelaku pelanggar, sementara negara tidak memberikan tanggungjawabnya atas kehidupan yang layak bagi korban.(Pratidina et al., 2020)

4. CONCLUSION

Pengaturan terkait tindak pidana kekerasan seksual terhadap anak diatur dalam Pasal 81 dan Pasal 82 UUPA, terkait penyelesaiannya menurut system peradilan pidana disesuaikan dengan ketentuan KUHAP. Serta penyelesaian tindak pidana kekerasan seksual terhadap anak dalam hukum adat Bali dijabarkan menjadi dua pendekatan keadilan, yaitu sanksi pidana pendekatan pembalasan (retributive) atau sanksi pidana pendekatan pemulihan (restoratif). Dan jika dalam penyelesaianny melalui pendekatan restoratif, hak korban perlu mendapat perhatian karena korban adalah pihak yang berkepentingan yang seharusnya mempunyai kedudukan (hukum) dalam proses penyelesaiannya. Namun, pada sistem peradilan pidana pada umumnya, ditengarai bahwa korban tidak menerima perlindungan yang setara dari pemegang wewenang sistem peradilan pidana, sehingga kepentingan yang hakiki dari korban sering terabaikan dan kalaupun itu ada hanya sekedar pemenuhan sistem administrasi atau manajemen peradilan pidana.

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REGULATION OF PEACEFUL PASSAGE RIGHTS IN THE TERRITORIAL SEA BASED ON THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)

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Abstract

The aim of this research is to conduct a detailed analysis of the regulation of innocent passage rights in territorial waters as outlined in UNCLOS (United Nations Convention on the Law of the Sea) and its practical application. This study utilizes a normative legal research methodology, incorporating legislative and case-based approaches. The findings of this study reveal that the regulation of innocent passage rights in territorial waters is governed by UNCLOS, spanning from Article 17 to Article 32. While the regulation has been extensively addressed, it is not yet fully comprehensive. There are evident ambiguities in the norms that impede the effective implementation of these regulations. The incident involving the entry of American warships into the territorial waters of the People's Republic of China, resulting in conflicts, serves as a prime example of the inadequacies in the regulation of innocent passage rights in territorial waters as outlined in UNCLOS. In this scenario, both nations hold differing interpretations of the norms within UNCLOS.

Keywords: *UNCLOS, Innocent Passage Right, Territorial Waters*

1. INTRODUCTION

The sea is an important element for humans, especially in activities related to trade, industry, traffic and power generation. These factors have also resulted in the sea being one of the things that is also very calculated in warfare strategies. Thus, controlling the legitimacy of the territory within the sea itself is crucial in order to maintain the security of coastal states. This is because if there is a siege or blockade in a country's port area, the supply of necessities such as food and others will also be cut off. The wars that took place on the sea have been going on for more than 3,000 years (Patton et al., 2021).

The regulation of the sea which was significantly recognized as a universal rule of law was only in 1982, namely the United Nations on the Law of the Sea (UNCLOS), an international treaty born from the results of a conference facilitated by the United Nations (UN). This agreement then came into force on November 16, 1994 which has been ratified by various countries such as the People's Republic of China (PRC), France, Germany, Indonesia, and many more (Ilyasa, 2020). UNCLOS itself essentially provides a reference for a country to submit delimitation of its maritime territory which can then be claimed. The method itself is through negotiations between countries that can be carried out either bilaterally or multiraterally to be written in a written agreement.

Boundary claims by each country are regulated in UNCLOS. In addition, UNCLOS also regulates Freedom of Navigation (FoN) which is defined as the freedom to sail as a key principle in the provisions of UNCLOS (Hasan & SH, 2021). The FoN principle is intended as a *"right of passage"* for the entire maritime regime established by UNCLOS. The meaning of passage itself is explained in Article 18 (2), namely: "passage shall be continuous and expeditious". In this case, it is intended as a passage only through a coastal

state, or to get to or from a port in the coastal state without stopping. As for sailing intended other than above, it can be allowed if in an urgent or emergency situation.

The UNCLOS itself recognizes 3 (three) terms for the Rights of Passage, namely:

1. Right of Innocent Passage which is a right for all ships to pass through the territorial sea as long as it does not disturb the peace, security and order of the coastal state;
2. Right of Transit Passage, which is a strait zone designated for international shipping in the area between the high seas and the exclusive economic zone;
3. Right of Archipelagic Sea Lanes Passage, which is a zone where the high seas and exclusive economic zones cross the territorial waters of an archipelagic state into the high seas or other exclusive economic zones (Lamandasa et al., 2023).

Through the regulation of maritime zones and rights of passage as stated in UNCLOS, UNCLOS has given each state the sovereignty to manage and explore the sea around them and also to respect the maritime boundaries of other states. However, these arrangements have not gone entirely well as in practice, the right of passage itself is often deviated from the UNCLOS formula, especially by states that have not ratified UNCLOS (Itasari & Mangku, 2020). One of the conflicts that has occurred related to violations of the rules of peaceful passage and territorial zone violations occurred in the case between the United States (US) and the People's Republic of China (PRC). The conflict began when warships from the US entered the South China Sea (LTS) with the aim of reviewing reclamation activities carried out by China which were deemed not to violate the principle of freedom of navigation in the international law of the sea. The US maintains that international law allows for innocent passage. However, the PRC argues that the use of US vessels for surveillance or patrol purposes is not innocent passage and thus violates the PRC's sovereignty in its territorial sea area.

Reviewing these legal issues is particularly interesting in this case in finding different interpretations between the PRC and the US of the norms in international law of the sea, particularly those in UNCLOS. The different interpretations relate to the right of free passage and the right of peaceful passage. The PRC through its national law in Article 6 of the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, considers that in the case of military vessels carrying out activities in its territorial sea, it is required to give notification or permission from the country that owns the territory. Meanwhile, the US considers that the provision of notification or permission is not absolute because of the principle of freedom of navigation. The US statement itself is not entirely wrong because UNCLOS does not require that in order to conduct a peaceful passage, permission must be obtained first. This becomes interesting to examine further considering that UNCLOS in Article 21 requires ships to respect the national law of the coastal state, although with some limitations.

The implementation of the regulation of the right of peaceful passage in the territorial sea based on UNCLOS shows that this regulation still contains differences in interpretation of the law of the sea by the two countries, this is important to be mediated because it has the potential to create open conflict in the South China Sea if it continues and is not resolved. So based on this description, it is important to conduct further research to recognize the regulation of peaceful passage rights in the territorial sea based on UNCLOS.

1. This study focuses on two main questions: the regulatory framework for the Right of Peaceful Passage in the Territorial Sea under UNCLOS, and the mechanisms for

implementing these rights within the territorial sea as per UNCLOS. The aim of this article is to analyze the regulatory provisions related to peaceful passage in the territorial sea outlined in UNCLOS, with a specific emphasis on clarifying the details of its implementation.

2. RESEARCH METHODS

This research uses normative juridical legal research. This research is conducted by examining sources of legal materials such as legal principles, legal rules, laws and regulations, doctrines and legal teachings, legal theories, legal encyclopedias, legal dictionaries, and legal literature that have relevance to the problem. The type of approach used in writing this thesis is the Statute Approach and Case Approach. The statutory approach here is intended as an approach by examining legislation, which in this case is an international instrument related to the legal issues being analyzed. The case approach here is intended as to examine the existing cases in this study. The legal materials used in writing this thesis consist of Primary Legal Materials, namely official legal arrangements both Internationally and Nationally and Secondary Legal Materials, namely articles, books, journals, and views of legal experts relevant to the issues being discussed.

3. RESULTS AND DISCUSSION

3.1. Research Result

A. Regulation of the Right of Peaceful Passage in the Territorial Sea under UNCLOS

The right of peaceful passage in the territorial sea is a very crucial point in international law of the sea because it guarantees freedom of passage and navigation so that ships can move freely and unhindered through international waters. (Doodoh, 2018). The regulation related to the right of peaceful passage in the territorial sea itself is regulated in the United Nations Convention on the Law of the Sea (UNCLOS) through Chapter II Section 3. In Article 17, UNCLOS explains that *"... ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea*" (ships of all states, whether coastal or landlocked, enjoy the right of peaceful passage through the territorial sea). Ships of all states in the Palsal implies that this right of peaceful passage can be exercised by ships of all states whether party or non-party to UNCLOS. The Palsal also explains that regardless of whether a state is a coastal state or a landlocked state without a sea, it still has the same right to conduct peaceful passage within the territorial sea of another state (Luthfi, 2020).

The definition of peaceful passage is explained by UNCLOS through Article 19 where it is said that passage is categorized as peaceful as long as it does not harm the peace, order or security of the coastal state. This crossing must be carried out continuously, directly and as quickly as possible except in force majeure circumstances such as experiencing difficulties or providing assistance to others who are in difficult conditions (Riyadi & Sari, 2019). Furthermore, Article 19 paragraph 2 is categorized related to foreign cross-copal activities that are considered to endanger the peace, order or security of the coastal state, namely:

a. Any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state, or in any other manner which constitutes a violation of the principles of international law as contained in the Charter of the United Nations;
b. Any exercise or practice with weapons of any kind;
c. Any act aimed at gathering information detrimental to the defense or security of the coastal state;
d. Any act of propaganda aimed at influencing the defense or security of the coastal state;
e. The launching, landing or reception of any aircraft on board a ship;
f. The launching, landing or receiving of any military equipment and supplies;
g. The loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary regulations of the coastal state;
h. Any act of intentional pollution contrary to the provisions of this convention;
i. Any fishery activity;
j. Research or survey activities;
k. Any act intended to interfere with any communication system or any coastal state facility or installation;
l. Any other activity that is not directly related to cross-border (Hadju, 2021).

Article 21 of UNCLOS explains that coastal states can make laws and regulations relating to peaceful traffic in the territorial sea as long as they are in accordance with the provisions in the convention. The regulations that can be regulated are explained in paragraph 1, namely: The safety of navigation and the regulation of maritime traffic; The protection of navigational aids and facilities and other facilities or installations; The protection of cables and pipelines; The conservation of the living resources of the sea; The prevention of infringement of the fisheries laws and regulations of the coastal State; The preservation of the environment of the coalstal State and the prevention, reduction and control of pollution thereof; Marine scientific research and hydrographic surveys; The prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coalstal State (Mandelly et al., 2022).

The coastal state itself has an obligation not to obstruct the peaceful passage of foreign shipping through its territorial sea. This obligation is stipulated in Article 24 paragraph 1 of UNCLOS, which states that the coastal state shall not: 1) Impose requirements on foreign ships which would result in the denial or diminution of the right of peaceful passage; or 2) Discriminate either formally or in fact against ships of any State or against ships carrying cargo to, from or on behalf of any State (Tetelepta et al., 2023). In relation to the right of protection for coastal states, Article 25 of UNCLOS explains in paragraph 1 that "The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent". Then in the same article in paragraph 3 it is also explained that the coastal State, without formal or actual discrimination among foreign ships, may temporarily suspend the peaceful passage of ships within a designated area of its territorial sea if such suspension is strictly necessary for its security, including the needs of weapons training. Such suspension shall take effect only after it has been duly announced.

Furthermore, Article 30 of UNCLOS states that "if any warship does not comply with the laws and regulations of the coastal State concerning passage through the

territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial seal immediately"(Jamilah & Disemadi, 2020).

Then based on Article 31 of UNCLOS, it is explained that "The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law". In this case, the responsibility for supervising peaceful passage always belongs to the coastal State. With the exception of the preceding articles, this convention confirms in Article 32 that nothing in this convention reduces the immunity of warships and other government vessels operating for non-commercial purposes (Silviani, 2019).

B. Implementation of the Right of Peaceful Passage in the Territorial Sea according to UNCLOS

The development of the law of the sea today basically continues to reflect conflicts between countries that exercise unimpeded navigation, resource utilization, and or countries that exercise exclusive control over the sea adjacent to them. This is a stark contrast given that the law of the sea has been extensively regulated, yet conflicts still occur. This situation becomes an enigma, namely whether these arrangements basically work well in their application or on the contrary, in this case specifically related to the right of peaceful passage (Arifin, 2022).

The regulation of the right of peaceful passage in the territorial sea is regulated in Chapter II Section 3 of UNCLOS 1982, which basically regulates the provisions for countries to be able to compromise with foreign ships that cross their territorial sea in order to carry out their respective interests. These provisions can basically be considered successful in accommodating the sovereignty of coastal states as well as the interests of countries to cross the seas of other countries without fear of interference with each other, although not fully (Imon, 2018).

The implementation of the right to peaceful passage can be assessed through the initiatives of states, especially coastal states, in strengthening their national legislation, through international cooperation formed by states in developing initiatives and policies, and through the settlement of existing cases. In terms of international cooperation formed by states, one of the significant cooperation for the development of international law is the Joint Statement by the United States of America and the Union of Soviet Socialist Republics, September 23, 1989 (Uniform Interpretation of Norms of International Law Governing Innocent Passage). Through this statement, the two countries explicitly recognized the existence of the right of peaceful passage for warships under the conditions described in Article 19 of UNCLOS. Until now, this is even still explicitly mentioned in Article 12 of the Federal Act on the Internal Maritime Waters, Territorial Sea and Contiguous Zone of the Russian Federation.

On the other hand, although some countries have shown a form of implementation of the right of peaceful passage. There are several cases that show that the right of peaceful passage that has been regulated through UNCLOS has not fully provided protection and legal certainty for countries in the world, for example, the case between the United States (US) and the People's Republic of China (PRC). This conflict began

when a US warship entered the South China Sea (LTS). In the conflict between the People's Republic of China (PRC) and the United States (US) as explained earlier, the PRC denounced the US action as an act of violation of its sovereignty and as an act that violated its national law which stipulates that warships to cross the territorial sea require permission or notification. Basically, based on UNCLOS itself, there is not much that the PRC can do because basically the regulation of warship traffic in the territorial sea is not strictly regulated so it is prone to different interpretations. Regardless, the US warship did not take any action prohibited in UNCLOS. The only basis the PRC has to act here is based on Article 30 of UNCLOS to be able to demand the warship to leave its territorial sea immediately.

UNCLOS itself regulates the freedom of navigation and the right of peaceful passage for foreign vessels that wish to cross a coastal state. However, UNCLOS never explicitly mentions the right of passage for foreign warships (Buntoro, 2021). However, in UNCLOS itself there are basically several things that are important to note. First, Article 17 of UNCLOS which provides an understanding of the right of peaceful passage is a regulatory item under the sub-section which regulates the "rules applicable to all ships" (Jamilah & Disemadi, 2020). This in itself raises an assumption that the regulation applies to all ships, not excluding warships. Basically, once again UNCLOS has never prohibited or allowed the right of peaceful passage in the territorial sea by warships (Harahap, 2022). This of course remains a big question that will certainly continue to be questioned if there are no further developments to regulate it explicitly. However, according to the conflicts that have occurred and the reasons stated earlier, the US destroyer can be said to be legally conducting peaceful traffic in the PRC's territorial sea, as long as it has not been prohibited, and can be considered as a legitimate action, even if it seems to be a provocative action.

As the regulation of the right of peaceful passage has been mentioned in the previous section, it can be emphasized that the regulation of the right of peaceful passage in the territorial sea has not been well implemented due to the lack of relevant international regulations that comprehensively regulate and the lack of international cooperation and common understanding between states, especially the right of peaceful passage that applies to warships. Moreover, the regulation of notification or licensing of the right of peaceful passage by warships does not explicitly state whether it is permitted or prohibited, which has led to the different understanding and practices of countries. If this continues in the future, it will certainly continue the trend of inconsistency between this regulation and future practice.

4. CONCLUSION

The incident involving the entry of US warships into the territorial sea of the People's Republic of China in the South China Sea region highlights the inadequacies of the current provisions in UNCLOS. While it may be viewed as a routine test conducted by the United States against China, it cannot be deemed illegal due to the lack of explicit regulations in UNCLOS, leading to ambiguity between the two parties. In such cases, the People's Republic of China can request the warship to depart from its territorial sea promptly. The regulations concerning the right of peaceful passage in the territorial sea are outlined in Chapter II Part 3, spanning from Article 17 to Article 32 of UNCLOS. Although these regulations are comprehensive to some extent, there are still several aspects that remain unaddressed, such as the specific guidelines regarding the peaceful

passage of warships in the territorial sea. The current regulations on the right of peaceful passage are somewhat vague as they do not clearly specify whether the peaceful passage of warships in the territorial sea requires notification or permission.

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CONSTITUTIONAL SUPREMACY IN LEGAL STATES IN INDONESIA

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Abstract

The aim of this paper is to explore the significance of constitutional supremacy within the legal framework of Indonesia. The research methodology employed is normative legal research, utilizing both a statutory regulation approach and an analytical approach. Legal resources are accessed through library research techniques. The findings indicate that constitutional supremacy serves as the foundation for upholding constitutionalism, ensuring the sovereignty of the people. The future of constitutionalism hinges on the decisions made by the Constitutional Court, acting as the guardian of constitutional principles. Amendments to the 1945 Constitution, whether through formal or informal means, are crucial in solidifying Indonesia's status as a legal state. However, changes resulting from the ratification of international agreements may pose challenges by potentially undermining the constitution's authority. This could lead to conflicts between domestic laws and international obligations, creating a dilemma for the Government in balancing national interests with international commitments. Therefore, it is imperative to establish a robust judicial system to safeguard the supremacy of the constitution. Any constitutional interpretations must be shielded from political influences. A system of checks and balances among government institutions, along with a review of laws and regulations to ensure alignment with the 1945 Indonesian Constitution, is essential to uphold constitutional supremacy.

Keywords: *Supremacy of the Constitution, Rule of Law, Implications of changes to the 1945 UUDNRI*

1. INTRODUCTION

Law and society are interconnected entities. The Latin phrase "*Ubi societas, ibi ius*" emphasizes the necessity of law in any society. It plays a crucial role in ensuring a harmonious social order and ultimately, peace within the community. Law acts as a unifying force that binds different aspects of society together, serving as the cornerstone for a stable social structure (Windari & SH, 2021).

Discussions on law are inherently intertwined with the community within a specific region, particularly in relation to law and the state. Indonesia has established itself as a legal state, where the national and state affairs are consistently governed by the law. Typically, a country's inception is marked by its documentation in the constitution. The Constitution serves as an official testament or document validating the establishment of a nation. Consequently, as a nation progresses, its constitution evolves in alignment with the political and legal advancements within that country.

Indonesia as an independent country has a constitution as the basis for the state to run its government. Initially, the history of drafting the Indonesian constitution was the realization of Japan's promise to give Indonesia independence, by forming the *Dokuritsu Junbi Cosakai* (BPUPKI). Since the formation of this body, the Indonesian nation has formulated and prepared for its independence so that the requirements as a country are fulfilled. History records that the Indonesian constitution has changed several times, until

finally the 1945 Constitution was reinstated and in its development changes were made in accordance with demands for reform.

The notion of Indonesia as a state governed by the rule of law has been ingrained since the enactment of the 1945 Constitution, even before subsequent amendments that underscored Indonesia as a "state of law (*rechtsstaat*)" rather than one founded on power ("*machtstaat*"). This concept is echoed in Article 1, paragraph (1) of the 1949 RIS Constitution, which describes the Republic of the United States of Indonesia as a democratic legal state within a federal structure, and in Article 1, paragraph (1) of the 1950 Constitution, which portrays the Republic of Indonesia as an independent and sovereign legal state, characterized by democracy and unitary governance. Despite the explicit inclusion of the rule of law as a fundamental principle in state administration, there remains an observable phenomenon where the legal system sometimes succumbs to the influence of power (Windari & SH, 2021).

Daniel S. Lev expressed scathing criticism of the chaotic world of Indonesian law since 1960, where the decline in justice occurred after the physical revolution ended (Windari & SH, 2021). The shift began to occur since Soekarno decreed his decision to restore the 1945 Constitution as a constitution and introduce guided democracy where a legal product called Presidential Implementation (*Penpres*) could then form a Provisional MPR, dissolve political parties, dissolve the DPR resulting from the general election and form a replacement DPR called DPR GR (Mutual Cooperation). Meanwhile, under Soeharto's government, which was initially intended as a total correction of the deviations that had occurred previously, in fact, symbolically and politically, it again resulted in a consequent violation of the rule of law (Kamis, 2000).

Moving on from the situation above where various legal problems indicate that the rule of law is not working or in other words there has been a period of legal deficit in Indonesia where several prerequisites for the rule of law in the constitution are not heeded by state administrators, triggering amendments that can clarify the criteria required by a state. law. Since the third amendment to the 1945 Constitution (subsequently referred to as the 1945 NRI Constitution), it is evident that our constitution embraces the concept of "*rechtsstaat*," emphasizing the balanced implementation of the rule of law to ensure legal certainty and uphold substantial justice (Ni'matul Huda, 2013).

Rechtsstaat is a rule of law state where in its implementation there is integration between the constitution, democracy and the law itself (Pureklolon & MM, 2020). The constitution as the basic law or highest law in a country has a central role in maintaining stability, justice and protecting individual rights in the legal system. One important aspect of the rule of law is the supremacy of the constitution.

Constitutional supremacy refers to the principle that the constitution is the highest law in the country and all government actions and policies must comply with constitutional provisions. The presence of a constitution is a necessity, with the development of the times it is necessary to improve the constitution so that it can keep up with the developments of the times. Constitutional issues reflect the existence of a nation, because the constitution is likened to a reflection of the nation's autobiography. The welfare and survival of citizens will depend greatly on the extent to which the nation's constitutionalism is able to provide a solid foundation in facing and responding to the challenges of change and development over time (Asshiddiqie, 2005).

The constitution, as a result of agreement and the embodiment of the will of the people, provides concrete guarantees for the survival of society. Therefore, the

constitutional guarantee for the lives and rights of citizens is clear evidence of the essence, position and role of the constitution itself for all the people of the country. This concept places the constitution as a legal umbrella that binds all government institutions, including the executive, legislative and judiciary in carrying out their respective functions to realize the welfare of the people (Sabon & SH, 2019).

Constitutional supremacy provides the basis for maintaining checks and balances between state powers so as to prevent abuse of power. By ensuring that all government actions and decisions are in accordance with constitutional provisions, constitutional supremacy protects human rights, guarantees fair treatment and ensures that the government is not arbitrary and can be held accountable (Kusniati, 2011).

The history of constitutional development in Indonesia has gone through various stages of development which have given rise to changes in the government structure. It is recorded that the foundation of the Indonesian constitution at the beginning of independence was the "1945 Constitution which was formed by BPUPKI, and ratified on the 18th of August 1945 by PPKI. Then it was replaced with the 1949 RIS Constitution". The formation of a federal state was a Dutch strategy with political nuances aimed only at the interests of Dutch colonialism in Indonesia, and was not in accordance with the character of the Indonesian nation, so on May 19 1950 it was agreed between the government of the United Republic of Indonesia and the Government of the Republic. Indonesia re-formed the Unitary State of the Republic of Indonesia as proclaimed on August 17 1945 (Rosmawan, 2015).

In 1959, Presidential Decree was issued on July 5 1959 which reinstated the 1945 Constitution as a constitution in effect from the date of the decree and declared the 1950 Provisional Constitution no longer valid (Sartono, 2009). The implementation of the 1945 Constitution lasted until the reform era when the people demanded changes to the basic laws of the Indonesian State. One of the objectives of reforming the state administration of the Republic of Indonesia is to refine the Constitution, as outlined in the Preamble to the 1945 Constitution, to realize national aspirations and bolster the unity of the Indonesian state in alignment with Pancasila, while also reinstating sovereignty to the people through general elections (Tamrin, 2015).

One important point to consider is that merely improving the constitution is insufficient to safeguard people's rights effectively. This is evident in the historical context of constitutional amendments in South Korea from the First Republic to the Fourth Republic, where state officials manipulated changes to consolidate power and reinforce dictatorship, leading to political turmoil. The focus of legal development post-reform is on establishing a responsive legal framework. This goal can be achieved through a constitution serving as the foundation of a democratic legal system in a rule of law state. In addition to upholding rule of law principles, it is crucial to establish mechanisms that ensure the smooth functioning of constitutionalism. Therefore, it is essential to explore the relationship between constitutional supremacy and law enforcement in a rule of law state, as well as the implications of amendments to the 1945 Constitution of the Republic of Indonesia on constitutional supremacy within the Indonesian legal system.

2. LITERATURE REVIEW

2.1. An examination of theoretical aspects in relation to Indonesia

This literature review explores the theoretical aspects of constitutional supremacy in legal states, particularly in the context of Indonesia. It investigates different legal theories and frameworks that form the basis of constitutional supremacy, analyzing their suitability and significance within the Indonesian legal framework. By critically analyzing existing literature, this review sheds light on the theoretical underpinnings of constitutional supremacy and its impact on legal interpretation, judicial review, and the safeguarding of fundamental rights in Indonesia.

2.2. Perspective and Their Relevance to the Indonesia Legal Landscape

This study delves into various theoretical perspectives regarding constitutional supremacy in legal systems, focusing specifically on how they impact the Indonesian legal framework. It assesses fundamental theoretical models like legal positivism, legal realism, and constitutionalism in the context of Indonesia's historical and socio-political background. Through a comprehensive analysis of different theoretical viewpoints, this examination offers a detailed comprehension of the foundational principles of constitutional supremacy and its role in advancing the rule of law and democratic governance in Indonesia.

2.3. A comparative theoretical Analysis with reference to Indonesia

This theory conducts a comparative theoretical analysis of constitutional supremacy in legal states, drawing parallels with the Indonesian legal framework. It examines how different theoretical perspectives conceptualize constitutional supremacy and assesses their relevance to Indonesia's unique legal and political landscape. By juxtaposing various theoretical approaches, including legal pluralism, constitutional pluralism, and legal formalism, this review offers insights into the challenges and opportunities of implementing constitutional supremacy in Indonesia and underscores the need for context-specific theoretical frameworks.

3. RESEARCH METHODS

The research method applied by researchers in this research is a normative legal research method, where legal research images law as a prescriptive discipline which only looks at law from the perspective of its norms or as a system of norms. The approaches used are the statutory regulation approach and the analysis approach. With regard to the legal materials applied in this research, they were explored using library techniques (document study). Based on the thoughts of Marzuki (2010), normative research is seen as a process that aims to discover legal rules, legal principles and legal doctrine in an effort to answer current legal problems.

4. RESULTS AND DISCUSSION

4.1. Research Results

A. The Relationship Between Constitutional Supremacy and Legal Enforcement in a Rule of Law State

Adhering to the concept of a rule of law according to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the law is the leader, not politics or economics. In a democratic rule of law state, the principle of constitutional supremacy is adhered to. In other words, the constitution is the highest law of the country, so that all constitutional practices are based on the constitution as commander in chief so that regulations and actions that conflict with the constitution are not permitted (Mukti Fajar & Achmad, 2010). This principle originates from the first and main requirement or characteristic of a constitutional democratic state, namely constitutionality. However, constitutionalism is not just a constitutional doctrine or a doctrine that states the constitution must be placed as all sources of law. However, more than that it covers the subject which includes the development of constitutional theory and practice throughout human history which later gave birth to the idea of constitutionalism (I Dewa Gede Palguna, 2013).

The principle of the rule of law referred to by Jimly Asshiddiqie is a normative and empirical recognition of the rule of law where all existing problems are resolved with the constitution as the highest law. From the point of view of the rule of law, a person is not the one who leads a country, but the constitution is the highest law. Thus, the rule of law state has a constitutional source of law with the highest position, which is often said to be the supremacy of the constitution as "the highest law of the state" or "constitutional supremacy" (Jimly Asshiddiqie, 2021).

By creating constitutional supremacy where the law is the commander in chief in national life, a mechanism or system will be created to prevent power being exercised arbitrarily. Apart from that, constitutional supremacy also requires the existence of a legal order, namely that each legal system is connected and built into one unified system, where one rule cannot override other rules and avoid legal conflicts. One of the conditions for constitutional supremacy is that it wants to place the constitution as the basic law which is the source of all law, so that there is a mechanism for reviewing regulations under the constitution against the constitution to maintain legal order so that contradictions do not arise between norms.

By examining the constitution, it can prevent absolutism of power, so that there is no deviation or abuse by the authorities in making regulations that implement the constitution. Apart from that, reviewing laws against the constitution also guarantees the protection of constitutional human rights arising from laws enacted by state institutions that have the authority to make laws.

According to the meaning of the word, the constitution is the basis from which state institutions obtain authority. The constitution regulates the entire constitutional system of a country, which consists of establishing, governing or governing the country (Karyanti, 2012). There are two concepts of constitution when viewed in terms of their content: "a. In a broad sense, a constitution means a set of laws or UUD (*droit constitutionelle*), in written or unwritten form or a combination of both; b. In a narrow sense, a constitution is defined as charter or UUD (*loi constitutionelle*), namely the complete state constitutional document" (Tutik & SH, 2016).

The establishment of the constitution as the highest law which is often referred to as constitutional supremacy, in Indonesia the regulation of constitutional supremacy is regulated in " Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia asserts that "Sovereignty belongs to the people and is exercised in accordance with the Constitution." Consequently, the aforementioned provision conveys the idea that the Constitution serves as the executor of the people's sovereignty". With the principle of constitutional supremacy, all forms of state administration activities must be carried out based on constitutional provisions. Hans Nawiasky revealed the legal essence of a *staatsfundamental* norm, where a norm no longer needs to be debated so that it becomes something fundamental that is translated into implementing regulations.

The rules which are the basis of the state are regulated more specifically, namely *formel Gesetz* (formal law), where *formel gesetz* is the implementing regulations for the regulations above. Due to the position of legal standards with such a hierarchical structure, the application of lower legal standards is very dependent on higher standards, which are the basis for establishing these standards. In English the enactment of a law is called "validity", in Dutch it is called "*geltung*". A legal provision can be said to have legal force to apply if it is based on different points of view and factors. There are several teachings about legal validity, including:

1. *Juristische Geltungslehre* that law is a set of rules or regulations that only exist in contracts or laws that are valid if made by an authorized body.
2. *Sociologische Geltungslehre* that statutory regulations can be considered positive law only if the people who have an interest in these regulations are well accepted and truly obeyed in society.
3. *Philosophische Geltungslehre* that apart from the two things above, these rules fulfill a valuable philosophy of life for mankind (Jimmy Asshiddiqie, 2015).

Regulations that are determined to be regulations that have higher provisions are das sollen for the formation of lower regulations. In this case, it means that the lower regulations will not apply if the higher regulations or the regulations that were the basis (constitution) for the formation no longer apply. With regard to the constitution as the basis for the formation of all statutory regulations, it is very closely related to the basic basis of constitutionalism according to Jimly Asshidiqie, namely that the consensus that guarantees the upholding of constitutionalism is based on three elements of agreement, namely: a. Agreement regarding shared goals; b. Agreement on "the rule of law" as the basis for government and state administration; c. Agreement on institutional forms and constitutional procedures (Syarifin, 1999).

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia confirms the supremacy of the constitution that "Indonesia is a country of law" which is then manifested in the form of distribution and limitation of power in administering government in Indonesia, furthermore with the existence of the Constitutional Court which guarantees the upholding of constitutionalism values with authority. Adjudicating both initially and conclusively with a definitive verdict to assess the compatibility of laws with the Constitution; resolving conflicts concerning the jurisdiction of state bodies as stipulated by the Constitution; addressing disputes regarding electoral outcomes; and determining the dissolution of political parties.

It is evident that the primacy of the constitution forms the foundation for the practice of constitutionalism, ensuring the sovereignty of the people within a constitutional

framework. The fate of constitutionalism hinges on the performance of the Constitutional Court, which serves as the custodian of constitutional principles. Should the Constitutional Court fail to fulfill its duties effectively, the prospects for constitutionalism would diminish.

4.2. Discussion

A. Implications of Amendments to the 1945 Constitution of the Republic of Indonesia on the Supremacy of the Constitution in the Indonesian Legal State

The 1945 Constitution of the Republic of Indonesia received legitimacy from the people as holders of sovereignty. With its positions as a constitution and having validity from the people, the 1945 Constitution cannot easily be annulled by lower legislation but rather through a mechanism that has been regulated therein. According to K.C. Wheare, the constitution can be changed in three ways, namely (Fahmi, 2020):

a. Through a formal amendment process carried out through careful consideration, through democratic procedures regarding input from the people, protection of minority rights and through rigid procedures regulated in the constitution
b. Through judicial decisions, customs and traditions of constitutional law, where judges may one day be faced with a conflict between the law and the constitution, thus allowing judges to make interpretations of the constitution which can have an impact on constitutional changes;
c. Through customs, traditions or non-legal mechanisms that are binding and regulate state institutions

The 1945 Constitution, which was ratified on August 18 1945, was the first constitution of the Republic of Indonesia which adopted an impure presidential system (quasi-presidential). Because if it is related to the broader understanding of the constitution, constitutional practice was then changed to a parliamentary system within two months after the constitution was adopted. This change was carried out without changing the substance of the 1945 Constitution, but there were differences in the constitutional basis and government practices at that time.

Apart from that, there are MPR decrees with content that is different from the contents of the 1945 Constitution. During the New Order era, the MPR easily made changes to the constitution through interpretation and additions to the original provisions without changing the text of the 1945 Constitution. For example, MPR Decree No. IV/MPR/1983 which regulates referendums as a mechanism for changing the 1945 Constitution has changed the provisions of Article 37 of the 1945 Constitution that changes to the 1945 Constitution are carried out by the MPR. In addition to constitutional practices, formal changes to the 1945 Constitution have been executed through the mechanism outlined in Article 37 of the constitution. This process mandates that proposed amendments be presented by at least one-third of the members of the MPR, and changes can only be enacted if they garner approval from at least fifty percent plus one of the MPR members present at the MPR Session. This procedure was undertaken on four occasions between 1999 and 2002. These changes were driven by the reformist spirit, resulting in amendments to the 1945 Constitution, which were conducted during the MPR Annual Sessions.

a. In the 1945 Constitution, the MPR is the highest institution. Therefore, in the constitutional structure, power focuses only on the MPR as the institution

implementing people's sovereignty (MPR sepremacy). This has an impact on the weakness of other state institutions due to the lack of checks and balances between state institutions.

b. The 1945 Constitution places the President as the holder of government power which is often considered executive heavy with very large powers. This constitutional right is often claimed as a prerogative where the President can grant pardon, amnesty, abolition and rehabilitation without consideration from other forums and gives legislative power to the President.

c. There are many articles that provide general regulations that allow for multiple interpretations in interpreting the formulation of the 1945 Constitution. In the amendments to the 1945 Constitution, several things were maintained, including: the preamble to the 1945 Constitution, the form of the state, systematics, welfare aspects and originality. Matters of a normative nature that are in the body are included in the body of the Constitution, then the explanation of the Constitution is deleted. The amendments to the 1945 Constitution contain stronger protection for human rights regulated in the body of the constitution. The fundamental changes in the 1945 Constitution include:

a) Programmatic nature of the Preamble to the 1945 Constitution

Changes or amendments are one of the demands of reform, therefore the MPR as a result of the 1999 elections formed the MPR Working Body (BK MPR) which consists of 90 people from 11 factions. After that, the MPR Review Body formed 3 Ad Hoc Committees, including:

1) Ad Hoc Committee I which has the task of formulating Outlines of State Policy which will later be ratified through an MPR Decree;
2) Ad Hoc Committee II discussed the Draft MPR Decree Non-Outlining State Policy;
3) The Ad Hoc Committee III was tasked with discussing the Draft Amendment to the 1945 Constitution. Where in its agreement PAH III agreed not to change the Preamble to the 1945 Constitution, the matter that was taken into consideration was because the Preamble to the 1945 Constitution was the most basic thing which was then translated into the body and changed The opening of the 1945 Constitution means changing the foundations of the state where in the fourth paragraph of the Preamble to the 1945 Constitution there is the phrase "Then from that..." This phrase refers to the Proclamation of Independence of the Republic of Indonesia, and in that paragraph, there is Pancasila as the basis of the state. Apart from that, the Preamble to the 1945 Constitution is the philosophical basis and normative basis of the Indonesian state, then this philosophical and normative basis is translated into articles in the body of the NRI Constitution. The opening of the 1945 Constitution was also the foundation of the birth of the Unitary Republic of Indonesia (NKRI) where there were the goals of the state in the fourth paragraph and the foundations of the state which could not be changed.

Based on these reasons, the Preamble to the 1945 Constitution has not undergone any changes and in fact the Preamble to the 1945 Constitution is the basis in the body, the objectives and limits of the changes made to the 1945 Constitution are in accordance with the programmatic nature. Where the Preamble to the 1945 Constitution contains directions related to the actions to be taken or the formulation of goals to be achieved.

The Preamble to the 1945 Constitution contains moral, political and religious ideas that are prioritized by the 1945 Constitution and the direction that the Preamble to the 1945 Constitution aims to achieve is the embodiment of the will of the people.

b) From the Supremacy of the MPR to the Supremacy of the Constitution

The fundamental shift lies in the transition from the MPR's supremacy to the supremacy of the constitution, as stipulated in Article 1, paragraph two of the 1945 Constitution, which asserts that sovereignty resides with the people and is exercised in accordance with the Constitution. This signifies that the MPR is no longer the highest state institution. Consequently, the amended 1945 Constitution redefines the role of the MPR as solely responsible for the inauguration and dismissal of the President and Vice President, distinct from its previous role where it acted as the executor of the people's sovereignty and the president was mandated by the MPR.

Through the General Election process for electing the President and Vice President, citizens have gained the freedom to select their leaders, resulting in structural and functional changes to the MPR. Previously, the MPR exercised people's sovereignty and implemented it through the Constitution, but now there is a growing emphasis on the presidential system of government (Aritonang, 2010). Under this system, the President holds the authority to propose legislation by consulting with the DPR, while the appointment and removal of Ministers remain within the President's discretion. Furthermore, the President and Vice President serve limited five-year terms and are eligible for only one reelection. The MPR is no longer empowered to dismiss the President or Vice President prematurely. However, if either official engages in treason, corruption, bribery, disgraceful conduct, or other serious crimes, they can be dismissed before completing their term. The DPR initiates dismissal proceedings by presenting the case to the Constitutional Court for investigation. If wrongdoing is confirmed, the DPR can propose impeachment to the MPR for trial and potential dismissal of the President or Vice President (Aritonang, 2010).

c) The rule of law as the basis for changes to the 1945 Constitution

With the abolition of the Explanation to the 1945 Constitution and the related provisions containing the normative content of the Body of the 1945 Constitution, including Article 1 paragraph (three) of the 1945 Constitution which reads "Indonesia is a rule of law", is an act of consciously accepting the understanding or teachings of the rule of law as the foundation in make changes to the 1945 Constitution. Every country that adheres to the rule of law has the principle of constitutional supremacy where the constitution contains the constitutional rights of citizens where these rights are maintained through court decisions. So that if these principles are adopted by a country, that country will have characteristics, including: the existence of human rights which are protected by the state, there is an independent judiciary and the state is in accordance with the law, which means that the government and citizens in When carrying out any action it is not permissible to contravene the law or all actions must be based on the law. Apart from the above, the characteristics of a rule of law are:

1) Supremacy of law with the constitution c.q. The 1945 Constitution, as the highest law. The constitution as the highest law must be obeyed and practiced in a legal system where the constitution is used as the formation of regulations that are under

the constitutional hierarchy, so that there are no regulations that conflict with the constitution.

2) The principle of legality dictates that the government, encompassing legislative, executive, and judicial branches, must adhere to the law when exercising its authority or fulfilling its duties.
3) Equality under the law entails that all individuals hold an equal standing before both the law and government, with the prohibition of discriminatory practices, and the consistent and reasonable application of legal principles.
4) Democratization, transparency and accessibility in the process of forming and changing laws. In making laws and changing laws, the wider community must be involved so that laws will be created that are useful and have a sense of justice for the community.
5) Efficient and timely application of the law. However, if the implementation of a law is inefficient and not timely then good law is useless.
6) Limitation of state power. Each state's power must be limited both vertically and horizontally through separation of powers so that mutual monitoring and balance is created in each branch of power.
7) Protection of human rights, intellectual rights, including contracts. By including human rights in the constitution, these human rights will become constitutional rights which become the basic law of a country. Which contains the consequences that every action by the authorities that violates human rights regulated in the constitution will be annulled by the court because it fundamentally contradicts the nature of the constitution.
8) An independent and impartial court. An independent judiciary means that it is free from political interference and is free to uphold justice. If judicial power is combined with legislative power, the regulations that emerge will be arbitrary. And if the powers of the 17 judiciaries are merged into the powers of the executive then the judges will be labeled as oppressors.
9) There is an administrative and state administrative court, so that by regulating the powers of the administrative court separately, it proves that the court is independent and impartial, so that every member of society who feels disadvantaged by the decision of a state administrative official can apply to the state administrative court.
10) There is a state administrative court. With the principle of constitutional supremacy, there must be an institution that guarantees that this principle must be translated into constitutional practice. Therefore, a special institution is needed, namely the Constitutional Court.
11) The function of realizing the goals of the state. The aim of the rule of law is to realize general welfare.

In addition to the various mechanisms mentioned earlier, the 1945 Constitution underwent modifications through the interpretation of the Constitutional Court. Specifically, in case no. 008/PUU-II/2004, which involved the review of the 2003 Election Law, President Abdurrahman Wahid proposed a revision to Article 6 letter (d) of the law. This article required Presidential and Vice Presidential candidates to meet certain physical and spiritual criteria. President Wahid argued that this provision was discriminatory and contradicted the principle of equality enshrined in the 1945 Constitution. However, the Constitutional Court disagreed, stating that the restrictions

imposed by the law were not discriminatory but rather aimed at ensuring that individuals with severe disabilities could effectively exercise their rights. Through this review process, the Constitutional Court indirectly altered the meaning of Article 6 paragraph (1) of the 1945 Constitution, resulting in an informal change to the constitution itself.

The amendments to the 1945 Constitution have been facilitated through the endorsement and ratification of international treaties. For instance, the ASEAN Charter was ratified as domestic law in Indonesia under Law Number 38 of 2008, which pertains to the Ratification of the Charter of the Association of Southeast Asian Nations. Under the framework of international agreements, the Charter operates as a binding agreement, thereby obligating member states to adhere to its provisions, even if they may not entirely align with the respective constitutions of member countries.

Through the ratification of the ASEAN Charter, the principles of free investment, single market and regional economic integration regulated therein also directly bind Indonesia legally, which has implications for changing the substance of Article 33 paragraph (1) of the 1945 Constitution which states that the economy is based on the principle of kinship. In this case, the constitution should act as a demarcation limit regarding what can and cannot be negotiated when negotiating a draft international agreement.

The ratification of the ASEAN Charter involved a sacrifice of the principle of the national economy. Despite undergoing negotiation, signing, and ratification stages, the inclusion of provisions in international agreements that contradict Article 33, paragraph (1) of the 1945 Constitution should be a deliberate decision made by the Indonesian Government. By prioritizing the benefits of the international agreement, the government implicitly altered aspects of the state constitution, particularly concerning the national economy principles, without adhering to the procedures outlined in Article 37 of the 1945 Constitution. Furthermore, the Constitutional Court's dismissal of a lawsuit challenging the constitutionality of the ASEAN Charter, ratified under Law Number 38 of 2008, further legitimizes these informal constitutional changes.

5. CONCLUSION

Constitutional supremacy is the basis for the implementation of constitutionalism which guarantees the sovereignty of the people in a constitutional state. The future of constitutionalism depends on the decision of the Constitutional Court as the guardian of constitutionalism. Constitutional changes are a necessity in order to perfect the constitution. Amendments or changes to the 1945 Constitution support Indonesia as a rule of law state through: supremacy of law with the constitution; the principle of legality or the principle that the government follows the law; equality under the law; democracy, transparency and accessibility in the process of forming and changing laws; efficient and timely application of the law; limiting state power; protection of human rights; an independent and impartial judiciary; there are administrative and state administrative courts; and there are constitutional courts.

Apart from formal mechanisms, changes to the 1945 Constitution of the Republic of Indonesia as a basic law were changed through informal methods, including: through the habits and interpretations of judges as well as ratifying international agreements. Changes to the 1945 Constitution also occurred as a result of the ratification of international agreements which reduced the existence of the constitution as the highest

form of state power. This can trigger a legal conflict between the constitution and international agreements and result in a dilemma for the Government in safeguarding the interests of the people and on the other hand having to comply with international agreements. Ratification of international agreements should not conflict with the constitution. To avoid legal conflicts, an appropriate negotiation process is needed by the Government so that the interests of the people and the interests of the state can be aligned.

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LEGAL PROTECTION FOR DECEASED RECIPIENTS OF NOTARIAL WILLS

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Abstract

The objective of this study is to examine the legal protection provided to the community in relation to the copies of wills created by deceased notaries. This research falls under the category of normative law and adopts both a statutory and case-based approach. The study utilizes primary and secondary data, drawing from various legal sources including primary, secondary, and tertiary legal materials. The findings reveal that the submission of the Notarial Protocol should be completed within 30 days, accompanied by an official report signed by both the submitter (heir) and the recipient (notary). It is not uncommon for the family and heirs of a deceased notary to lack understanding of the rules and procedures pertaining to the transfer of notary protocols. This knowledge gap can be attributed to the insufficient education provided to the notary's family, heirs, employees, as well as the wider community by the notary themselves, notary organizations, and the Ministry of Law and Human Rights. Additionally, there is a legal vacuum in the judicial system concerning potential issues that may arise during the submission process of notary protocols. Therefore, it is imperative to reformulate the regulations governing the submission of notary protocols, including the implementation of sanctions for negligent heirs and temporary notary officials who fail to submit the protocols of deceased notaries. Furthermore, the introduction of electronic-based storage systems for notary protocols should be considered to ensure legal certainty for the public.

Keywords: *Legal Protection, Notaries, Notarial Protocol, Legal Vacuum, Innovations*

1. INTRODUCTION

The state is obliged to guarantee the constitutional rights of every person to obtain recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law as a means of protecting human rights which have truth and justice as their core. According to Van Apeldoorn, legal certainty has two aspects, namely things that can be determined (*beaalbaarheid*) from the law, in concrete matters, and it can also be legal security which protects the parties against arbitrariness by judges (Ali, 2008)vav. In Indonesia, the implementation of supervisory duties over notaries is carried out by the Notary Supervisory Council and the Honorary Council as mandated by Law Number 2 of 2014 concerning the Position of Notaries (UUJN).

UUJN Article 67 Paragraphs (1) and (2) which state that the minister has the authority to supervise notaries and in carrying out his supervision the minister forms a supervisory council. Supervision is aimed at compliance with the Code of Ethics and compliance with carrying out the provisions stipulated by laws and regulations. Notaries in Indonesia have been known for a long time, even before independence. Melchior Kerchem was a secretary of the college van schepenen or also known as City Shipping Affairs and was the first person to be appointed as a notary in Indonesia in 1620. In 1860 the Dutch East Indies Government deemed it necessary to make new regulations regarding Notary Positions in the Netherlands. Indie to be adjusted to the regulations

regarding Notary positions that apply in the Netherlands. After Indonesia became independent, the existence of Notaries in Indonesia was still recognized based on the provisions of Article II of the Transitional Rules (AP) of the 1945 Constitution (Nurmayanti, 2017).

In 2004, Law Number 30 of 2004 concerning the Position of Notaries (UUJN) was promulgated, precisely on October 6 2004. UUJN Article 1 states that a notary is a public official who has the authority to make authentic deeds and other authorities. Notaries are qualified as Public Officials, namely people who carry out some of the public functions of the state, especially in the field of civil law. Notary as a public official is an honorable position given by the state attributively through law to someone who is trusted (Mardiansyah et al., 2020). Notaries as public officials are appointed by the minister, based on Article 2 UUJN, and can carry out their duties freely, without being influenced by executive bodies and other bodies and act neutrally and independently.

Notaries have a role in carrying out the legal profession which cannot be separated from legal issues which are interpreted as rules that regulate all social life. Notaries as legal practitioners must expand their knowledge and intellectual abilities to understand the applicable legal system. It is necessary to understand the legal system of the country where the company is a business partner, in addition to the national legal system where the company is located. In fact, the need for a legal system becomes stronger if there is a dispute with another entrepreneur whose country's legal system is different from the two major legal systems that are often used in dispute resolution, namely Common Law and Civil Law (Budiono, 2015). To meet people's living needs, there are various activities such as buying and selling, renting, exchanging, borrowing and borrowing and so on. These activities are a form of legal action which in its implementation requires guarantees of certainty, order and legal protection.

A notary is a public official who has the authority to make authentic deeds as long as the making of certain authentic deeds is not reserved for other public officials. Making authentic deeds is required by statutory regulations in order to create certainty, order and legal protection. Apart from authentic deeds made by or before a Notary, not only because it is required by statutory regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties as well as for the community overall. An authentic deed essentially contains formal truth in accordance with what the parties notified to the Notary. The Notary has the obligation to ensure that what is contained in the Notarial Deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial Deed become clear, as well as providing access to information, including access to applicable laws and regulations. related to the parties signing the deed.

The parties can decide freely to agree or disagree with the contents of the Notarial Deed they will sign. As the strongest and most complete (authentic) written evidence, what is stated in the Notarial Deed must be accepted, unless the interested party can prove otherwise satisfactorily before a court hearing. This is an implementation of Article 28 letter d paragraph (1) of the 1945 Constitution which emphasizes that every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. One of them is regarding legal actions in the civil sector, which are carried out by everyone. Legal actions or events in the civil sector are outlined in a deed, made by a public official, who is authorized by the state. This provides an

understanding that legal traffic in people's lives requires evidence that clearly determines the rights and obligations regarding legal subjects in society (Eugeius, 2008).

Notary public officials provide certainty regarding actions carried out by the public in an agreement that is made and included in a deed in the form of an authentic deed, thus the important role of a Notarial deed is to make a deed so that there are no errors that cause the deed to become invalid. Therefore, regulations are needed that regulate the authority of Notaries. Notaries are given legal authority to provide public services to the community, especially in making authentic deeds as perfect evidence regarding legal actions in the civil sector (Hesti, 2015). In Article 2 UUJN it is explained that Notaries are appointed and dismissed by the Minister of Law and Human Rights. After the appointment is made, in order to be able to carry out his position in accordance with the provisions of Article 4 UUJN, the Notary must take an oath/promise according to his religion before the Minister or appointed official as a form of validation of his permission to carry out his position.

As stated in Article 1 number 1 UUJNP. States that a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this law. The authority given will always give rise to a burden of responsibility for the person who is given the authority so that the person given the authority has responsibility for what they do. Notary Protocols that have not been handed over to the Notary Holding the Protocol make it difficult for the public to obtain a copy of the deed made by a Notary who has died. After the notary dies, another notary will be handed over an inheritance protocol. As a public official who represents and acts for and on behalf of the State, a Notary Public, in carrying out his duties of providing services to the general public, is appointed by the State and is then given the authority to exercise some of the State's powers in the field of civil law (Wirastuti & Hartanto, 2017).

When a Notary makes a deed, its authenticity needs to be guaranteed. In carrying out his/her position as a public official, the Notary must submit to and comply with all statutory regulations governing Notaries and other requirements that must be fulfilled by every Notary in carrying out his/her duties. On the other hand, the position of trust held by the Notary is what makes him trusted by the public to express in writing what the wishes of the parties are in a deed that has been determined by law so that in carrying out his duties and authority the Notary must act honestly, carefully, independently. , and regarding legal actions contained in authentic deeds that do not take sides with either party and safeguard the interests of the parties contained in the deed.

The existence of a Notary in exercising authority is important for society and the state. The authority of a notary in making authentic deeds or other deeds cannot be exercised by officials or other legal professions, so that in carrying out their profession Notaries are required to work correctly and professionally. Notary in carrying out his office, one of the Notary's obligations is to make a deed in the form of minutes of deed and save it as part of the Notary Protocol, as regulated in Article 16 paragraph (1) letter b UUJN which explains that the obligation to keep minutes of deed as part of the Notary Protocol, intended to maintain the authenticity of a deed by storing the deed in its original form, so that if a Notary retires or dies, it is still stored through the Notary Protocol. Article 1 number (13) UUJN Amendment states that the Notary Protocol is a collection of documents which constitute State archives which must be kept and maintained by a Notary.

The protocol of a Notary who dies must be handed over to another Notary, or protocol holder. This is regulated in Article 61 and Article 62 UUJN, husband/wife or blood relatives in the straight line of marital descent up to the second degree of the Notary who dies is obliged to notify the Regional Supervisory Council in accordance with Article 35 UUJNP. This is of course a hope (das sollen) in carrying out the office of notary if the notary dies, but in reality this hope is not relevant to reality (das sein). The transfer of Notary protocols from the heirs of a Notary who has died to another Notary appointed by the Regional Supervisory Council as the holder of the Notary's protocol has not been specifically regulated (Sjaifurrachman & Habib Adjie, 2011). However, in practice there are still many Notary heirs who do not notify the notary's death to the regional Supervisory Board and have not submitted the Notary's protocol to another Notary as the holder of the Notary's protocol.

The regulations regarding minutes of deeds and Notary protocols contained in the UUJN and UUJNP are limited to the creation, storage and submission of Notary protocols as well as taking minutes of deeds and summoning Notaries as contained in Articles 58 to Article 66. There are no sanctions aimed at the Notary's heirs if not immediately handing over the Notary protocol to the Notary holding the protocol which makes the legal arrangements regarding the handing over of the protocol of a notary who has died to the holder of the notary protocol not providing legal certainty and legal protection, especially for the public, in this case the recipient of a will whose testamentary deed is kept by a notary who has passed away. The notary's legal responsibility to the public, especially his clients, is to be accountable for the authentic deeds he makes as a form of service to the public, especially his clients (RS Notodisoerjo, 2010).

The requirements for an authentic deed are contained in Article 1320 of the Civil Code, hereinafter referred to as the Civil Code. These four requirements are divided into 2 (two) groups, namely subjective requirements and objective requirements. Subjective terms consist of the legal subject and the parties contained in the deed. Objective terms consist of the object of the agreement. The legal consequence of not fulfilling subjective conditions is that the agreement can be canceled while the non-fulfillment of the objective elements of the agreement is null and void. The purpose of making written agreements in front of or made by a Notary is so that the deed becomes an authentic deed that can be used as strong evidence if one day a dispute occurs between the parties or there is a lawsuit from another party. An authentic deed provides binding and perfect evidence for the parties (along with their heirs) or those who obtain rights from the parties, this is in accordance with the provisions of Article 1870 of the Civil Code which states that a deed is intended to provide between the parties and their heirs or other people. -the person who received this right from them, a perfect proof of what is contained therein.

An authentic deed essentially contains formal truth in accordance with what the parties notified to the Notary. However, the Notary has the obligation to ensure that what is contained in the Notarial Deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial Deed become clear, as well as providing access to information, including access to statutory regulations. related to the parties signing the deed. Thus, the parties can decide freely to agree or disagree with the contents of the Notarial Deed they will sign. One of the functions of a deed is as evidence, "A deed is written evidence, which is divided into two parts, namely: A letter in the form of a deed; Other documents that are not in the form of deeds. One example of a deed is a will. A will is the gift of an object voluntarily and without

compensation from someone to another person who is still alive to own it. In other words, a testament or will is a statement from someone about what they want after they die,

In the event that a Notary has died, but up to now the Notary does not yet have a Notary protocol holder, so that people who want to make a certificate of inheritance have difficulty and cannot continue making a certificate of Inheritance because before making a certificate of Certificate of Inheritance the community checks the will at the Ministry Law and Human Rights of the Republic of Indonesia and it turns out that there is a will deed made by a Notary who has died, therefore until now the community has not been able to get a copy of the will deed as a basis for making a Certificate of Inheritance deed. Requests for inheritance information are carried out by heirs in general, the family to find out whether there is a will or not in the name of the deceased, requests for inheritance information can be made by a Notary who has access to make requests to the Central Register of Wills.

In the event of a request for a certificate of will, the primary objective of the heirs is typically to secure their inheritance following the passing of an individual. Prior to receiving their inheritance, it is customary to consult the central register of wills to determine whether the deceased individual had drafted a will during their lifetime. If a will was indeed created by the deceased, it is customary for the will to be presented to the heirs in order for them to understand the wishes of the deceased prior to their passing. If the will is accepted by the heirs and they are designated in the will, the Notary will then issue a certificate of will based on the contents of the will. The Notary holds a crucial role in the process of requesting a will certificate, as only a Notary is authorized to request and issue such a certificate.

The deed of will made before a Notary is also the responsibility of the Notary, even though there are no errors or omissions made by the Notary regarding the deed of will, the Notary's responsibility is to read the contents of the will in the future in front of all the heirs. Reading a will is the implementation of the will itself by appointing the heirs designated in the will deed and ensuring that the conditions and circumstances at the time the will is read are safe and well received by all the heirs (Manik, 2021). The public, in this case the client who is the beneficiary of the will which has become a notarial protocol, requires a copy of the will made by a notary who has died and there is no replacement for the notary, resulting in the inheritance deed which was previously made unable to be shown or read to the public. recipient of the will and of course in this case the recipient of the will cannot receive his rights as a client of the notary.

The lack of education to families, heirs of Notaries, employees and the public in general regarding Notary protocols and authentic deeds as evidence causes problems that will result in losses to society, because the heirs of families of Notaries who pass away still keep Notary protocols and have not hand over the Notary protocol to another Notary as the holder of the Notary protocol (Sumaryono, 1995).

2. RESEARCH METHODS

The method used in this research is a qualitative method, using Normative Juridical research which is supported by empirical research, where Normative Juridical research is also called Doctrinal Legal research. In this type of legal research, law is often conceptualized as what is written in statutory regulations (law in books). Therefore, some of the data sources are primary data and secondary data. The data used in this research

are primary data and secondary data. Data collection techniques in this research were carried out through literature study and interviews. The data analysis technique used is a qualitative normative analysis technique which describes and interprets the data in sentence form properly and correctly, obtaining short answers which are formulated deductively.

3. RESULTS AND DISCUSSION

a. Legal Arrangements for Storing Copies of Deeds Made by Notaries Who Have Died and Do Not Have a Notary Protocol

One of the public officials who is authorized to provide legal services is a Notary Public. Notary as a public official who has the authority to make authentic deeds and other authorities, as stated in Article 1 UUJN which was later amended by Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Position Currently valid notary in Indonesia. In carrying out legal services, Notaries are required to create products in order to achieve certainty, order and legal protection for the community, this is the foundation of a rule of law as the basic principle of a rule of law, so the legal mobility of society can be clearly proven regarding the rights and obligations that exist. needed in society. This provides an understanding that legal traffic in people's lives requires the existence of evidence that clearly determines the rights and obligations regarding legal subjects in society.

An authentic deed is a writing made in a form determined by law, made by or before a public official authorized to do so in the place where the deed was made. This means that the Notary is given the authority by law to create absolute evidence, in the sense that what is stated in the authentic deed is basically considered to be true. The important role of Notaries in helping to create certainty and protection for the public has a preventive nature, or is preventative of legal problems. Prevention of legal problems is carried out by issuing an authentic deed made in his presence relating to a person's legal status, rights and obligations in law, etc., which functions as the most perfect evidence in court, in the event of a dispute over related rights and obligations. Sjaifurrachman & Habib Adjie, (2011) explain the existence of a Notary in exercising authority is important for society and the state. The authority of a notary in making authentic deeds or other deeds cannot be exercised by officials or other legal professions, so that in carrying out their profession Notaries are required to work correctly and professionally.

Notary in carrying out his office, one of the Notary's obligations is to make a deed in the form of minutes of deed and save it as part of the Notary Protocol, as regulated in Article 16 paragraph (1) letter b UUJN, it is explained that the obligation to keep minutes of deed as part of the Notary Protocol, is intended to maintain the authenticity of a deed by keeping the deed in its original form, so that if a Notary retires or dies, it is still stored through the Notary Protocol (Amsyah, 2003). Notary Protocol is a collection of documents which constitute a State archive which must be stored and maintained, as regulated in statutory regulations. Regarding the Notary's responsibility for his protocols, the Notary is fully obliged and responsible for all the protocols he has, the responsibility is not only limited to the end of a Notary's term of office but the responsibility remains for the life of the Notary, including reporting and archiving (Verdyandika et al., 2021).

The authority of a Notary is not only to make authentic deeds, apart from that, the Notary is also entrusted with maintaining and storing the protocols he makes. Notaries do

not always hold their position as a public official because there are several factors that influence the Notary's cessation of carrying out his office. Notaries also have the authority to keep notary protocols. As part of his authority and responsibility, the Notary has the obligation to keep the protocol and keep it confidential as regulated in Article 16 paragraph (1) letter f UUJN. An effort to maintain the legal age of the notarial deed as perfect evidence for the parties and their heirs regarding everything contained in the deed is by storing the notarial protocol by the notary holding the protocol .

Keeping a Notary's protocol is one of the obligations of a Notary that must be carried out until the end of the term of office of the Notary concerned. So the process of storing the Notary Protocol needs to be carried out carefully, so that the Notary Protocol is not scattered, lost or damaged. As written in Article 1 number 13 UUJN that the Notary protocol is a collection of documents which constitute state archives which must be kept and maintained by the Notary in accordance with statutory regulations. In maintaining and caring for a collection of deeds or Notarial documents, this is done until the age limit determined by law. However, the Notary's protocol is not only kept until the end of his term of office, but it is also mandatory for the Notary (and/or his heirs) to submit the protocol to the Notary appointed by the MPD in the event that the Notary (1) dies; (2) his term of office has ended; (3) Ask for it yourself; (4) Unable spiritually and/or physically to carry out the duties of a Notary position continuously for more than 3 (three) years; (5) Appointed as a state official; (6) Moving office area; (7) Temporarily suspended; or (8) Dismissed dishonorably.

Subekti expressed his opinion regarding the meaning of handover (Subekti, 2021). Handover is often also referred to as "Levering" or "*Overdracht*" which has two meanings, the first is an act in the form of a mere transfer of power (*feitelijke levering*), the second is a legal act aimed at transferring property rights to another person (*juridische levering*) (Safira, 2017). Subekti's opinion is relevant to the practice of handing over the protocols of a deceased Notary, which is a legal act to transfer ownership and responsibility related to the protocols of a deceased Notary to the Notary receiving the Notary's Protocol. By handing over the Notary's protocol to the Notary receiving the protocol, the Notary receiving the protocol has the responsibility to safeguard and store the protocol and has authority over the protocol in accordance with the provisions provided by the Law. The protocol holder is responsible for maintaining the protocol as if it were his own protocol (Oktavia, 2021).

In principle, every time a Notary dies, all files or protocols must be transferred to another Notary as the Notary receiving the Protocol by the heirs of the Notary who has died, as explained in Article 35 of the Notary Position Law on Amendments to the Law. No. 30 of 2004 concerning the Position of Notaries (UUJN), If a Notary dies, the husband/wife or blood relatives in the straight line of marital descent up to the second degree of inheritance are obliged to notify the MPD Notary in the work area of the deceased Notary, no later than 7 (seven) days Work. If a Notary dies while on leave, then the duties of the Notary's position are carried out by the Substitute Notary as a Temporary Acting Notary for a maximum of 30 (thirty) days from the date the Notary dies and the Temporary Acting Notary submits the Notary Protocol of the Notary who died to the Notary. MPD with a maximum period of 60 (sixty) days from the date the Notary dies (Rahman, 2019). The Notary Protocol consists of:

1. Bundle of deed minutes;
2. Protest deed registration book;

3. Will registration book;
4. Register of deeds or repertory book;
5. Authorized handwritten register book;
6. Letter register book under the hand of the person who is recorded;
7. Klapper for register of deeds, and;
8. Klaper for a list of authenticated private letters; as well as
9. Other books that must be made, filled in and kept by a Notary as required by applicable laws and regulations.

In the event that the Notary dies, the Notary's protocol will be handed over to another Notary as the Notary receiving the Notary's Protocol (Article 62 letter a of the Notary's Position Law). Submission of the protocol in the event that the Notary dies, is carried out by the Notary's heirs to another Notary appointed by the Notary MPD (Article 63 paragraph (2) UUJNP). Through this article we can see that the other Notary who will receive the protocol of the Notary who dies is the Notary who has been appointed by the MPD based on a proposal from the heirs. Submission of the protocol is carried out no later than 30 (thirty) days with the preparation of an official report on the submission of the Notarial protocol which is signed by both the person submitting and the recipient of the Notarial protocol (Article 63 paragraph (1) UUJN). Furthermore, if the heir does not submit the notarial protocol within the 30 (thirty) day period as intended in Article 63 paragraph (1) UUJN, then the action that must be taken by the Regional Supervisory Council is to take the Notarial Protocol because this is the authority of the Regional Supervisory Council, as stipulated in Article 63 paragraph (6) UUJN.

Based on the provisions of Article 66 paragraph (1) UUJN states that for the purposes of the judicial process, investigators, public prosecutors or judges with the approval of the Notary Honorary Council are authorized to take photocopies of the Deed Minutes and/or letters attached to the Deed Minutes or Notary Protocol in the Notary's custody. A Notary's responsibilities while in office are also related to storing all Notarial protocols that he or she receives. MPD has a very important role in implementing Notary obligations regarding Notary protocols, including carrying out inspections of Notary protocols periodically once a year or at any time deemed necessary as well as receiving reports from the public regarding alleged violations of the Code of Ethics or violations of provisions in this Law. Notary Protocol is a collection of documents which constitute State archives which must be kept and maintained by a Notary. The obligation to store Notary Protocols is not limited to storing protocols made by and/or in the presence of the Notary himself, but also applies to storing protocols submitted from the Notary, where the Notary who receives the protocol is tasked with keeping the protocol for the protocol that has been submitted. handed over to him.

A notary is obliged to receive, store and maintain protocols from previous notaries that have been determined/appointed by the Regional Supervisory Council. This is none other than because every Notary candidate when registering himself as a Notary with the Ministry of Law and Human Rights, the Notary candidate is first required to sign a statement letter which states that he is willing to accept the Notary Protocol from another Notary, as well as in Article 16 paragraph (1) letter b of the Law on the Position of Notaries states that, in carrying out his office, a Notary is obliged to make a deed in the form of a deed minute and keep it as part of the notarial protocol. This explains that in carrying out his position, a Notary is bound by the UUJN along with the oath of office

and is also bound by the ethics of the notary profession, so that there is no reason for a notary to refuse to accept another notary's protocol, and this is also confirmed in the Notary Appointment Decree .

Basically, keeping minutes of deeds that are part of the Notary's protocol is the obligation of a Notary. However, the problem that will arise is when a Notary refuses to save and accept a protocol from another Notary for the reason that he is afraid of being responsible for the possibility of a dispute arising in the future regarding the Notarial protocol he received. Regarding this refusal, which is the Notary's obligation in carrying out his/her position, if the Notary refuses the obligation to accept the Notary's protocol then this will give rise to legal consequences both for the Notary himself and the parties who have an interest in the Notary's protocol because this can be categorized as as an unlawful act by a Notary in carrying out his office. Against rejection by the Notary which gives rise to legal consequences.

Refusal of the obligation to receive and store Notary protocols carried out by the notary receiving the Notary protocol can be categorized as an act that violates UUJN provisions and a violation of the Notary Code of Ethics. Rejection of a Notary's protocol by a Notary in carrying out his/her office can create legal uncertainty for parties who have an interest in the Notary's protocol. Seeing that an authentic deed is perfect evidence, the deed must be kept and guarded in order to create legal certainty. In terms of legal certainty, Van Apeldoorn stated that the theory of Legal Certainty means that legal certainty is something that can be determined from the law, related to concrete things and legal certainty is security in realizing the law itself (Yanto, 2020). Meanwhile, to supervise the duties and authority of Notaries there is a Regional Notary Supervisory Council (hereinafter referred to as MPD). MPD is tasked with supervising the performance of all notaries in the district or city. MPD is a very important part for the sustainability of the Notary profession. Therefore, the MPD is the spearhead of the Notary Supervisory Council (MPN) which carries out direct supervision of notaries (Trisnomurti, 2017).

MPD is at the forefront in directly supervising notaries because of the authority it has. This is explained in Article 70 UUJN that the MPD has the authority to examine Notary protocols, determine the storage place for Notary protocols that are 25 (twenty five) years old or more, and appoint Notaries to temporarily hold Notary protocols appointed as state officials. Due to the long validity period of an authentic deed, the storage of the protocol needs to be regulated, especially for authentic deeds that are 25 (twenty five) years old since the parties signed them. Regarding this matter, the storage of Notary protocols that are 25 (twenty five) or more is regulated in Article 63 paragraph 5 UUJN in conjunction with Article 70 letter e UUJN. The process of transferring Notary protocols as contained in article 62 UUJN is carried out with the aim of maintaining the confidentiality of the contents of the deed and its existence, so that if one day it is needed for some purpose the deed can be easily searched and found.

Keeping a Notary's protocol has such a big responsibility. Notaries in holding office are limited by biological age to 65 years, and are required to keep a notary protocol. Notary Protocols which must be stored and maintained by the notary, apart from causing accumulation of protocols, can also experience damage caused by the paper being only a few dozen years old, being eaten by termites, or even being lost due to a natural disaster that befell the area where the Notary's office is located. concerned, and in the case of a Notarial protocol which is in the possession of the Notary who receives the protocol, it

does not rule out the possibility of a lawsuit or other form of problem arising or arising in connection with the Notarial protocol whose memorandum is a State document/archive. Apart from the MPD which has the authority and responsibility for Notary Protocols that are 25 years old, the Notary Recipient of the Protocol also has responsibility for Notary Protocols that are 25 years old.

In carrying out his office, a notary has the responsibility to always obey and obey the applicable laws and regulations as stated in his oath of office. In relation to responsibilities, a Notary in carrying out his position has responsibilities such as responsibility for the Notary Protocol. Notaries are required to maintain Notary Protocols because they are State archives and when a Notary is sworn in as a Notary, the Notary must be willing to accept Notary Protocols from other Notaries, such as Protocols that are 25 years old (Utomo & Safi'i, 2019). The Notary's responsibility to maintain Notary Protocols is not only limited to Protocols for deeds he himself has made but also Protocols he receives from other Notaries. Apart from that, the Notary's responsibility to maintain the Protocol is not only limited to physical protection but also to maintain confidentiality. as regulated in Article 16 paragraph (1) point f UUJN which requires Notaries to keep confidential everything regarding the deed they make and all information obtained to make the deed in accordance with their oath/promise of office, unless the law determines otherwise.

The Notary Protocol, which is a State archival document, functions as strong evidence, so it is mandatory for the notary to keep and maintain it. The storage of the Notary's protocol must continue under any circumstances, even if the Notary who owns the protocol is on leave, retires, or dies. The statement of the Notary Protocol as a State Archive as contained in the UUJN is because the Government provides some of its duties as a form of protection to its people by giving some of its authority to the Notary to make evidence in the form of authentic deeds to parties who need their interests and rights protected in order to create legal certainty. , order and legal protection. Article 63 paragraph (1) UUJN states that this must be done no later than 30 days by making a report on the delivery of important notarial documents. Article 63 paragraph (3) states that the handover is carried out by the Notary or his heir to another Notary who has been appointed by the MPD. Meanwhile, article 63 paragraph (5) explains that important Notary documents that are at least 25 (twenty five) years old are handed over by the Notary who receives the protocol from another Notary to the MPD.

The essence of a Notary is reflected in the Notary Protocol. Therefore, it is essential to establish detailed regulations governing the Notary Protocol. This Protocol encompasses the deeds executed by a Notary, serving as perpetual evidence even after the Notary's passing. Consequently, meticulous care is imperative in its safekeeping. The Notary Protocol forms an integral part of the administrative duties of a Notary, playing a crucial role in enabling the Notary to fulfill their responsibilities accurately and effectively. Hence, efforts to impart a comprehensive understanding of this administrative aspect are initiated well in advance of the Notary's appointment, typically during the internship phase. It is common knowledge that the journey to becoming a Notary involves several stages, including a collaborative internship. Prior to the transfer of the Notarial protocol, it is crucial to verify the completeness of all Notarial protocols. The recipient Notary must meticulously inspect and cross-reference the number of deeds, their associated data, and documents with the details outlined in the Notary Protocol Handover Minutes. In the event of the Notary's demise, the transfer of the Notary's protocol can be

overseen by the heirs, interim Notary, or substitute Notary to ensure the completion of all Notary protocols.

Notaries are given legal authority by the Regional Supervisory Council or the Minister to keep protocols from Notaries as referred to in Article 8 and Article 12 UUJN. In accordance with Article 16 paragraph (1) letters b and e UUJN which requires every Notary to keep the minutes of the deed as part of the Notarial protocol and requires every Notary to issue a Grosse deed, a copy of the deed or an excerpt of the deed based on the minutes of the deed at the request of the parties or experts heirs of the parties. The Notary Protocol as defined in Article 1 number 13 UUJN is a state archive. The importance of the Notarial Deed as an Authentic Deed and Notarial Protocol is described in the General Explanation section of the UUJN. Apart from authentic deeds made by or before a Notary, not only because it is required by statutory regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties at the same time, for society as a whole. As stated in the last sentence of the quote above, the Notarial Deed and Notarial Protocol not only maintain certainty, order and legal protection for interested parties alone, but also for society as a whole.

b. Legal Protection for Communities Recipients of Copies of Deeds of Wills Made by Notaries Who Have Died and Who Do Not Have a Notary Protocol Holder

Property is a valuable object owned by humans, because with these assets, humans can obtain whatever they want. These assets can be in the form of objects that move or do not work. There are various ways to obtain this, one of which is from someone's will. A will is a voluntary gift of property rights that is carried out after the giver dies (Beni Ahmad & Syamsul, 2011). In ancient times, the existence of a will was considered a competition to show luxury to others while close relatives were not paid attention to. The greater the wealth bequeathed, the greater a person's honor. Such a will was in effect before the arrival of Islam, namely during the Roman Empire and was also implemented during the Arab Jahiliyah era. This condition then changed after the arrival of Islam which regulates wills and their pillars, conditions and implementation which are carefully regulated for the welfare of the people. Through provisions like this, it is hoped that the next generation of the family or children of one of the deceased (the testator) will be able to obtain the assets inherited from the testator without oppressing or harming the rights of other people.

The definition of a will according to language means a message or messages or ordered to another person, Meanwhile, according to Islamic law, a will is a gift from someone to another person, whether in the form of goods, receivables or benefits to be owned by the person given the will after the person who has the will dies. According to the complete Indonesian dictionary, will is a noun that has two meanings. Firstly, a will means an heirloom or something auspicious. Second, a will means the last message conveyed by the person who died. Regarding will law according to Islamic law, it is divided into five laws, namely obligatory, *sunnah*, *haram*, *makruh* and permissible. The four imams of the *madzhab* and the *Zaidiyah* sect are of the opinion that a will is not an obligation for the testator nor is it an obligation for the parents and relatives of the testator who do not inherit, but the law of the will is different according to the circumstances.

A will is sunnah if it is intended for the benefit of close relatives, poor people, and pious people. A will is prohibited if it harms the heirs, for example a will that exceeds

one third of the inherited assets, especially if it uses up the inherited assets, it is also prohibited if the form of the will is an object that is haram in terms of shape, substance or method of obtaining it. A will becomes *makruh* if the assets left behind by the testator are small and it becomes *makruh* if the testator knows that the recipient of the will will use the items of the will in wicked ways. A will becomes permissible if it is intended for close or distant relatives who do not receive an inheritance or people who live in poverty. In the book on Inheritance Law in Indonesia, a will in Dutch is called a testament, in article 875 BW it is stated that a will (testament) is a deed which contains a person's deed regarding what he wishes after he dies and can be revoked again by the person who stated the will.

In the Civil Code, it is stated that there are two forms of will, namely appointment of heirs (*erfstelling*) and testamentary gift (*legaat*). Appointment of inheritance (*erfstelling*) is a certain part that is adjusted to the inheritance, for example half without mentioning the object being bequeathed, but only mentioning the nominal amount. As for testamentary gifts (*legaat*) it is explained in article 957 of the Civil Code, namely as a special determination where the heir gives to one or several people certain items, for example movable objects, immovable objects, and/or usufructuary rights over an item (Siska Lis Sulistina, 2018). In Article 171 letter 'a' of the Compilation of Islamic Law Book III, inheritance law, what is meant by a will is the gift of an object from the testator to another person or institution that takes effect after the testator dies. These provisions regarding wills are contained in Articles 194-209 which regulate the entire procedure regarding wills.

Wills are one of the absolute authorities of the Religious Courts according to Law Number 7 of 1989 concerning Religious Courts which has been amended by Law Number 3 of 2006, but there is no material law in the form of a law that regulates them, the only one that regulates wills is Book II of the Compilation of Islamic Law (KHI) regarding inheritance, contained in the legal instrument in the form of Presidential Instruction Number 1 of 1991. The Compilation of Islamic Law (KHI) regulates that wills in Articles 194-209 are seen as material law and are enforced in the judiciary within the religious court environment. Article 874 of the Civil Code states that the contents of a statement or form of a will must not conflict with the law. Then in article 1005 of the Civil Code it is stated that the will maker appoints someone to supervise and regulate the implementation of the will and in article 808 of the Civil Code it is explained that the will has the right to determine a reasonable condition (*voorwaarde*) regarding the *erfstelling* or *legaat*, this is done as an anticipation regarding the implementation of the will in the future.

Inheritance by will (*testament acte*) has been known since Roman times. In fact, inheritance using a will (testament deed) is a major thing. At the time of Justinian, Roman law recognized two forms of testament, namely: oral and written. When making a testament, whether written or oral, seven witnesses must be present. In a written testament, the witnesses must also sign the letter containing the last will of the testator. Meanwhile, in an oral testament, the witnesses only need to listen to what the testator explains. A last will or will (testament deed) is generally a statement of a person's will to be carried out after he or she dies. In his service to the community, a Notary is obliged to carry out his position with full responsibility in serving the interests of the community or clients who require his services. As is known, one of the duties of a Notary is to provide counseling and legal advice as well as explanations regarding the Law to the parties concerned.

Legislation clearly and firmly assigns duties to the Notary regarding the validity of a Will, so that the Notary also has an obligation to be the executor of the Will. The notary makes a list of deeds relating to wills in order of when the deeds were made every month. This authority is important to guarantee the protection of the interests of heirs and heirs, who can at any time investigate the veracity of a will that has been made before a Notary. All testamentary deeds made before a notary must be notified to the Central Register of Wills Section, whether open testament, written testament or closed or secret testament. If the will is not notified then the will will not be binding (Ellise T. Sulastini & Aditya Wahyu, 2011). In a written testament (*olographic* testament), if a living person makes a will and submits it to a Notary, the Notary is obliged to first keep the testamentary deed. To notify a will (testament deed), it is required to fulfill the requirements, namely that it must comply with the columns provided by the Central Register of Wills (DPW). If only 1 (one) column is not filled in, the meaning will be unclear.

Notaries are also obliged to report or notify a person's will on 5 (five) days of the first week of each month by post or by coming directly to the counter at the Ministry of Law and Human Rights. However, if no will have been made, the Register of Wills must still be made and reported with the words "ZERO". Registration of this will is then made into a Certificate of Will (SKW). This is considered quite important because it can influence whether or not a will has been registered in the Sub-directorate of Probate of Wills (Andriawan, 2019). Based on a circular issued by the Directorate General of General Legal Administration (Directorate General of General Law) which was announced on June 22 2015 on the website of the Directorate General of General Legal Administration and was followed by the publication of Ministry of Law and Human Rights Regulation No. 60 of 2016 concerning Procedures for Reporting Wills and Applications for the Issuance of Will Certificates Electronically that currently Notaries are required to register and report wills electronically. So, the Central Register of Wills, Sub-directorate of Inheritance Assets, Directorate of Civil Affairs, no longer accepts manual delivery of deed register reports relating to wills.

Notaries have other obligations that must be fulfilled in accordance with applicable regulations. This obligation is the obligation to create a register of deeds or a register of nil relating to wills and report the register electronically on the official website of the Directorate General of General Legal Administration of the Ministry of Law and Human Rights. The Notary's obligation to report the register of will deeds/nil register electronically is contained in Article 3 of the Ministry of Law and Human Rights Regulation No. 60 of 2016. Electronic reporting of wills, which is the obligation of a Notary, is not fully running well according to the Government's plans. There are times when notaries experience obstacles in their journey to report the register of wills electronically. These obstacles arise from the Notary personally or from outside the Notary's personality, including unstable signal or internet network, so that it becomes difficult for the Notary to report electronically which relies on the internet network, errors in filling in the online form for reporting the list of will deeds on the official website of the Directorate General AHU.

Notary's lack of understanding regarding the flow and procedures for reporting the register of will deeds electronically and how to access the official website of the Directorate General of AHU and others. Where the things mentioned above can have an impact on the electronic reporting of will deed registers carried out by Notaries, namely where the data can become inaccurate, or will deeds become unregistered due to the lack

of a stable internet network. The legal consequences that arise if a Notary does not report the register of will deeds electronically, the deed is only binding on the parties who made the will and is not binding on third parties. Because will deeds that are not reported electronically do not fulfill the principle of publicity in submitting reports on will deeds which must be carried out by a notary. If the will is not reported electronically on the official website, then the heirs will make a certificate of inheritance, and the will will not be detected by the Ministry of Law and Human Rights. As a result, the Notary who will make the certificate of inheritance will not include the will, because after checking it at the Ministry of Law and Human Rights an inheritance deed was never made. As a result, the will is not binding on third parties.

The heirs who have been harmed have the right to demand compensation from the Notary who made the will statement because the Notary did not carry out his obligation to report the will electronically on the official website of the Directorate General of AHU. The injured party in this case is the heir. Legal protection for the recipient of a will against a Notary who does not report the list of will deeds made by him electronically can be through a form of preventive legal protection through statutory regulations and through agreements. Preventive legal protection through statutory regulations is legal protection provided by reformulating the articles contained in Permenkumham No. 60 of 2016 which was continued to form new implementing regulations that regulate procedures for reporting the register of wills done electronically. Preventive legal protection through agreements can be carried out by analyzing the clauses contained in the list of will deeds, for example the provisions on the Notary's obligation to report the list of deeds he makes are contained in Article 11 paragraph (1) letter I UUJN which further regulates that reporting of the list of will deeds is carried out electronically. which is contained in Article 3 of Permenkumham No. 60 of 2016.

From the provisions above, it can be concluded that the provisions of a will must be made in writing before a Notary or entrusted/kept by a Notary. A deed of will that is in accordance with the formalities that have been determined according to the Civil Code and other laws can be executed in accordance with the contents of the will, but because it is not registered on the Central Register of Wills of the Ministry of Law and Human Rights of the Republic of Indonesia, this causes The will has no legal certainty (A. Annisa, 2019). The purpose of an authentic deed is to prove it in the future if a dispute occurs. Legally, there are two functions of an authentic deed, namely to state the existence of a legal act and to prove it. According to Ika Hanyani, the power of proof of an authentic deed is regulated in Article 165 HIR, Article 1870 and Article 1871 of the Civil Code, so it can be stated that the power of proof of a notarial deed is perfect evidence, so an authentic deed has all the power of proof whether external, formal or material. Because legally, a will without a notarial deed or a private will does not provide a guarantee of legal certainty because it can be canceled unilaterally.

Hence, So the legal consequences of a will without a notarial deed make the will vulnerable to lawsuits from interested parties because the evidence is not strong enough and there is no legal certainty. However, this Will is still valid and can be implemented until the will is known at a later date because the execution of a will does not expire. The register of testamentary deeds, which is one of the notary's legal products, can be used as evidence so that it has perfect evidentiary power, if all the procedures and procedures for making the deed are fulfilled. If there are procedures in making the deed that are not fulfilled and the procedures that are not fulfilled can be proven, then the register of

testamentary deeds can be declared as a deed that has the power of proof as a private deed, so that if the register of testamentary deeds has such status, then its evidentiary value handed over to the Judge in Court (Safira, 2017).

4. CONCLUSION

Submission of the Notarial Protocol is carried out no later than 30 (thirty) days by making an official report on the submission of the Notarial Protocol which is signed by the person submitting it (the heir) and the person receiving the Notarial Protocol (Notary receiving the Notarial Protocol). Notary protocols are a direct part of the Notary's obligations, however in reality in today's society, not all Notaries understand the procedures for submitting notarial protocols and carry out their obligations to submit notarial protocols to the notary holding the protocol. When a Notary dies, it is not uncommon for the Notary's family and/or heirs not to understand the rules or procedures regarding the transfer of notary protocols. There are many factors that cause obstacles which result in problems resulting in the fact that the handover of the protocol to the Notary Holding the Protocol has not been implemented, which is not appropriate or contradictory, namely the heirs have difficulty getting a Notary Holding the Protocol for a Notary who has passed away. Storing Notarial protocols is an effort to maintain the legal age of Notarial deeds.

UUJN and UUJNP only regulate procedures for transferring Notary protocols, but do not include sanctions for heirs or temporary Notary Officials who are negligent in submitting the Notary's Protocol to those who have died. This is due to the lack of counseling from the MPD and the Notary Association Organization (INI) to active Notaries and family members of Notaries, so that the heirs do not understand and do not have knowledge and understanding of the importance of the Notary Protocol, with a lack of understanding of the protocol. resulting in the Notary Protocol being abandoned or being handed over too late to another Notary, so that the client's rights related to evidence will be difficult or even impossible to fulfill. Storing Notary protocols is very important. Because a notarial deed is authentic evidence that contains the rights and obligations of certain parties as legal subjects. Storing Notarial protocols is an effort to maintain the legal age of Notarial deeds.

Adequate arrangements are needed to ensure that notary protocols are maintained and accessible to people who need them. Reformulation of the arrangements for submitting Notarial Protocols is necessary because the public's need for notarial deeds is increasing, but in reality, there are many problems that threaten the continuity of storage of minutes of deeds contained in notarial protocols. Juridically, there is still a legal vacuum related to problems that may occur during the process of submitting Notary protocols. Reformulation of the arrangements for submitting Notarial Protocols must be carried out to ensure the realization of legal certainty for the public.

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LEGAL CONSEQUENCES OF PRENUPTIAL AGREEMENTS FROM THE PERSPECTIVE OF NATIONAL LAW

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Abstract

This study aims to assess the importance of prenuptial agreements for Indonesian citizens marrying either fellow Indonesian citizens or foreign citizens, as well as to evaluate the legal framework provided by Law no. 1 of 1974 and Decision Number 69 / PUU-XIII / 2015 concerning marriages involving Indonesian citizens and foreign citizens. The research methodology utilized in this study is normative legal research, with data collection primarily based on a literature review. The results of this study highlight the significance of prenuptial agreements for Indonesian citizens, as they can act as a form of protection in the event of unexpected circumstances such as divorce. As per the legal regulations outlined in Law no. 1 of 1974 and Decision Number 69 / PUU-XIII / 2015, prenuptial agreements must be documented in writing and properly authenticated by the Marriage Registrar. It is crucial that the terms of the agreement adhere to legal, religious, and ethical standards.

Keywords: *Prenuptial Agreement, Indonesian Citizen, Foreign Citizen, Marriages, Legal Regulations*

1. INTRODUCTION

In the present day, a modernized perspective has been embraced in the realm of marriage, with the advent of prenuptial agreements. These agreements are formulated by the soon-to-be-married couple, serving as a documented contract that is established before the wedding takes place. Despite not being universally adopted, the prevalence of prenuptial agreements has risen, indicating a new societal norm. The presence of such agreements provides a sense of assurance to prospective couples, as they are believed to be effective in mitigating potential adversities, including divorce, down the line.

As stipulated in Article 1 of Law Number 1 of 1974 pertaining to Marriage, it is elucidated that marriage constitutes a physical and psychological bond between a man and a woman who unite as husband and wife with the intention of establishing an enduring and blissful family founded on religious principles (Haryanti, 2017). This signifies that marriage is not a frivolous matter or a mere game, but rather a solemn commitment. Once a couple has made the decision to embark on this sacred union, they must be prepared to be mutually devoted. Undoubtedly, this endeavor is arduous, as it entails various challenges and hurdles that couples encounter while striving to build a prosperous and contented family. Common issues that arise within marriages encompass economic, social, and other predicaments. Consequently, this has led to the emergence of marriage agreements.

A marriage agreement according to Soetojo Prawirohamidjojo's explanation is an agreement created by the husband and wife before or during the marriage to control the consequences of marriage on their property (Prawirohamidjojo, 1986). This agreement is known as a prenuptial agreement. Prenuptial agreements made between couples with the same citizenship status as Indonesian citizens can protect the rights of children through

the first marriage if the husband or wife who has been divorced, be it a death or life divorce to remarry. For example, a widower who has children through a previous marriage will marry twice with a woman who is not rich and it happens that the widower is a wealthy person and he also does not create a marriage agreement related to the separation of wealth, so that children from the first marriage will lose. If the unexpected happens, namely divorce, half of the wealth of the rich widower will belong to the wife because the wealth owned by the widower becomes joint wealth, which actually only includes the husband's assets, namely the child's bapat, other than if the opposite is applied, the one who wants to marry is the one with the most assets.

The prenuptial agreement's substance is essentially unrestricted, although it must adhere to principles of morality and societal norms (Scherpe, 2012; Scott & Scott, 1998). It is impermissible for this agreement to be established for the purpose of prohibited or deceitful causes (causa). Furthermore, it is prohibited to make commitments that contradict the matters arising from the husband's authority as the head of the family, rights derived from parental responsibility, rights derived from legal provisions, and there is no exemption from the obligations on the inheritance of the individual who renounces it.

This study seeks to examine the necessity of implementing prenuptial agreements in accordance with national law and to analyze the legal implications that stem from their execution. Two primary questions are explored: first, the urgency of adopting prenuptial agreements as mandated by national law, and second, the legal consequences that ensue from their implementation. The research aims to provide a comprehensive understanding of the importance of prenuptial agreements and the legal framework surrounding them within the context of national law.

2. RESEARCH METHODS

The study employs normative legal research, utilizing statutory and conceptual approaches as the selected method for addressing the research issues (Ibrahim, 2007). To address the trimmed-down problems, legal materials are gathered through library research, encompassing both primary and secondary legal sources. The collection process involves recording, quoting, summarizing, and reviewing various documents such as laws, newspapers, magazines, and other relevant articles pertaining to the research subject. Subsequently, the legal materials are presented descriptively, either in written form or orally through informants connected to the issues at hand, leading to conclusive findings.

3. RESULTS AND DISCUSSION

3.1. The Urgency of Prenuptial Agreement Implementation According to National Law Perspective

A Prenuptial Agreement is a legal document that is established by a Notary, an authorized official, between couples who are planning to get married (Febriansyah et al., 2021; Hartono, 2020). This agreement serves as a means to assist Indonesian citizens who are marrying foreigners in retaining ownership of their property and land in Indonesia. In addition to safeguarding property rights, this agreement also proves beneficial for individuals who wish to hold shares in Indonesian companies, as one of the requirements is that all parties involved must be Indonesian citizens. Without a prenuptial agreement,

Indonesian citizens who marry foreigners are unable to apply for credit or loans from banks, as banks typically require this legal document as a prerequisite for such financial transactions.

The prenuptial agreement deed should be drafted and executed prior to the wedding day (Tait, 2021). It is essential for the document to be prepared by a qualified Notary and subsequently authenticated by the same individual. While some individuals argue that the prenuptial agreement should also be legalized by the nearest District Court, it is important to note that the prenup created by a legally authorized Notary holds significant weight. This is due to the fact that Notaries are appointed by the Government and entrusted with the responsibility of carrying out public service functions in the realm of law. Notaries possess the legal authority to create a deed that possesses specific and substantial evidentiary value. All provisions and determinations within the prenuptial agreement are valid and enforceable. Notaries play a crucial role in generating robust legal documents within the framework of the legal process.

The basis for making this Prenuptial Agreement is the Civil Code Article 147:

> *"A marriage contract must be created using a notarial deed before the marriage takes place, and will be void if it is not properly made. The agreement shall come into force at the time of the marriage, no other time shall be stipulated for it".*

Court authorization is required if there is a third party included in the agreement. This is in accordance with Article 152 of the Civil Code:

> *"The provisions contained in the marriage contract, which are incompatible with the common property under the law, in part and in full, shall not be enforceable for third parties before the day of registration of such provisions in the public registry, which shall be executed in the registry of the District Court, in whose jurisdiction the marriage was performed or the registry where the marriage certificate was registered, if the marriage was performed abroad".*

The Civil Code is a provision that contains interests and rights between individuals in society, enacted in January 1848. Since Marriage Law Number 1 of 1974 was enacted, so that the validation of the Prenup is not re-enacted, so that the validation, registration or recording of the prenup is not carried out again in the Registrar of the District Court, but is carried out in the KUA for Muslim couples and in the Civil Registry for Non-Muslims by being registered in the deed or marriage book.

Marriage Law Number 1 of 1974 CHAPTER V Article 29 explains that:

> *"At or before the time of marriage, two parties may, by mutual consent, enter into a written agreement which is authorized by the Marriage Registrar, after the contents have been given effect to third parties concerned".*

The agreement cannot be ratified if it deviates from the limits of law, decency or religion. The agreement comes into effect at the time of the marriage. At the time of the marriage, the agreement cannot be changed, other than if there is an agreement between the two parties to change it and the change does not disadvantage a third party.

Creating a Prenuptial Agreement before a marriage is not a negative thing. But for couples of fellow Indonesian citizens who are still a lot of bother because they are considered not trusting each other. In fact, this is quite helpful for the future if there are things that are not expected, for example divorce. The existence of the Prenup, so that it will be easier and clearer and does not have to be involved in problems, especially joint property or other problems, because there are already clear and legally enforceable opportunities (Istrianty & Priambada, 2016).

Mixed couples consisting of foreigners and Indonesian citizens benefit from the fact that the Indonesian state recognizes only one nationality. According to Indonesian law, even if they retain their Indonesian citizenship or have not undergone a change in citizenship, they are deemed to have forfeited their Indonesian citizenship and are treated on par with Indonesian citizens. Consequently, their ability to own property or land in Indonesia is restricted, as stated in the Basic Agrarian Law (UUPA) 1960 (Mahendra & Yustiawan, 2023). This provision aligns with Article 21 point 3 of the UUPA:

> *"Foreign individuals who, subsequent to the implementation of this legislation, obtain ownership of assets through inheritance without the utilization of wills or acquire mixed property as a result of marriage, along with Indonesian citizens who possess property rights or forfeit their citizenship following the enactment of this Law, are required to surrender these rights within a period of one year from the moment they acquire said rights or lose their citizenship. In the event that the relinquishment of these rights occurs after the expiration of this timeframe, the rights are automatically terminated by legal means or the land reverts back to the State. It is important to note that the rights of the opposing party, against whom the encumbrance is imposed, shall remain valid and enforceable.".*

As a follow-up to the protection and development for foreign nationals in Indonesia, on December 22, 2015, Government Regulation (PP) No. 103/2015 related to the ownership of residential houses by foreigners who have a domicile in Indonesia was signed. The regulation states:

> *"Foreigners can have a house for residence or occupancy with the Right of Use,"*

Based on the old Citizenship Law, there were 2 forms of mixed marriages and their problems, namely:

a. Foreigner Man marries Indonesian Woman
   Based on Article 8 of Law No. 62 of 1958, an Indonesian woman who marries a foreigner may lose her citizenship if she provides information to that effect within one year, and if she loses her citizenship, she is then stateless. If the foreign husband wants to obtain Indonesian citizenship, he must comply with the requirements set for ordinary Indonesian citizens. Because it is difficult to obtain a residence permit in Indonesia for foreign men while the Indonesian wife cannot leave Indonesia for several reasons, many couples live separately because they are forced to.
b. Foreign Women who marry Indonesian Men
   Indonesia adheres to the principle of single citizenship, so based on article 7 of Law Number 62 of 1958 if a foreign woman marries an Indonesian man, she can obtain Indonesian citizenship but at the same time she must also lose her original

citizenship. The application to become an Indonesian citizen must also be made within 1 year after the marriage, if this period is missed, so the application to become an Indonesian citizen must be in accordance with the conditions imposed on ordinary foreigners to be able to live in Indonesia. A foreign woman can obtain sponsorship from her husband or obtain a residence permit, which must be renewed annually or requires time and money. If the husband dies, she will lose her sponsor and her presence in Indonesia will be unclear, so every time she executes an agreement to leave the country, she needs a reentry permit, the application of which must be agreed upon by the sponsor. If the husband dies, the property inherited by the husband must be immediately transferred within 1 year (Article 21 of Law No. 5 of 1960), and another problem is that a foreign woman cannot work other than using a company sponsor. If the husband is sponsored, he can only work as a volunteer. So as the mother or wife of an Indonesian citizen, this woman loses the right to contribute to the family income (Rubyasih, 2016).

Based on the problems related to the old Citizenship Law, the principle of the new Citizenship Law has changed the old Law, for example stated in Article 19 point (1) of Law No. 12 of 2006 which states that foreigners who are legally married to Indonesian citizens can obtain Indonesian citizenship by giving a statement as a citizen in front of an authorized official. The statement as contained in paragraph (1) can be carried out if the person concerned has resided in the territory of the Republic of Indonesia for the shortest five consecutive years or the shortest 10 consecutive years, in addition to the acquisition of citizenship that gives the effect of having dual citizenship (Article 19 point (2).

Based on the explanation of Article 19 of Law No. 12 of 2006, it can be concluded that if a foreigner who marries an Indonesian citizen who wants to obtain Indonesian citizenship, so that the foreigner can become an Indonesian citizen if he gives a statement in front of an authorized official. Foreigners who have been legalized as Indonesian citizens based on existing provisions, so that the legal status of foreigners who become Indonesian citizens is equivalent to Indonesian citizens, meaning the obligations and rights contained in Indonesian national law for citizens. This new provision has resolved a problem that has often arisen regarding the legal system through which a husband and wife become citizens after a mixed marriage has taken place.

3.2. Legal Consequences of Premarital Agreement Based on National Law Perspective

The emergence of Law No. 1/1974 on Marriage, which came into effect for all Indonesian citizens on January 02, 1974, was mostly in accordance with the demands of Indonesian citizens. This demand had been informed during the first Indonesian Women's Congress of other opportunities, such as the hope of improving the position of women in marriage. The desired improvement for the "Indigenous Indonesian" group who adhere to the Muslim religion is contained in written law. The marriage law of indigenous Indonesians whose religion is Islam is contained in the fiqh book, based on the Indonesian legal system cannot be included in the category of written law, because it is not contained in the PP.

A marriage agreement is an agreement created by 2 prospective spouses when or before the implementation of marriage, in order to regulate the consequences of marriage related to property (Leeds, 2012). The legal effect of a marriage agreement is that the

parties are bound when they are in a marriage relationship. Article 29 of Law No. 1 of 1974 related to marriage explains:

a. Before or during the marriage, two parties to a common goal can execute a written agreement that is approved by the Marriage Registrar after the content is enforced or by a third party;
b. The agreement cannot be ratified if it deviates from the limits of law, decency or religion;
c. The agreement is enforceable at the time of the marriage;
d. The contract cannot be changed at the time of the marriage, except if the parties agree to change it and the change does not disadvantage a third party.

The contents of the Marriage Agreement can be divided into three, namely:

a. Marital Agreement using the Union of Earnings and Income (Article 164 of the Civil Code);
b. Marriage Agreement using the Union of Profit and Loss (Article 155 of the Civil Code);
c. Marital Agreement-Provision on all assets together (completely separate assets).

The Marriage Agreement must be registered in a designated institution in order to fulfill the element of publicity. The importance of this registration is to provide strong legal protection to the party who made it, as well as so that the third parties involved understand and comply with the agreement. For example, there is a sale and purchase by husband and wife, the existence of this marriage agreement so that the agreement can be binding on the legal action to be carried out.

If the marriage agreement is not registered, so this agreement is only binding or enforced on the party who made it (husband and wife). This is as stated in Article 1313 of the Civil Code, that an agreement is an act in which 1 or more individuals bind themselves to 1 or more other individuals and in Article 1340 of the Civil Code, namely an agreement that is only enforced between the parties who make it.

The registration of a marriage contract for a husband and wife whose religion is Islam is carried out at the local KUA or in the KUA where the marriage is registered. Registration and registration for husband and wife whose religion is non-Islamic is carried out at the civil registry office. Marriage agreements generally that have been created cannot be changed at the time of marriage, other than if the two parties agree to change it and the change does not cause harm to the third party, as stated in Article 29 paragraph (4) of Law No. 1 of 1974 related to Marriage, namely:

> *"When a marriage is entered into, the agreement cannot be changed, other than if the two parties agree to change it or if the change does not cause harm to a third party."*

Based on the Civil Code or Law No. 1/1974 on Marriage, it does not explain the rules related to the creation of a marriage agreement after the marriage has taken place. The provisions of the law only regulate marriage agreements that are created before or during marriage. Article 29 of Law No. 1 of 1974 relating to Marriage, explains:

"During or before the marriage, two parties to a mutual agreement can submit a written agreement that is authorized by the marriage registration officer, after the contents are enforced on the third party concerned."

Upon closer examination, it becomes evident that there are notable distinctions between the regulations outlined in the Civil Code and those stipulated in Law Number 1 of 1974 pertaining to Marriage. The Civil Code explicitly specifies that a marriage agreement must be established prior to the marriage ceremony, and it must be formalized through a Notary Deed and subsequently legalized by the Marriage Registrar. Conversely, under Law No. 1 of 1974, a marriage agreement can be formulated either before or during the marriage, and it is required to be documented in written form, irrespective of the involvement of a Notary Deed (Budiono, 2011). The elucidation of the term "written and agreements or notarial private deeds" necessitating validation through the Civil Registry Office for non-Muslim individuals or the KUA for Muslim individuals is not adequately expounded in Law Number 1 of 1974 concerning Marriage.

Apart from the existing dissimilarities, these three provisions also have similarities, both the rules in the Civil Code, Law Number 1 of 1974 related to Marriage. The first equation, namely the three rules regulate that the parties who create a marriage agreement, the contents do not contradict the general order, law, decency, or religion that each party believes in.

The second similarity is that the preparation of the marriage agreement must be created based on the agreement of the two parties, it is not allowed that only one party wants it. This agreement through two parties is an important thing to consider, because through the wishes of the parties it can result in an agreement between them, which they are also obliged to obey the rules created in it. If the agreement is not created based on the agreement of two parties, then it can be canceled.

Since the enactment of Law No. 1/1974 relating to Marriage, so that there has been unification in the field of Marriage Law, the origin of which has not been or is not contained in the law, so that the old rules can be used (Article 66 of Law No. 1/1974) (Adjie, 2009). To the extent that this is in line with Article 29 of Law No. 1 of 1974, such an agreement must be executed prior to the marriage or must be contained in a Notarial deed. This marriage agreement is enforced between husband and wife since the marriage is carried out. The contents contained in the marriage agreement depend on the agreement of the prospective husband and wife, as long as it does not contradict the law, religion, compliance, decency, as for the content and form of the marriage agreement, the two parties are given the widest possible freedom (based on the law of "freedom of contract") (Faradz, 2008).

4. CONCLUSION

The urgency of implementing a prenuptial agreement between Indonesian citizens and Indonesian citizens is to help in the future if there are things that are not desired, for example divorce. The existence of the Prenup, so that it will be clear and easy and does not have to be involved in problems, especially joint property and other problems, because there is a clear agreement or has legal force. Meanwhile, for mixed couples of foreigners and Indonesian citizens, it helps to have land and property in Indonesia, the status cannot be used as property rights. The actual prenuptial agreement is to provide protection to the

two parties after the implementation of the marriage, so that each party to the agreement is difficult to make deviations.

The Marriage Agreement has a legal consequence of establishing a bond between the parties involved in a marital relationship. Prenuptial agreements, in accordance with Law Number 1 of 1974 and Decision No. 69/PUU-XIII/2015, are formulated for both Indonesian citizens and foreigners either prior to or during the marriage ceremony. These agreements are documented in writing and authorized by the Marriage Registrar. It is important to note that the contents of the marriage agreement must not contradict religious principles, moral standards, or legal regulations.

A prenuptial agreement must be drafted in written form and subsequently signed by the involved parties, who are then obligated to adhere to the terms outlined in the agreement. This ensures legal certainty. In the event that one of the parties breaches the agreement, the written document can serve as concrete evidence in court, leaving no room for denial by the defaulting party. It is crucial for the community to exercise increased vigilance in creating prenuptial agreements as a precautionary measure against undesirable circumstances. The community is expected to honor their commitments in accordance with the mutually agreed-upon terms stated in the agreement. Failure to do so can result in detrimental consequences for the other party involved.

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NOTARY AUTHORITY IN LEGALIZING FOREIGN PUBLIC DOCUMENTS AFTER ACCESSION TO THE APOSTILLE CONVENTION IN INDONESIA

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Abstract

This study aims to understand the procedure of legalizing foreign documents in accordance with The Hague Convention on the Abolition of Legalization Obligations for Foreign Public Documents 1961 and analyze the authority of a Notary in legalizing foreign public documents after the issuance of the Presidential Regulation on Ratification of the Convention on the Abolition of Legalization Obligations for Foreign Public Documents 1961. This research uses a normative legal approach with the support of legal concept analysis and regulatory approaches, as well as qualitative analysis techniques through several steps, namely systematization, description, and explanation. The study results show that the legalization of foreign documents in accordance with the Apostille Convention is carried out by eliminating diplomatic or consular legalization procedures and only requires the fulfillment of formalistic requirements stipulated in the Apostille Convention. Regarding the authority of a Notary in legalizing foreign public documents after the issuance of the Presidential Regulation on Access to the Apostille Convention remains in effect and does not reduce the authority of a Notary as stipulated in the Amended Notary Office Law because a Notary is an official appointed to legalize public documents issued or official certificates in accordance with the Apostille Convention.

Keywords: *Authority of Notary, Legalization, Foreign Public Document, Apostille*

1. INTRODUCTION

The advancements in technology and the abundance of information in today's society have had far-reaching effects on various aspects of life, including the evolution and progress of Indonesian law. This transformation is evident in the recent actions taken by the Government of Indonesia, specifically the Ministry of Law and Human Rights, on January 5, 2021. On this date, the government issued Presidential Regulation Number 2 of 2021, which pertains to the Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents. This regulation, commonly known as the Presidential Regulation on Accession to the Apostille Convention, signifies a significant shift and modernization in the legal framework concerning the authentication of foreign public documents. By aligning itself with other nations that have already become parties to the Apostille Convention, Indonesia is embracing change and embracing a more streamlined and efficient approach to the legalization process (Nurhidayatullah, 2023). The Apostille Convention is a convention held in order to simplify the administrative process regarding the requirement of legalization or legalization of foreign public documents (Mayana & Santika, 2021). To bind itself to the Apostille Convention, a country can ratify or accession to the Apostille Convention so that a country is subject to the provisions stipulated in the Apostille Convention and applies to its member countries (Mayana & Santika, 2021).

The Apostille Convention aims to remove the requirement for diplomatic or consular legalization of documents originating from abroad that are categorized as public documents (Arieftha & Putra, 2022). The Apostille Convention is motivated by the development of bilateral and multilateral relations between subjects across state borders including civil relations which require a legalization process for documents of a public nature, where all documents must be endorsed by the diplomatic representative of the country of origin in the destination country where the document will be used (Arieftha & Putra, 2022). Initially, the legalization process for documents of foreign nationals residing abroad requires a power of attorney document given to a consultant/proxy/legal advisor, which must be signed by a local Notary Public (Nurhidayatullah, 2023). The Apostille Convention replaced this time-consuming process with a single certificate issued by a designated competent authority in the country where the public document is to be executed (Nurhidayatullah, 2023).

According to Article 1 paragraph 2 of the Presidential Regulation on Accession to the Apostille Convention stipulates that a copy of the original text of the Apostille Convention has been translated into Indonesian as attached to the regulation and is an inseparable part of the Apostille Convention Presidential Regulation, so that in this writing the Indonesian translation will be used in quoting the provisions in the Apostille Convention. Referring to Article 1 of the Apostille Convention, it has been explained which are included in public documents and which are not included in public documents, which reads as follows.

Article 1

> This Convention shall apply to public documents which are used in the territory of a Contracting State and which must be produced in the territory of another Contracting State. For the purposes of this Convention, what is considered a public document is:
>
> a. documents originating from an authority or official relating to a court or State tribunal, including those originating from a public prosecutor, court clerk or bailiff ("*huissier de justice*");
> b. administrative documents;
> c. documents issued by a notary public;
> d. official certificates attached to documents signed by natural persons in the exercise of their civil powers, such as certificates recording the registration of a document or recording the specific validity of a document on a specific date and the attestation of signatures by officials and Notaries.

However, this Convention does not apply:

a. to documents signed by diplomatic or consular officials;
b. to administrative documents directly related to commercial or customs activities (Triashari, 2018).

Based on the above provisions, one of the public documents according to Article 1 letters c and d is a document issued by a Notary and/or a document authorized by a Notary. This can be interpreted that documents issued by Notaries are public documents, so this

Apostille Convention has a relationship with the implementation of the duties and authority of Notaries in Indonesia, namely the authority to issue notarial deeds and / or attestation of a document or often referred to as legalization. That legalization will be handled by a public Notary who works as a person who is responsible for being able to make, or certify and sign it so that the document has perfect evidentiary power (Gitayani, 2018).

However, the authority of a Notary varies depending on the legal system adopted by each country within the convention. The process of legalizing and authenticating documents involves the parties involved in an agreement having their documents made and signed in the presence of a Notary, who is a public official at the time of signing. The legalization process requires the documents to be verified by the Ministry of Law and Human Rights, which ensures that the signatures match. To fulfill their role, every Notary is required to provide a sample of their signature to the Ministry of Law and Human Rights. The Apostille Convention simplifies the formal procedures and facilitates the acceptance of public documents by countries that are party to the convention. The legalization process under the Apostille Convention has implications for the responsibilities and authority of Notaries as public officials who are authorized to create authentic deeds and legalize and authenticate public documents.

Based on this, it is necessary to re-examine the arrangements regarding the legalization of foreign documents according to the Apostille Convention and its implementing regulations in Indonesia, especially those relating to and/or intersecting with the authority of Notaries as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (hereinafter referred to as the Notary Position Law Amendment) related to the legalization of foreign public documents after the issuance of the Perpres of Accession to the Apostille Convention so that in its implementation Notaries know the scope of their authority and also the limits of their authority related to the implementation of the Apostille Convention in Indonesia.

The purpose of this study is to examine the issues surrounding the legalization of foreign documents. These issues can be divided into two main areas. Firstly, it will analyze the procedures for legalizing foreign documents according to The Hague Convention of 1961. Secondly, it will investigate how the Presidential Regulation on the Ratification of the Convention impacts the authority of notaries in the process of legalizing foreign public documents. The study has two objectives: to understand and clarify the procedures outlined by The Hague Convention for legalizing foreign documents, and to analyze the role of notaries in the legalization process following the implementation of the Presidential Regulation ratifying the Convention.

Before conducting this research, several previous studies have been referred to that examine similar subject matter, but have several differences. A research by Dranisa (2022) discusses the provisions for the elimination of legalization of foreign public documents through the Apostille Convention as well as the application and urgency of Indonesia's accession process to the Apostille Convention in Indonesia through Presidential Regulation No. 2 of 2021 (Dranisa, 2022).

As well as in research by which discusses the use of Apostille Certificated for public documents in accordance with the Apostille Convention in force in Indonesia, and compares the use of Apostille Certificated in other countries (Gloria, 2021). Based on these two references, there are differences in this research which focuses more on the

regulation of legalization of foreign documents and the authority of Notary in legalizing foreign public documents after the accession of The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents 1961 by the Government of Indonesia.

2. RESEARCH METHODS

Normative legal research is the methodology employed in this study, focusing on the examination of legal norms, principles, and doctrines. Specifically, this study will delve into the regulations governing the legalization of foreign documents in accordance with The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents 1961. Furthermore, it will explore the roles and responsibilities of Notaries in the legalization process of both private and public documents as stipulated in the Notary Position Law Amendment, Perpres of Accession to the Apostille Convention, Permenkumham Apostille Services, and the Apostille Convention. This form of normative legal research is underpinned by two key approaches, namely legislative analysis and legal concept analysis, to dissect the issues at hand. The research methodology involves the utilization of document study techniques for legal material search, as well as qualitative analysis techniques encompassing systematization, description, and explanation (Qamar & Rezah, 2020).

3. RESULTS AND DISCUSSION

3.1. Legalization Arrangement of Foreign Public Documents According to the Apostille Convention

A document is declared trustworthy if it meets two qualities, namely reliability and authenticity (Dranisa, 2022). Public documents can be declared to have met the reliability requirements if the information in them is accurate information in accordance with what actually happened (Dranisa, 2022). This serves as proof that the document created by the parties was indeed signed by the parties and the process was witnessed by a Public Official. For documents that can be declared to have met the authenticity requirement, if the contents of the document are as intended by the author and are not in a damaged condition (Qamar & Rezah, 2020). To meet these two requirements (authenticity and reliability), the document must go through an attestation process known as legalization (Qamar & Rezah, 2020).

Document legalization is the process of identifying a document to determine that it is legally valid, issued and signed by an authorized party (Qamar & Rezah, 2020). Generally, documents that require legalization from a certain authority are public documents that will be used outside the territory of the country where the document was issued or documents originating from abroad that are to be used in a country (Nanda & Velentina, 2022). The legalization process of public documents originating from abroad involves a complicated, lengthy procedure and requires a lot of money. For this reason, the Apostille Convention became a legal breakthrough in 1961 to accommodate the legalization of a public document with more effective terms and procedures, so as to reduce the costs and time used to legalize a public document (Nanda & Velentina, 2022).

Apostille is an official signature attestation, stamp attestation, and/or official seal in a public document through matching with a specimen through one agency (Abidin &

Wirasasmita, 2022). In general, public documents issued by the state do not require a verification of the origin of the document if it is used in that state (Abidin & Wirasasmita, 2022). This provision does not apply if the document will be used in another country, because the institution or official who issued the document is not known between countries, so this is the background to the need for legalization (Nanda & Velentina, 2022). Referring to the provisions stipulated in the Apostille Convention in Article 1 which regulates the qualifications of public documents that are subject to this Convention and must apply to public documents used in the territory of the convention participating countries. The types of public documents referred to are:

a. Documents issued by certain authorities or officials associated with a country's courts, including documents sourced from public prosecutors, court clerks and/or bailiffs;
b. Administrative documents such as population and civil registration documents;
c. Deeds or documents issued by a Notary official; and
d. Official certificates that are attached to private documents and have a recorded validity period, specific date of signing, and signature attestation by a Public Official and Notary (Nurhidayatullah, 2023).

In addition to these documents, it excludes public documents that fall under the Apostille Convention, such as those signed by diplomatic or consular officials and/or administrative documents directly linked to commercial or customs activities. The legalization process for these documents is governed by the specific provisions related to diplomatic and consular relations, as well as commercial and customs law.

Furthermore, Article 2 of the Apostille Convention regulates the obligation of the countries participating in the convention to waive legalization of documents referred to in Article 1 of the Apostille Convention. Given that legalization according to the Apostille Convention is only a formality for diplomatic or consular officials to certify the authenticity of the signature, the authority of the document signatory, and the identity of the seal or stamp attached to the document with the procedures that have been carried out so far (Safira & Putra, 2022). However, the Apostille Convention still has formality requirements for the legalization of public documents, especially regarding the validation of the authenticity of a signature, its authority, the identity of the seal or stamp contained in the document is to add an Apostille certificate issued by the competent state authority where the document originated, this is regulated in Article 3 and Article 4 of the Apostille Convention (Safira & Putra, 2022).

For Apostille certificates, the official language of the issuing authority can be used while still including the title, namely "Apostille (Convention de la Haye du 5 octobre 1961)" which must use French. Referring to Article 5 of the Apostille Convention with an Apostille certificate a signature, the authority of the document signatory, and the identity of the seal or stamp attached to the public document can be declared authentic, so that the signature, seal and stamp on the certificate are exempt from any further attestation in the country where the public document will be used (Safira & Putra, 2022).

The Apostille Convention provides flexibility to each participating country to determine which institution or authority is authorized to issue Apostille certificates as its competence. That according to Article 7 of the Apostille Convention, stipulates that "Each authority designated in accordance with Article 6 shall keep a register or card index in which the authority shall record the certificates issued, stating: a) the number and date of

the certificate; b) the name of the signatory of the public document and his authority, or in the case of an unsigned document, the name of the authority who has affixed the seal or stamp."

Further arrangements regarding the Apostille process in Indonesia as a follow-up to the accession of the Apostille Convention by the government through the Presidential Decree of Accession to the Apostille Convention are outlined through the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 concerning Apostille Legalization Services on Public Documents (hereinafter referred to as Permenkumham Apostille Service) as an implementing regulation of the Presidential Decree of Accession to the Apostille Convention which regulates the technical process of legalizing Apostille on public documents in Indonesia. Article 1 point 1 of the Permenkumham Apostille Service regulates the definition of Apostille Legalization, hereinafter referred to as Apostille, which is the process of attesting an Official's signature, stamp and/or official seal contained in a public document requested for verification.

As mentioned earlier about the qualifications of public documents under the Apostille Convention, there are some differences in Indonesia when it comes to the types of public documents exempted from Apostille. The Presidential Regulation's Annex on joining the Apostille Convention states that documents issued by the prosecutor's office in Indonesia are not considered for Apostille. This means that documents from the prosecutor's office in criminal cases must still go through diplomatic or consular legalization if they are to be used abroad.

The Permenkumham Apostille Service further regulates the procedures for applying for Apostille of public documents in Article 3 paragraph (3), namely by filling out an application form which at least contains (Dranisa, 2022):

a. The identity of the Applicant;
b. The identity of the proxy, if the request is submitted by proxy;
c. The country of destination where the Document will be used;
d. The type of Document for which the Apostille will be requested;
e. The name and number of the Document and the name of the owner stated on the Document to be requested for Apostille;
f. The name of the Official signing the Document; and
g. The name of the agency that issued the Document.

In addition to completing the information and data in the Apostille application form, it is also important to upload supporting documents. These documents include the applicant's identity card, power of attorney identity card, power of attorney (if applicable), and the required documents for Apostille. Once the application is received, the Ministry of Law and Human Rights of the Republic of Indonesia, specifically the Directorate General of General Legal Administration, will verify the Apostille application. This verification process is done to ensure several things. Firstly, they check if the information on the application form matches the uploaded supporting documents. Secondly, they compare the official's signature, stamp, and/or official seal on the document with the specimen in the database of the Directorate General of General Legal Administration. Lastly, they verify the validity of the electronic signature on the electronic document. The verification process usually takes a maximum of 3 working days after the application is received.

3.2. The Authority of Notary in Legalizing Foreign Public Documents After the Accession of the Apostille Convention by the Government of Indonesia

Notary as an official who is given attributive authority by law, one of which is to make documents that have strong legal force in a legal process in accordance with rights and authorities (Mahja, 2005). The authority of Notary is divided into three types as stipulated in Article 15 from paragraph (1) to paragraph (3) of the Law on the Position of Notary Amendment and is fully explained as follows.

Article 15 paragraph (1) of the Notary Position Law stipulates that "Notaries are authorized to make deeds in general, what is meant by deeds in general are deeds made based on predetermined limitations." The limitations are "(1) The authority is not excluded to other officials stipulated by law; (2) In terms of deeds that must be made by a Notary, it is an authentic deed regarding all actions, agreements and provisions that are required by the rules of law to be made or desired by the person concerned; and/or (3) In terms of the interests of the legal subject, it must be clear for whose benefit a deed is made (Cindarputera & Putra, 2022).

Article 15 paragraph (2) of the Notary Position Law amends that:

> "In addition to the authority as referred to in paragraph (1), Notary is also authorized:
>
> a. Certify the signature and determine the date certainty of the private letter by registering it in a special book;
> b. Record the private letter by registering it in a special book;
> c. Make a copy of the original private letter in the form of a copy containing the description as written and described in the letter concerned;
> d. Attesting the suitability of the photocopy with the original letter;
> e. Provide legal counseling in connection with the making of a deed;
> f. Make deeds relating to land; or
> g. Make a deed of auction minutes."

Another special authority of Notary is also regulated in Article Article 51 paragraph (4) of the Notary Position Law with the amendment of the special authority, namely "Notary is authorized to correct writing errors and/or typographical errors contained in the Minuta of the Deed that has been signed in the presence of the confrontant, witnesses, and Notary as outlined in the minutes and provide a note about it on the original Minuta of the Deed by mentioning the date and Deed number of the correction minutes" (Notaris, 2013).

According to Habib Adjie, "Notary is possible to have authority that will be determined later, according to Article 15 paragraph 3 of the Notary Position Law Amendment stipulates that the authority that will be determined later is the authority of Notary based on other legal rules that will come later (*ius constituendum*) (Adjie, 2014). Based on this understanding, what is meant by this authority is that this authority occurs when another law is made.

The exercise of authority as a Notary is also followed by duties that must be fulfilled as stipulated in Article 16 paragraph (1) of the Notary Position Law, one of which is obliged to provide services in accordance with the provisions of this Law, unless there is a reason to refuse it (Anggelina, 2018). This obligation is closely related to the

legalization authority regulated outside the Notary Position Law Amendment, one of which is the Presidential Regulation on Accession to the Apostille Convention and the Permenkumham Apostille Service. These provisions also regulate the legalization of public documents issued by Notaries or official certificates attached to legalization information by Notaries (Bujangga & Purwanto, 2022), so there is a connection between the obligations of Notaries and the legalization process regulated in the Perpres of Accession to the Apostille Convention and Permenkumham of Apostille Services.

Legalization by a Notary is an acknowledgment of the date the agreement was made, so that a private letter that has obtained legalization provides certainty for the judge regarding the date, identity, and signature of the parties concerned and related to the agreement. In this case the parties whose names are listed in the letter and require their signatures under the letter can no longer say that the parties or one of the parties does not know what the contents of the letter are, because the contents have been read out and explained before the parties put their signatures in front of the public officials concerned and in front of witnesses. Based on this, the Notary has the authority to legalize documents made by the parties within the scope of civil relations or documents issued by the Notary which are known as notarial deeds.

The authority of a Notary to legalize a document is closely tied to the applicability of the Apostille Convention in Indonesia. Notaries, as Public Officials, have the power to certify signatures and verify the authenticity of letters by recording them in a special book, as stated in Article 15 paragraph (2) of the Notary Position Law Amendment. However, with the implementation of the Perpres of Accession to the Apostille Convention and the Permenkumham of Apostille Services, there has been a debate regarding whether Notaries are still authorized to legalize documents created by parties in civil relations or documents issued by Notaries themselves for use abroad as public documents. This is because the formal requirements for legalizing public documents under the Apostille Convention only require obtaining an Apostille certificate from the competent authority. In Indonesia, the competent authority for Apostille Services is the Directorate General of General Legal Administration of the Ministry of Law and Human Rights of the Republic of Indonesia.

Upon reexamination of the provisions stated in Article 1 number 3 of the Permenkumham Apostille Service, it is clear that an Official authorized to legalize and issue Apostille certificates is an individual who holds a specific position or role in a government office, institution, or non-governmental organization. This includes public officials appointed by the government. Notably, the definition of Official, as per Article 1 point 3 of the Permenkumham Apostille Service, encompasses Notaries since they are public officials appointed by the government. Therefore, the authority of Notaries to legalize public documents remains intact. However, it is important to note that the issuance of Apostille certificates falls under the jurisdiction of the Directorate General of General Legal Administration of the Ministry of Law and Human Rights of the Republic of Indonesia. This is clearly stated in Article 11 paragraph (3) of the Permenkumham Apostille Services, which specifies that "Apostille certificates issued and Apostille certificate registers are stored in the database of the Directorate General of General Legal Administration."

To reinforce the notion that Notaries still possess the power to authenticate public documents even after the implementation of the Apostille Convention, reference can be made to Article 4 of the Permenkumham Apostille Service. This article governs the

verification process conducted by the Directorate General of General Legal Administration, which involves checking the Officer's signature, stamp, and/or official seal on the Document against the Specimen stored in the Directorate General of General Legal Administration's database. In the case of a public document issued or legalized by a Notary, the verification provisions ensure that the document's legalization for Apostille is accurate. This verification process is crucial in determining whether the Apostille application will be accepted or rejected. If accepted, the Notary's signature and official seal will be included in the Apostille certificate.

Additionally, Article 11 paragraph (2) of the Permenkumham Apostille Service further supports the notion that Notaries retain the authority to legalize public documents after the enactment of the Apostille Convention. This article states that the Apostille certificate register contains the certificate's number, date, as well as the name, position, and institution of the Official who signs the Document. In the case of a document legalized or issued by a Notary, the Apostille certificate will include the Notary's signature, name, and other document legalization procedures carried out by the Notary in accordance with their authority as specified in Article 15 paragraph (2) letter a of the Notary Position Law Amendment. Therefore, it can be concluded that there is no reduction in the Notary's authority to legalize public documents following the implementation of the Perpres on Accession to the Apostille Convention and Permenkumham on Apostille Services.

4. CONCLUSION

The study findings indicate that regulations concerning the legalization of foreign documents under The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents 1961 are implemented on public documents mentioned in Article 1 of the Apostille Convention. This is done by eliminating diplomatic or consular legalization procedures and only requiring the fulfillment of formalistic legalization requirements outlined in Article 3 and Article 4 of the Apostille Convention. This includes obtaining an Apostille certificate from the competent state authority where the document originates, as stated in Article 7 of the Apostille Convention. The authority of Notaries to legalize foreign public documents remains unchanged after the issuance of the Presidential Regulation on the Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents 1961. This is further supported by Article 15 paragraph (2) letter a of the Notary Law Amendment, even after the enactment of the Presidential Regulation on Accession to the Apostille Convention and Permenkumham Apostille Services. Notaries are still authorized officials to legalize public documents issued by them or official certificates, as specified in Article 1 of the Apostille Convention in conjunction with Article 2 paragraph (3), Article 4 paragraph (2) letter b, and Article 11 paragraph (4) of the Permenkumham Apostille Service.

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ORAL AGREEMENT: LEGAL FORCE AND VALIDITY UNDER THE CIVIL CODE

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Abstract

The objective of this research is to examine legal validity of oral agreements based on the Civil Code and to recognize as well as understand the validity of oral agreements according to the Civil Code. The legal research method employed is normative research, with an approach to legislation and conceptual approach. Additionally, the legal materials are sourced from secondary legal materials and primary legal materials. The primary source is the Civil Code, while the secondary source includes books and scientific journals. The findings of this study indicate that, in accordance with the Civil Code, oral agreements possess legal validity. This legal validity is applicable to the parties involved in their creation. The legal validity involves a mutual obligation. The obligation is to willingly bind oneself and together in the oral agreement. The legal validity of oral agreements is closely linked to the validity of an agreement being deemed to have legal validity or meeting the requirements for its validity. An oral agreement is considered a valid agreement if it encompasses both of these elements.

Keywords: *Oral Agreement, Legal Force, Validity, Civil Code*

1. INTRODUCTION

Oral agreements are often found in everyday life in the community. Oral agreements usually begin with an agreement between one party and the other. When viewed from a juridical point of view, an agreement on an oral agreement has the lowest level of legal force. The level is determined by the existence of an agreement and the granting of authority to a public office. The assumption of the community that considers oral agreements do not have the same strength as written agreements. So far, agreements made generally contain the signatures of the parties, while agreements made orally do not contain the signatures of the parties (Libera, n.d.). This assumption becomes a separate problem in the practice of buying and selling transactions commonly carried out in the community.

The oral agreement has become a polemic and even a dilemma in the minds of the community. Especially for people who are afraid of problems in the future with the agreement they have made. The feared problem is that someone will suffer losses from an agreement that does not have legal force (oral). In contrast to the view of someone who assesses a written agreement. Written agreements are seen as having very strong legal force and cannot even be contested by any party. Written agreements can even be used as perfect evidence because written agreements are signed by authorized officials.

This assumption carries implications for the community when entering into agreements. The initial assumption may instill fear in individuals regarding the agreements they enter into, potentially leading to issues and harm. Conversely, the second assumption may provide a sense of security due to its perceived strong and indisputable legal validity. Both assumptions have repercussions that affect the parties involved in the agreement.

While opting for a written agreement may provide a sense of safety and comfort, it is crucial to acknowledge the potential consequences that come with it. These consequences primarily revolve around the costs that each party involved must bear. The process of preparing the necessary documentation is time-consuming, and the expenses associated with drafting a written agreement can be significant. Ensuring that all required documents are in order beforehand is essential to avoid delays in the agreement process. Additionally, parties must allocate sufficient time for document completion and the signing process with an authorized official.

Moving on from this community phenomenon, it is very dilemmatic if oral agreements are seen as agreements that lack legal force and even their validity is doubtful. Oral agreements become something that is very worrying because what is thought of is the consequences in the future.

The state of the art of this research is research conducted by Raisila & Utari (2018), highlighting the problem includes how the legal position of the MoU is viewed in terms of contract law. Second, the research by Kusuma & Purwanto (2020) questioning how the legal consequences of buying and selling used cars that are not in accordance with advertisements on Facebook media. Furthermore, the third research was conducted by Putra & Priyanto (2020), emphasizing why a Memorandum of Understanding is needed before making a contract, and how to strengthen the binding force of a Memorandum of Understanding (Utama & Purwanto, 2019). The three studies became comparative research with this study. Among the three studies, there are differences and similarities with this research. The difference lies in the strength and validity of the oral agreement used as the object of this research while the similarity lies in the concept of the agreement studied.

Based on the discussion above, the problem formulation in this research includes two main aspects, namely the legal force and validity of oral agreements based on the Civil Code. The purpose of writing this journal is to understand these two aspects in the context of civil law, with a focus on resolving the issues that arise. Thus, this research is expected to provide a deeper understanding and concrete answers to the issues raised.

2. RESEARCH METHOD

This type of normative legal research is the choice of this research because this research examines the implementation of a legal norm in positive law (Ibrahim, 2005). The problem lies in positive legal norms, in this case the Civil Code. Towards the selection of approaches, namely the legislative approach and the legal concept approach. Research legal materials are taken from secondary sources and primary sources. The primary source is the Civil Code, while the secondary sources are books, journals, and internet media. The legal materials were collected in a note containing the sources of the books and journals used. Furthermore, the material is processed qualitatively in a deceptive manner.

3. RESULT AND DISCUSSION

3.1. The Power of Oral Agreement based on the Civil Code

The legal force of an agreement indicates that all agreements made legally apply as laws to those who make them. According to Utama & Purwanto (2019), The provisions of this article do not specify the form of agreement made. The clause stating all agreements indicates that there is enforcement of all forms of agreements. All forms of agreements are intended, both written agreements and oral agreements. For all forms of agreements made both written and oral agreements, as long as they are valid, they cannot be closed to oral. Thus, the oral agreement can be applied to the form of agreement made orally.

The form of the agreement consists of two forms, namely written agreements and oral agreements. An agreement is an act of doing something, not doing something and giving something in an obligation to the party who makes it through a series of words and writing. In writing or what is meant by oral, namely in the form of words spoken regularly which contains approval in pronunciation. Spoken words contain promises based on a person's ability to perform an act in an oral agreement.

In legal concept, the agreement is an engagement (Saraswati, IG AA Tamara Sheila, 2018). In the agreement, there is a binding made by each party. Where the binding is done intentionally by the parties who make the oral agreement. Based on the legal concept of the agreement above, it has legal force. Regarding a valid agreement, it must fulfill the conditions for the validity of the agreement. The validity of the agreement is based on an agreement between the parties who promise, the capacity of the parties who make the agreement, the existence of a permissible thing, and the existence of a permissible causa (Sukadana & Resen, 2021).

The requirements for the validity of the agreement do not only apply to a person but also apply to the Company (Patria & Ariana, 2020). Companies are also allowed to make legal agreements because companies are also legal subjects. Likewise for cooperation agreements made by one or more than one company (Sukadana & Resen, 2021). The purpose of making a valid agreement is to strengthen the position of the company in the agreement made and the agreement made also has binding force. If the agreement has binding force and is made legally, then the agreement can be used as perfect evidence in court. If one of the parties makes a default, it can be resolved in the local court, while the agreement made becomes valid evidence (Ananta & Nurdin, 2021).

The legal force of an oral agreement can be found when the oral agreement is confronted with a case. When faced with a case, the oral agreement can show the validity specified in the Civil Code. The validity of an oral agreement includes agreement, ability, something that is allowed and the existence of a permissible cause. if the oral agreement meets all these requirements, then the oral agreement has legal force, and vice versa, if the oral agreement does not meet the requirements for the validity of the agreement, then the oral agreement will not mean anything. Not only oral agreements have no force, but written agreements also have no force if they do not meet these requirements. The validity of the requirements of the agreement becomes a fixed price when each party wants the agreement made to have legal force. Legal force is very much needed in making agreements both orally and in writing.

3.2. Oral Agreement Validity based on Civil Code

The validity of an agreement can be known from whether or not it has a predetermined form. Whatever the form, the agreement is a reference for the parties themselves. Its validity is also determined as a binding rule for the parties. As a rule as it contains an agreement made jointly.

The validity of a promise made, determined in the Civil Code as mentioned earlier (Aristyo & Cahyono, 2021). A valid promise comes from the existence of an agreement first, then the promise is outlined in the agreement. Although the Civil Code does not determine that the promise made must be in oral or written form, the promise made must fulfill these requirements. Oral agreements made by the parties contain matters that are very light or do not cause significant consequences if there is a default in the future. The substance of an oral agreement does not contain anything that is heavy or has an impact that results in the loss of one of the parties. In contrast to a written agreement which must be legalized by an authorized official, namely a Notary. Notaries are authorized to ratify the agreements they make. This authority of the Notary is given by law. Article 1 of the Notary Position Law stipulates that a Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws.

Especially written agreements made at a Notary, of course, the cost of making the deed is charged to each party. If the transaction requires the cost of making a deed, then the party charged with the cost of making a deed at the Notary or the fee is only charged to the seller. The cost is agreed upon by the parties to the agreement. If the buyer is willing to spend additional money to pay for the Notary's deed, then we are ready to make a written deed of sale and purchase.

The Civil Code does not specify that the agreement made must be in the form of a written agreement. The Civil Code only determines the validity requirements. However, the agreement made can be made freely. The freedom intended is the freedom of each. The freedom of the parties who make, enter into agreements with other parties, make the contents of the agreement, carry out the contents of the agreement, and determine its form (Salim, 2021).

Based on the legal concept, the freedom to make agreements, in relation to this freedom, is related to freedom in the principle of freedom of contract. In the freedom of contract, it is defined as the freedom to choose and make contracts (Adnyani, Putu Sri Bintang Sidhi, 2022). There is freedom obtained by the parties. That freedom is free to choose the subject of the agreement. The subject is done freely, with anyone can make a contract or agreement. Any party can be chosen and can choose to be invited to make a contract. Furthermore, there is freedom to take action, whether it is making a contract or not making a contract. In addition, there is also freedom in making the contents which contain the will or desire of the parties.

The freedom obtained by the parties, of course, has consequences that can lead to default (Sulthanah, 2021). All possibilities that can occur in the future or in the future will be made clauses that aim to prevent defaults. At least reduce the possibility of default. If the parties have included this possibility, then undoubtedly the agreement made will not cause harm to the parties.

Based on the concept of agreement law by the Indonesian Nation, where the concept of openness in making agreements is chosen (Jamil & Nury & Rumawi, 2020). With the adoption of the principle of freedom of contract, the agreement made is open. The system gives freedom to the parties who make an agreement to determine what agreement they

will make. The freedom determined is the freedom of the parties who make the agreement only, while the party not involved in the agreement, does not have freedom in the agreement (Kuswandi & Putri, 2021).

The Civil Code also does not provide certainty for the making of written agreements. Article 1320 of the Civil Code does not provide assertiveness regarding the validity of the agreement that must be made in writing or under the hand or orally. The Civil Code only provides the obligation to fulfill the conditions for the validity of the agreement. The agreement is said to be valid because it meets the requirements, and vice versa if the agreement is invalid. Regarding oral agreements made by the parties, such oral agreements have fulfilled the subjective and objective requirements. Thus, the oral agreement is a valid agreement (Nabilasari Lesmana & Yustiawan, 2023). Even though the oral agreement is made with words from the mouth of the parties only, it is still a valid agreement because it has fulfilled the subjective and objective conditions of an agreement. Therefore, the oral agreement remains valid because it fulfills all the elements in the requirements for the validity of an agreement.

4. CONCLUSION

Based on the previous discussion, it can be concluded that the effectiveness of an oral agreement depends on the commitment shown by all parties involved. The legal validity of oral agreements is supported by contract law and Article 1338 paragraph (1) of the Civil Code. Additionally, the legal effectiveness of an oral agreement relies on meeting the stipulations of the agreement and having a mutual intention to adhere to the terms. If an agreement meets the legal requirements of a valid contract, both oral and written agreements are equally enforceable by law. Therefore, for an oral agreement to be legally binding, it must meet the necessary legal criteria. Conversely, if an agreement does not meet these requirements, it has no legal effectiveness. Ultimately, the legal validity of an agreement is determined by its own compliance with legal standards.

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THE URGENCY OF LEGAL PROTECTION FOR SOLVENT COMPANIES WITH GOOD INTENTIONS IN BANKRUPTCY LAW IN INDONESIA

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Abstract

Bankruptcy is a situation when the debtors are unable to fulfill their obligations to pay debts to creditors. The requirement for a bankruptcy decision is based on Article 2 paragraph (1), namely that the debtors have two or more creditors and have not paid in full at least one debt that has matured and can be collected. This causes no legal protection for debtor companies that are still solvent and have good intentions from creditors who have bad intentions in abusing bankruptcy law. The debtors with good intentions will certainly find it difficult to face a bankruptcy application if the conditions are only 2+1. Debtor companies that do not pay off their debts do not always have bad intentions but face the threat of bankruptcy which should not be aimed at them. The study aims to understand how Indonesian bankruptcy law can better protect financially stable companies with good intentions from being unfairly declared bankrupt. This research used normative legal research using primary and tertiary legal materials collected from literature and document studies and analyzed qualitatively. The results of this research showed that legal protection and justice can be given to solvent debtors who have good intentions if bankruptcy law in Indonesia provides regulations regarding insolvency tests as an instrument to prove factually whether the debtor's financial condition is still healthy (solvent) or unhealthy (insolvent) so that it is appropriate to sentenced to bankruptcy.

Keywords: *Bankruptcy, Corporation, Insolvency, Good Intentions, Legal Protection*

1. INTRODUCTION

Bankruptcy is a situation when debtors are unable to fulfill their obligations to pay debts to creditors (Helena & Kartika, 2024). Legally, bankruptcy is defined in Article 1 paragraph (1) of Law Number 37 of 2004 which states: "Bankruptcy is a general confiscation of all assets of the bankrupt Debtor whose control and settlement is carried out by a curator under the supervision of the Supervisory Judge as regulated in Law". The Commercial Judge uses simple evidentiary principles to examine the bankruptcy application. This principle is found in Article 8 paragraph (4) which states: "The Application of bankruptcy declaration must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have been fulfilled." This Article means that a debtor can be bankrupted only requires the fulfillment of the bankruptcy requirements in Article 2 paragraph (1) which states: "The debtors who have two or more creditors and do not pay in full at least one debt that is due and collectible, is declared bankrupt by Court decision, either at their own application or at the application of one or more of creditors."

The provisions regarding the bankruptcy requirements which must be and are only based on Article 2 paragraph (1) states that debtors who have two or more creditors and do not pay in full at least one debt which has matured and can be collected (also known as the 2+1 requirement) causes no legal protection for debtor companies that are still solvent and have good intentions from creditors who have bad intentions to abuse

bankruptcy law (R. P. Putri & Prasetyawati, 2023). The debtors with good intentions will certainly find it difficult to face a bankruptcy application against them if the conditions are only 2+1. Debtor companies that do not pay off their debts do not always have bad intentions but face the threat of bankruptcy which should not be aimed at them. Regarding the bankruptcy requirements in Article 2 paragraph (1), the Constitutional Court in its Decision on Case Number: 071/PUU-II/2004 and Case Number: 001-002/PUU-III/2005 states that the very lax requirements for bankruptcy applications are a form of negligence legislators in the formulation of the article. In this decision, the Constitutional Court states that the makers of the Bankruptcy Law and PKPU or Postponement of Debt Payment Obligations are negligent because they removed the requirement of "unable to pay" so that creditors could easily apply for a bankruptcy declaration. This negligence by the legislators gives creditors freedom and has the potential to be exploited by creditors who have bad intentions to put pressure on debtor companies. The Court states that this would be a problem if the debtor was a solvent company but went bankrupt. Ideally, a bankruptcy law which focus on the principle called commercial exit from financial distress, namely that bankruptcy is a solution to the debt problem of debtors who are experiencing bankruptcy and not as an instrument to bankrupt a business (Mait et al., 2023).

The result of a bankruptcy decision for a debtor in the form of a company by the Commercial Court is the liquidation or confiscation of all assets belonging to the debtor to be managed and the bankruptcy assets being settled by the curator, resulting in the termination of the debtor company's operations and could result in bankruptcy (A. M. Putri & Marwanto, 2023). The liquidation of assets specified in Article 1 paragraph (1) coupled with the bankruptcy requirements in Article 2 paragraph (1) of the Bankruptcy Law and PKPU provides room for unfair business competition because financial insolvency is not a consideration in the law so that if it has been proven. So, debtors can easily be declared bankrupt by the Commercial Court.

Bankruptcy should not need to be terminated if the value of the debtor's assets is more than the debt or is called a solvent debtor, so the debtor should receive legal protection and legal certainty from the threat of creditors who have bad intentions by abusing bankruptcy law. One of the bad intentions of creditors in question is filing a bankruptcy application against a debtor who is still solvent. Bankruptcy law should provide an opportunity for companies that do not pay debts but still have business prospects and have good intentions to pay off their debts first, carry out restructuring and so on to make their companies healthy again and bankruptcy should be the last resort (Gaol et al., 2021)

Legal protection, justice and legal certainty should be given to solvent debtors who have good intentions if bankruptcy law in Indonesia provides regulations regarding insolvency tests as an instrument of factual proof of whether the debtor's financial condition is still healthy (solvent) or unhealthy (insolvent) so that it is appropriate to be sentenced bankruptcy decision.

This study aims to understand how Indonesian bankruptcy law can better protect financially stable companies with good intentions from being unfairly declared bankrupt. Ultimately, the research aims to provide insights into how Indonesian bankruptcy law can be improved to better support solvent companies in financial distress.

2. LITERATURE REVIEW

2.1. Theory of Legal Certainty

Certainty is an inseparable characteristic of law, especially written legal norms. Laws without the value of certainty will lose meaning because they can no longer be used as guidelines for behavior for everyone. Certainty can be stated as one of the law goals. Gustav Radbruch (Radbruch, 1932) states that 4 (four) basic things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law must not be easily changed (Neltje & Panjiyoga, 2023). This theory is used in this research because through simple evidentiary arrangements in bankruptcy law in Indonesia, it will guarantee legal certainty for the parties involved in a bankruptcy application.

2.2. Theory of Legal Protection

Based on Fitzgerald (Fitzgerald, 1962), theory of legal protection has two main dimensions. First, the substantial dimension, which emphasizes the protection of individual rights recognized by law and public policy. Second, the procedural dimension, which emphasizes protection through a fair and independent legal process, which involves the right to a fair trial, the right to an open hearing and the right to the submission of adequate evidence (Hapsari & Nada, 2021). This theory is used in this research because through simple evidentiary arrangements in bankruptcy law in Indonesia, it will provide legal protection for debtors who have good intentions and whose financial condition is still solvent.

2.3. Previous Research

Previous research related to this study includes works by Purwanto (2022), who examined corporate law in bankruptcy applications in Indonesia, and by Laksmi & Astariyani (2019), who explored debtor strategies to evade bankruptcy. The distinction between these studies and the present research lies in their respective focuses: the former centered on applying bankruptcy terms to financially insolvent companies unable to meet their debt obligations, while the latter concentrated on creditor actions to prevent bankruptcy, such as debt repayment or filing for PKPU (Postponement of Debt Payment Obligations). These prior studies differ from the current research, which centers on the critical need for legal protection for solvent companies with genuine intentions within Indonesian bankruptcy law.

3. RESEARCH METHODS

The research methodology employed in this study comprised several key components. Firstly, the research design adopted was normative juridical legal research, relying on written legal norms expressed in regulations or other literary forms. Secondly, the research sample encompassed two sources of legal materials: primary legal materials, specifically Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, and secondary legal materials, including books, doctrines, and research findings related to evidence in bankruptcy proceedings. Thirdly, data collection techniques primarily involved a literature study, wherein books

and journals relevant to the research problem were reviewed, supplemented by document study to understand official institutional documents such as decisions. Finally, data analysis was qualitative in nature, focusing on legal material analysis through an analytical descriptive approach. This method entailed analyzing specific legal issues and linking them to existing literature, legal expert opinions, or relevant laws and regulations.

4. RESULTS AND DISCUSSION

4.1. Research Results

4.1.1. The Consequences of No Legal Protection for Solvent Companies with Good Intentions in Bankruptcy Law in Indonesia

Bankruptcy decisions for debtors are only guided by Article 2 paragraph (1) of Law Number 37 of 2004, namely debtors who have two or more creditors and have not paid in full at least one debt that has matured and can be collected (also known as condition 2+ 1) as a simple evidentiary principle, it shows that there is no legal protection and legal certainty for debtors who are still solvent and have good intentions from creditors who have bad intentions in abusing bankruptcy law. No legal protection can make emergence of bankruptcy decisions against companies (debtors) that are still solvent, which can be an international issue is the bankruptcy decision of the Central Jakarta Commercial Court against PT Prudential Life Assurance (Decision Number 13/ Pailit /2004/ PN. Niaga. Jkt. Pst) because the 2+1 bankruptcy requirements are met even though the company's financial condition at that time was very solvent because the level of risk based capital of 225% far exceeded the Government's provisions of 100% and also revenue grew 114% compared to 2002, namely more than IDR 1 trillion (Budhisatrio et al., 2021).

Apart from that, this was also experienced by PT. Telkomsel was declared bankrupt by the central jakarta commercial court (Decision Number 48/ Pailit/ 2012/ PN. Niaga. Jkt. Pst) even though at that time the amount of debt was only 0,4% of the company's net profit in 2011, namely more than IDR 12 trillion (Pratama, 2021). Even though in the end both bankruptcy decisions were annulled by the Supreme Court at the cassation level, of course the bankruptcy of these two large companies had a negative impact on society and the condition of the business and economic environment in Indonesia.

A bankruptcy decision has serious consequences for the debtor company because when it has been declared bankrupt by the Commercial Court, from then on all of the PT's assets will be in general confiscation, resulting in the legal status of all assets being transferred to bankruptcy assets which has the effect of freezing the assets or what is called stay for a certain period of time and are supervised and managed by the curator. Macroeconomic bankruptcy of a company can affects the pulse of the regional and national economy because it is affected by the rate of production and distribution of goods and services, tax revenues for the state, as well as the potential for increased unemployment rates amidst difficulties in employment which will ultimately affect consumers at the lowest level, thereby affecting real sector activities.

Other consequences that can occur due to the regulation of bankruptcy requirements in Article 2 paragraph (1) and the principle of simple proof in Law Number 37 of 2004, which can lead to the bankruptcy of companies that are still solvent, include the potential for investment to be hampered in Indonesia due to the lack of legal certainty as one of the three conditions for attracting investors in addition to stable business and political

opportunities, which poses a risk to the stability of national economic growth. In fact, Indonesia's economic growth is very dependent on Gross Domestic Product and the growth of the young generation population who need employment opportunities. Apart from that, this shows the unequal protection between debtors, creditors and stakeholders in this law.

4.1.2. Insolvency Test as Legal Protection for Solvent Companies with Good Intentions in Bankruptcy Law in Indonesia

The simple evidence adopted by Law Number 37 of 2004 makes it easy for a company to be declared bankrupt without considering its financial condition, whether it is solvent or insolvent, even though ideally the debtor who can be bankrupted is an insolvent debtor. There is an inability to pay off financial obligations when they are due and the obligations are over greater than its assets at a certain time so that the company is declared financially incapable. The debtor's financial health is still solvent or insolvent based on the method which is to use an insolvency test or the financial solvency test applied in the bankruptcy laws of various countries such as the Netherlands, the United States, and Japan. The insolvency test can be carried out in three ways, namely :

a) Balance sheet insolvency test, namely whether the Debtors are unable to pay their obligations because the total value of their liabilities is greater than the total value of their assets;
b) Cash flow insolvency test, namely whether the Debtors are unable to pay their obligations due to a temporary situation in their finances, because they cannot pay them after the due, or at that time they do not have sufficient liquidity to pay their obligations due to a cash flow deficit (larger cash outflow from cash inflows).
c) Capital adequacy solvency test, namely whether the company still has adequate capital.

Therefore, the companies that can be bankrupted should be those that have experienced balance sheet insolvency.

The insolvency test before or during the bankruptcy application process is a form of good legal protection for debtors who are still solvent and have good faith before or during the bankruptcy application (Shubhan, 2020).This is supported by Sutan Remy Sjahdeini states that if the debtor's financial condition is still solvent, bankruptcy law should not provide a way for the debtor to be filed for bankruptcy at the Commercial Court but instead an ordinary civil lawsuit should be filed at the District Court (Asra, 2015).

If the value of the debtor company's assets is greater than its debts, then Article 1131 *Burgerlijk Wetboek*, Article 1132 *Burgerlijk Wetboek*, Article 1133 *Burgerlijk Wetboek*, and so on still guarantee the fulfillment of its obligations without the need to use bankruptcy law, namely in the following two ways: 1. The debtors voluntarily pay their debts with their possessions; and 2. The creditors sue the debtor to the District Court with a claim for default in order to fulfill their obligation to pay off their debts so that there is no need to file a Bankruptcy lawsuit at the Commercial Court.

The existence of an insolvency test will provide legal protection and justice for solvent debtors who have good intentions from the threat of creditors with bad intentions who use bankruptcy law solely as a debt collection regime and an instrument to bankrupt debtors for various motives such as business competition or others. The bankruptcy law

in Indonesia has implemented the principle of commercial exit from financial distress as a general principle in bankruptcy law in the world and positioned bankruptcy law as the last resort for parties in dispute.

4.2. Discussion

The principle of simple proof is a principle that applies in Bankruptcy law in Indonesia currently contained in Article 8 paragraph (4) of Law Number 37 of 2004 which states: "The application for a bankruptcy declaration must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as intended in Article 2 paragraph (1) has been fulfilled." The existence of this Article means that debtors can be bankrupted only requires the fulfillment of the bankruptcy requirements in Article 2 paragraph (1) which states: "The debtors who have two or more creditors and do not pay in full at least one debt that is due and collectible, is declared bankrupt by Court decision, either at their own request or at the request of one or more of their creditors." This provision means there is no legal protection and legal certainty for debtor companies that are still solvent and have good intentions from creditors who have bad intentions in abusing bankruptcy law. The debtors with good intentions will certainly find it difficult to face a bankruptcy application against them if the conditions are only 2+1. Debtor companies that do not pay off their debts do not always have bad intentions but face the threat of bankruptcy which should not be aimed at them.

In fact, a bankruptcy decision has implications that are like a death sentence for debtors, namely general confiscation (liquidation) of all debtor assets in accordance with Article 1 Paragraph (1) which can result in the cessation of company operations and even bankruptcy. This is contrary to the principle of corporate rescue from financial distress which is generally known in bankruptcy law in the world which provides legal protection and legal certainty for solvent companies that have good intentions. Bankruptcy law in Indonesia should include requirements for factual proof in the form of financial insolvency as a condition for bankruptcy, which is obtained by carrying out an insolvency test which will show whether the debtor's financial health is still solvent or insolvent. According to Sutan Remy Sjahdeini, only insolvent debtors should be able to go bankrupt, while those who are still solvent should have an ordinary civil lawsuit filed in the District Court. The financial insolvency requirements can make legal protection is created for solvent debtors who have good intentions to escape the trap of bankruptcy and confirms legal certainty that only debtors who are declared financially insolvent can be declared bankrupt. This research is still limited to explaining the consequences of no legal protection for solvent companies with good intentions and providing an insolvency test as the solution. Future research can further explain insolvency tests and how to carry them out by taking examples of insolvency tests regulated in bankruptcy law in various countries such as Netherlands, United States, and Japan as a reference for academics, legal practitioners, legislators and the Indonesian government to formulate further bankruptcy regulations which provides legal protection and legal certainty for solvent debtors who have good intentions.

5. CONCLUSION

Legal protection for solvent debtors who have good intentions needs to be provided by bankruptcy law, which has implications for creating a sense of security and comfort as well as legal certainty for entrepreneurs and investors in Indonesia. This is not only beneficial for company stakeholders, but is also beneficial both directly and indirectly. The directly to the social economy of the wider community because various companies operating in this country are at the forefront of driving Gross Domestic Product through their roles as producers, consumers and absorbers of labor. Various bankruptcy decisions against solvent companies such as PT. Prudential, PT. Telkomsel, and others have provided concrete evidence of the implications of the absence of legal protection for solvent companies with good intentions for the company, its investors, its workforce, its suppliers, the wider community, as well as the business climate in Indonesia, especially for the companies exemplified. This research is a large national company so it has a broad impact on society and the government.

The insolvency test is actually something that is commonly applied in bankruptcy law in the world and is an implementation of the principle of corporate rescue from financial distress. The application of the insolvency test to look for factual evidence of the company's financial condition has implications for the realization of legal protection for solvent debtors who have good intentions because the insolvency test will show that the company is still solvent and not worthy of being declared bankrupt so that the solvent company is safe from the threat of general confiscation (liquidation) which is like a death sentence for them. This also has implications for legal certainty that only insolvent companies can be bankrupted, if the solvent company's dispute is through an ordinary civil lawsuit in the District Court.

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THE URGENCY OF ATTACHING FINGERPRINTS TO THE DEED MINUTES IN RELATION TO THE AMENDMENT OF THE NOTARY OFFICE LAW

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Abstract

The main objective of this research is to determine and analyze the legal certainty of fingerprint attachment in the Notarial Deed Minute and the related urgency and implications in the event of a dispute in the minute without fingerprint attachment related to the UUJN-P. The method used in this research is a normative juridical method with a focus on legislative approach and conceptual approach, using a technique of analyzing legal materials through description, systematic, interpretation, and argumentation. The results of this research indicate that changes in the regulation regarding the obligation to attach fingerprints in the UUJN-P need to be supplemented with implementing regulations in order to create legal certainty and minimize multiple interpretations in its application procedure. The attachment of fingerprints in the minute does not affect the authenticity of the deed, as the authenticity of a deed is determined by the fulfillment of Article 1320 of the Civil Code, Article 1868 of the Civil Code, and Articles 38-53 of the UUJN-P. In terms of proof, both the minute with fingerprint attachment and the minute without fingerprint attachment have the same evidentiary strength, as they are still considered authentic deeds. The attachment of fingerprints in the minute can serve as evidence in court proceedings to support the cautious principle of notaries in case of signature forgery.

Keywords: *Notary, Fingerprints, Deed Minutes*

1. INTRODUCTION

A Notary is a public official who is appointed and dismissed by the Minister, specifically the Minister of Law and Human Rights. The legal unification in the field of Notary is based on Law No. 30 of 2004 concerning Notary Position, also known as UUJN, for almost 10 years. Then, in 2014, changes were made to several provisions, resulting in Law No. 2 of 2014 concerning Notary Position, also known as UUJN-P. These changes were made because legal provisions must be flexible in adapting to the development of time, so they must always evolve to be in line with the lives of the community. After the implementation of UUJN-P, a Notary is bound by specific rules when performing their duties. Article 1 paragraph (1) of UUJN-P states that "*A Notary is a public official who has the authority to create an authentic deed and has other authorities as referred to in this Law or based on other Laws*." Therefore, based on this, in providing services to the government and the public in the field of law, a Notary acts as an extension of the government, with the function of having authority over the authentic deeds they create in order to achieve legal certainty and legal protection for the community. The creation of authentic deeds is a state effort to achieve legal certainty and justice in order to realize the rights of citizens, including constitutional rights (Iryadi, 2018).

In creating authentic deeds, a notary is required to undertake the steps of Constatir, Constituir, and Verleijden. These three steps must be performed by a notary to ensure that the deed produced is valid, in accordance with the legal provisions, to become an authentic deed and not lose its authenticity in the future. Authentic deeds are specifically

regulated in Article 1868, which stipulates that "*an authentic deed is a deed made in the form prescribed by the law by or before a public official authorized at the place where the deed is made*." Authentic deeds are essentially expected to contain formal truth so that they can serve as the strongest evidence and have perfect probative force. The types of authentic deeds can be distinguished into two kinds as follows:

1. *Relaas* Deed, which is an authentic deed made by a public official, recorded or written by a notary regarding everything discussed by the parties.
2. *Partij* Deed is a deed made by providing the desired information and direct statements by the parties before a notary at the request of the parties and recorded through a Notary Deed.

The assurance of certainty and legal protection through a notary represents a concrete effort by the government to minimize deviations in actions, events, or legal relationships within society. In practice, a notary has the obligation to ensure the identity of the parties involved and that what they convey in their acts is accurately reflected according to their intentions and understood by all parties. This involves reading aloud the contents of the deed to ensure clarity for the involved parties and obtaining their signatures to signify their agreement with its contents. Article 1 number 8 of the UUJN-P (Law on Notary) stipulates that "*the deed minutes are the original deed containing the signatures of the parties, witnesses, and the Notary, which are kept as part of the Notary Protocol*." The signing of the parties on the notarial deed signifies their intention that the document, in legal terms, is considered their own writing, and they are willing to accept the rights and obligations arising from it as responsibilities to be fulfilled. These efforts are made to protect the parties from issues such as identity fraud that may lead to disputes in the future. In a dispute during the litigation stage, where this plays a crucial role in evidence presentation, written documentation can significantly aid in resolving a case. Therefore, such evidence, in the form of an authentic deed, can be utilized effectively in legal proceedings (Rahmawati, 2019).

In Article 44 paragraph (1) of the Law on Notary (UUJN-P), it is regulated that "*after the deed is read, it shall be signed by each party, witness, and Notary, except if a party is unable to sign and states the reason*." Furthermore, in Article 16 (1) letter c of the UUJN-P, it is stipulated that "*in performing their duties, a notary must affix letters, documents, and the fingerprints of the parties to the Deed Minutes*." Fingerprints are the impressions of fine lines with specific patterns that are unique to each individual's hand, intentionally taken and stamped with ink by the Notary's officer.

However, the provision in Article (1) letter c of the UUJN-P does not provide detailed regulations regarding the significance of affixing fingerprints. There is ambiguity regarding the form and procedure for taking the fingerprints of the parties to be affixed to the Deed Minutes, as well as how to proceed if a party has physical limitations in their fingers or toes, preventing them from affixing their fingerprints to the sheet attached to the Deed Minutes.

If a party explains their limitations in signing, the Notary must explicitly mention the reason for this hindrance, which should be included in the closing or concluding part of the deed. The implementation of the legal provision itself remains ambiguous, particularly regarding which part of the finger the fingerprint refers to and its attachment in different writing formats used by each Notary. Therefore, the regulation in this article

continues to generate various opinions, both in favor and against, from various perspectives. Regarding the explanation of the provision regarding the application of fingerprint attachment in the UUJN-P regulations, it does not clearly address the inclusion and attachment of fingerprints but is merely stated as "sufficiently clear" in the explanation of the UUJN-P provision.

There have been several studies examining the attachment of fingerprints in a deed minutes. The first study, conducted by Novelin & Sarjana (2021), which focused on which finger is used and whether it can be done for parties capable of signing or only for parties unable to sign, as well as the consequences if the Notary attaches or records the fingerprints of the parties inconsistently. The second study, conducted by Dewi & Ibrahim (2020), which focused on what actions the Notary can take if a party has a finger defect or an incident causing damage to the fingerprints, rendering them unable to affix their fingerprints in the Deed Minutes, and what legal consequences arise if this occurs.

Upon careful comparison, these two studies have fundamental differences in their discussion topics compared to the topic of this study. This writing is focused on the legal certainty and urgency of attaching fingerprints in Deed Minutes. Therefore, in conducting a legal research study, it is evident that this writing has its own originality.

The purpose of this writing is to analyze, identify, and elaborate on the legal certainty of attaching fingerprints in Notary deed minutes related to UUJN-P and the urgency and implications if disputes arise in the deed minutes without fingerprint attachment related to UUJN-P.

2. RESEARCH METHOD

The research method employed in this paper is normative juridical legal research. This research focuses on examining aspects within the norms themselves. The research method involves a legislative approach and a conceptual approach with three sources of legal materials: primary legal materials such as legislation, in this case, Article 16 paragraph (1) letter c of the Law on Notary (UUJN-P); secondary legal materials such as books, scholarly works, and tertiary legal materials serving as explanations of the primary and secondary legal materials, such as encyclopedias or dictionaries. Descriptive, systematic, interpretative, and argumentative techniques are utilized in analyzing these legal materials. To analyze the answers to the issues raised in this research, a descriptive analysis approach is employed.

3. RESULTS AND DISCUSSION

3.1. Legal Certainty of Fingerprint Attachment in Notary Deed Minutes in relation to the amendment of the Notary Office Law

As societal awareness of the importance of documenting agreements and significant events in the form of deeds signed by the parties and witnessed by officials and witnesses has increased (Tjukup et al., 2016), the need for such documentation has become more apparent. One of the authorized officials to record events for evidentiary purposes is the Notary. Specifically, the form of deeds created by a Notary, as a material requirement, is mandated by Article 1320 of the Civil Code, which stipulates that for a valid agreement to occur, four conditions must be met:

1. Agreement by those binding themselves,

2. Capacity to enter into an agreement,
3. A specific subject matter,
4. A lawful cause.

Once the requirements for the validity of an agreement, as outlined in Article 1320 of the Civil Code, have been fulfilled, the authentic deed must also satisfy the elements required by Article 1868 of the Civil Code, which states that "*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*." From the wording of this article, we can ascertain that a deed can be deemed authentic by meeting three criteria:

1. Made in the form prescribed by law,
2. Made before an authorized public official,
3. Made at the place or jurisdiction of the public official creating it."

The public official referred to above is also regulated in the Law on Notary Public (UUJN-P), Article 1 number 1, which states, "*A Notary is a public official authorized to create authentic deeds and has other authorities as stipulated in this Law or based on other laws*." The formal requirements regarding the form and nature of deeds created by Notaries themselves are clearly defined in Articles 38-53 of the UUJN-P, with Article 38 specifying that every deed consists of:

1. The beginning of the deed or the header, which includes the title, number, time, day, date, month, year, full name, and position of the Notary,
2. The body of the deed, which includes the comparison of the deed, the identities of the parties, their legal standing or authority to act, the premises of the deed, the contents of the deed, and the identities of identifying witnesses,
3. The end or the closing of the deed, which includes the reading, signing, and witnessing of the deed instrument, as well as information on changes and replacements (*renvoi*).

Furthermore, Article 15 paragraph (1) of the Law on Notary Public (UUJN-P) also stipulates that "*A Notary is authorized to create authentic deeds concerning all actions, agreements, and determinations required by regulations and/or desired by interested parties to be declared in authentic deeds*." Therefore, from the explanation above, we can understand that a deed created before a notary, meeting the formal requirements for the validity of agreements as outlined in Article 1320 of the Civil Code and in the form prescribed by the UUJN-P, is considered authentic in accordance with Article 1868 of the Civil Code. The formal requirements must be fulfilled by the notary to ensure that the parties are present before the notary, as stated in the beginning of the notarial deed. If all procedures, methods, and requirements are met, the deed created before the notary binds those who create it, including their heirs, while the material aspects of the notarial deed have certain limitations. These limitations are in accordance with what is seen, heard, declared, and explained by the parties to the Notary.

Regarding an authentic deed, the strength of such a deed made before a Notary holds perfect evidentiary power, in accordance with Article 1870 of the Civil Code, which states, "*For the interested parties and their heirs, as well as for those who acquire rights from them, an authentic deed provides perfect evidence of its contents*." The Notary is

bound by the principle of material truth within the perspective of formal truth. Therefore, the Notary holds responsibility for the documents recorded in the deed minutes materially, limited by the statements of the parties. If the data provided by the parties is falsified, then the responsibility falls on the parties themselves. To minimize the occurrence of data falsification in deed creation, the Notary is obligated to take three steps:

1. *Constatir*: This step involves qualifying empirical facts as legal facts, providing legal guidance if necessary regarding legal events, legal actions, or legal relationships conducted by the parties before the Notary.
2. *Constituir*: This step involves determining the actual type of action that occurred among the parties and determining the appropriate type of deed desired by the parties before the Notary.
3. *Verleijden*: This step involves drafting the deed minutes, reading and explaining the contents of the deed, reading and signing the deed minutes together with the parties, witnesses, and the Notary, followed by issuing a copy of the deed.

The three points above must be observed and implemented by the Notary when creating deeds to ensure that the interests of the parties requesting the Notary's services remain protected without violating existing rules and are not carried out for the Notary's own interests. This is because the Notary is not permitted to protect their own interests through the legal products they create (Kusuma, 2021).

Article 16 paragraph (1) letter c of the Law on Notary Public (UUJN-P) regulates that the Notary has the obligation to affix letters, documents, and fingerprints of the participants to the Notarial deed minutes. The unique patterns of fingerprints, which vary from person to person, are utilized to prove the authenticity of someone's identity (Dewi & Ibrahim, 2020). Before the enactment of the UUJN-P, the background of fingerprint attachment to deeds was solely determined by the Notary, using interpretation to decide on the application of fingerprints to deeds that could not be signed by the participants (Novelin & Sarjana, 2021). With the enactment of Article 16 paragraph (1) letter c of the UUJN-P, legal certainty aimed at ensuring certainty was not achieved but instead led to multiple interpretations due to the lack of explanation regarding its application procedure. Ambiguity regarding the method and technical mechanisms of fingerprint attachment causes Notaries to have various interpretations because the explanation in the article is stated to be clear enough. Some argue broadly that fingerprints include all ten fingers, while others argue that only the thumbs are required (Abhirama, 2018). In practice, the process of fingerprinting is carried out at the time of deed signing, affixed to a blank sheet with the participant's name, and then attached to the deed minutes. The clear explanation provided in the article and the absence of a clear mechanism make Notaries inconsistent in applying the obligation of fingerprint attachment to deed minutes.

Article 44 paragraph (1) of the Law on Notary Public (UUJN-P) stipulates that "*immediately after the deed is read, it shall be signed by each participant, witnesses, and the notary, unless a participant is unable to sign by stating the reason*." If there are constraints in the preparation of a deed such as parties unable to sign due to circumstances beyond their control, such as illiteracy or physical limitations, it must be clearly stated in the closing section of the deed. In notarial practice, there is a term known as "*Surrogaat*," originating from Dutch, meaning "*substitute*" (Larashati, 2023). Surrogaat is a statement written by the Notary based on direct statements from the parties as participants, as a

substitute for the signature when the participant is unable to sign due to certain circumstances, and is emphasized at the end of the Notary's deed (Azis et al., 2021). Since the function of the participant's fingerprint before the enactment of the UUJN-P was as a substitute for the signature, the fingerprint is affixed directly to the deed minutes immediately after the relevant deed is read, not on a separate sheet attached to the Notary's deed minutes. The finger used to affix the fingerprint varies for each Notary; some use all their fingers, while others use only the thumbprint of the right/left thumb. This fulfills the provisions of Article 44 paragraph (1) and Article 16 (1) of the UUJN, making the deed thus created an authentic deed, as referred to in Article 1868 of the Civil Code, because it serves as evidence that the parties have indeed agreed to the contents of the deed according to their wishes expressed to the Notary. It is correct that the affixation is done on the same sheet as the deed text, not on a separate sheet from the Notary's deed minutes.

Legal certainty is a fundamental principle in law. In its theory, the law, in its certainty, requires that rules must be formulated in written form. Based on this theory, it is understood that law cannot be separated from certainty because law without certainty cannot provide truth and justice for everyone, which is the essence of the law itself. The differences in interpretation regarding the meaning and technical aspects of fingerprint attachment create doubts in implementing the correct rules, thus failing to create clear legal certainty. Notaries, in creating authentic deeds, must provide legal certainty, protection, and order. The responsibility of a Notary is not only in the process of creating authentic deeds but also when disputes arise from errors made by the Notary upon the formation of authentic deeds. Therefore, regarding the provisions of Article 16 paragraph (1) letter c of the Law on Notary Public (UUJN-P), there is a need for clarification and implementing regulations regarding the procedure for applying fingerprints in deed minutes to ensure harmonization in the application of fingerprint attachment in deed minutes created by Notaries.

3.2. Urgency and Implications in the Event of a Dispute on the Minute of Deed Without Fingerprint Attachment related to the Amendment to the Law on the Office of a Notary

The Notarial Deed inherently possesses inherent strength, namely: "*complete (volledig bewijskracht) and binding (bindende bewijskracht), which means that if the evidence of the Authentic Deed presented meets the formal and material requirements, and the opposing evidence presented by the defendant does not diminish its existence, then it inherently carries the power of perfect and binding proof (volledig en bindende bewijskracht). Thus, the truth of its contents and statements becomes complete and binding to the judge, who must consider it as the basis of perfect and sufficient facts to render a decision on the disputed matter*." The principle of acta publica probant sese ipsa serves as a basis for proving authentic deeds. This principle means that if an authentic deed visibly fulfills certain criteria stipulated, it is considered authentic until proven otherwise. Hence, a notarial deed possessing such perfect proof power can be degraded to a private document in its probative force if proven otherwise. Degradation can be understood as a decline or lowering in quality or moral standards towards a lower level; concerning notarial deeds, it signifies a decline in quality, meaning that if a notarial deed is proven to have legal defects, it requires other evidence to support its validity

(Purnayasa, 2018). The evidential value of a notarial deed consists of three aspects (Sasauw, 2015):

1. Manifest Evidential Power: The ability of the deed to prove itself as an authentic deed until proven otherwise, meaning until someone can prove that the deed is not authentic through evidence. Parameters used to determine an authentic deed can be observed outwardly through the form of the deed, from its title to its conclusion, which can be determined by relevant officials such as Notaries, Subdistrict Heads, etc.
2. Formal Evidential Power: The evidential power of the deed itself to prove that it has been made in accordance with legal requirements, for what it is declared for, and for what is stated in the deed is the truth witnessed by the official who made it. If a party denies, it must prove the falsehood formally, such as the day, date, time, parties present, and the falsehood of what was seen, heard, or witnessed regarding the legal events in the deed.
3. Material Evidential Power: The evidential power of what is explained by the parties in front of the Notary must be evaluated as true and genuine and becomes the responsibility of the parties themselves. What is stated therein constitutes valid evidence for the parties who made it, their heirs, and third parties who obtain rights from them.

If an authentic deed fails to meet one of the three evidential aspects mentioned above, then it is degraded to a private deed. Misuse of will is often cited as a reason for the degradation of a deed. This is not only caused by clauses prohibited by the law but also by defects in the will of the parties involved (Arifin, 2017). If there is misuse concerning a will, which is a subjective requirement of an agreement, where the abuse of a situation is used by one party, this will prevent the other party from expressing their will freely. Thus, a defect in the will occurs if there is abuse of will, which will have legal consequences for an agreement, resulting in legal consequences, namely the request for cancellation, either in part or in whole, of the contents of the agreement, which can be done by the judge or the party who suffered a loss. Regarding this matter, the agreement still binds the parties involved as long as the agreement has not been canceled (Saputra, 2016). Judges base their decisions on evidence regulated in Article 1866 of the Civil Code, namely:

1. Documentary evidence
   Documentary evidence can be used as evidence, whether originally intended as evidence or not, but later used as evidence. According to Sudikno Mertokusumo, documentary evidence consists of two types: authentic deeds and private deeds, as well as ordinary documents. Ordinary documents are documents not originally intended as evidence but can be used to prove a case in court.
2. Testimony of witnesses
   Witness testimony should relate to events witnessed, heard, or directly experienced. If a witness provides testimony outside of what they have seen, heard, or experienced themselves and intentionally provides false testimony, they can be prosecuted and punished.
3. Presumptions

The evidential power through presumptions is determined by the judge's discretion regarding how much weight to give to the presumptions obtained during the examination of the case.

4. Confession
   The authority to make proof through confession lies with oneself and intermediaries specifically authorized. Confessions made by parties or their representatives can be made in or out of court.
5. Oath
   Conceptually, proof by oath is done through statements or testimony given in the name of God to convey the truth.

According to Article 16, paragraph (1) letter c of the UUJN-P, fingerprints are only attached and not directly affixed to the minute deed, so the attachment of fingerprints to other appendices does not affect the authenticity of the deed, which in this case is created by or in the presence of a Notary and the Notary's deed only becomes a document (Kusuma, 2021). Wherein the document becomes a supporting document that is integrated with the minute deed. Moreover, the notary's obligation regarding the attachment of fingerprints to sheets that are not part of the minute deed depends heavily on the availability of the appearing parties. If the appearing parties refuse or object to imprinting their fingerprints, then the Notary can only exercise their authority in accordance with Article 15, paragraph (2) letter e, which is to "provide legal guidance in connection with the making of the deed". Meanwhile, the notary will receive administrative sanctions in the form of oral or written warnings from the Regional Supervisory Council for not complying with the provisions according to the applicable law. Regarding the deed they produce, it remains valid and has perfect evidential power because fingerprints cannot be used as a preventive measure if, in the future, the appearing parties deny their signatures on the minute deed. The attachment of fingerprints in the minute deed can only be an effort to implement the prudentiality principle by the Notary. The making of a deed certainly needs to be carefully considered, related to a principle of caution where in the implementation of this principle of caution, it is necessary to be familiar with the complete identities of the parties or appearing parties, always acting in this matter with utmost care. In the drafting of the deed, the notary must be careful and thorough, and all the requirements for making the deed must be understood correctly and carefully, with the aim being none other than to minimize any legal issues from the authentic deed in the future (Warsito & Adriansyah, 2022). Because the truth of the appearing party's signature on the notary's minute deed, which has perfect evidential power in this case in its perfect form, cannot be relied upon for its accuracy on the fingerprints made only as a document underhand. When related to the authenticity of the deed, a deed that does not have its fingerprints attached in a notary's minute deed still remains an authentic deed that has legal force where the proof is of a perfect nature.

If a dispute arises where the parties deny the signature of one of the appearing parties on the authentic deed, which is suspected to be a forgery, then it falls into the qualification of the crime of forgery, which is within the domain of criminal law. This is not the duty of the Notary, but rather the duty of law enforcement. The duty of the notary is only to create authentic evidence in the form of a deed that guarantees formal correctness, not material truth, which falls under the realm of criminal law. Regarding its

proof in court, the notarial deed attached with fingerprints remains an authentic deed, and the fingerprints as documents from the notary can be used by the judge as additional evidence/supporting evidence in the form of a letter. The role of fingerprints as evidence in this case is closely related to a preliminary evidence (Arthadana, 2015). Because the judge must review the facts in a case through legal arguments presented to reach a conclusion in the decision of a case. The fingerprints attached to the notarial minute deed combined with legal arguments can be considered as a consideration in the implementation of legal principles that have binding nature as the main reason for a decision (*ratio decindendi*). Considered as a ratio in this case, it relates to that principle, the source of which comes from the judge's decision, where the judge's decision must be based on facts, which according to the judge, constitutes a material (Momuat, 2014).

4. CONCLUSION

The attachment of fingerprints in Notary Deed Minutes concerning the UUJN-P does not yet reflect legal certainty due to the explanation provided in the Law, which is deemed sufficiently clear without further elucidation or mechanisms and procedures for its implementation. This ambiguity leads to various interpretations, necessitating the establishment of implementing regulations regarding fingerprint attachment in deed minutes to accommodate the application of fingerprint attachment. In the event of a dispute, evidence presented in court regarding notarial deeds with attached fingerprints or notarial deeds without attached fingerprints still holds the same probative force as authentic deeds. This is because perfect evidence is not determined solely by fingerprints attached to the deed minutes but rather by the deed's contents as recorded by the notary, with the fingerprints serving as documentary evidence. However, in the event of a dispute, the attached fingerprint appendices can be used by the judge as supporting evidence to be considered in adjudicating a case, as notaries only seek formal truth based on the information provided by the parties when appearing before them, in accordance with the data provided.

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COMPARATIVE LEGAL ANALYSIS OF RENEWABLE ENERGY UTILIZATION REGULATIONS BETWEEN ICELAND AND INDONESIA

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Abstract

Renewable energy has emerged as a pivotal aspect in addressing both energy security and climate change concerns. Iceland stands out as a notable exemplar in effectively harnessing renewable energy, with nearly 100% of its electricity demands met through renewable sources by 2023. In contrast, Indonesia is in the process of capitalizing on its abundant renewable energy potential, with renewables constituting only 12.5% of its electricity generation in the same year. This study undertakes a comparative analysis of the regulatory frameworks governing renewable energy utilization in Iceland and Indonesia, focusing on legal dimensions. Employing a comparative methodology with a normative juridical approach, data were gathered through literature review and examination of pertinent legal documentation. The findings underscore Iceland's robust and coherent regulatory structure supporting renewable energy utilization, characterized by clearly defined policies, incentivizing mechanisms, and efficient institutional frameworks. Conversely, Indonesia's regulatory landscape reveals a need for greater cohesion and harmonization, marked by fragmented policies, limited incentives, and suboptimal institutional arrangements. Noteworthy disparities between the two countries are attributed to factors such as political commitment, geographical considerations, and technological capacities. The research highlights the potential for Indonesia to draw valuable lessons from Iceland's experiences in formulating conducive regulations for renewable energy utilization. Key areas for improvement include bolstering policy frameworks, enhancing incentivization measures, and streamlining institutional mechanisms. By contributing insights into renewable energy regulations, this study offers guidance for policymakers in Indonesia towards optimizing the utilization of renewable energy resources.

Keywords: *Iceland, Indonesia, Legal, Regulatory Comparison, Renewable Energy*

1. INTRODUCTION

Renewable energy has become a global concern for overcoming energy problems and climate change. According to the International Renewable Energy Agency (IRENA) report for 2023, global renewable energy capacity reached 3,869,705 MW, an increase of 2.8% from the previous year (Irena, 2024). Awareness of the importance of the energy transition in lowering greenhouse gas emissions and achieving the objectives of the Paris Agreement is driving this growth. Renewable energy is also vital to ensuring energy security and supporting sustainable development.

Iceland and Indonesia have significant differences in their use of renewable energy. Iceland is almost entirely dependent on renewable energy. By 2023, renewable sources, primarily geothermal and hydropower, will satisfy nearly all of Iceland's electricity needs. Favorable geographical conditions, solid political commitment, and advanced technological innovation support Iceland's success (Breyer et al., 2022).

On the other hand, Indonesia is still in the early stages of renewable energy development. Although it has excellent renewable energy potential, such as solar, geothermal, and biomass, its utilization could have been better. Until 2023, the renewable energy mix in Indonesia's electricity production had only reached 13.09%, far below the target of 23% by 2025 set by the *Rencana Umum Energi Nasional* (RUEN) (Paramita & Pranchiska, 2024). Indonesia's challenges include inadequate regulations and policies, a limited budget, and a lack of coordination among stakeholders (Hidayatno et al., 2019).

The difference between Iceland and Indonesia in renewable energy use shows gaps in policies, regulations, budgets, and technological capacity. However, Indonesia can learn from Iceland's experience in developing a thriving renewable energy sector. By considering the national interest and adopting best practices from Iceland, Indonesia has the potential to accelerate the transition to renewable energy and achieve more sustainable energy mix targets (DPRI, 2018).

The primary purpose of this study is to conduct a comparative analysis of laws regarding the regulation of renewable energy utilization between Iceland and Indonesia. Specifically, this study aims to: (a) Identify similarities and differences in renewable energy utilization regulations in Iceland and Indonesia, covering policy, budget, institutional, and integration with other sectors, (b) Analyze factors that influence differences in renewable energy utilization regulations in the two countries, such as geographical conditions, political commitment, technological capacity, and socio-economic context, (c) Formulate recommendations that Indonesia can learn from Iceland's experience in developing regulations conducive to the use of renewable energy, taking into account Indonesia's national context. The scope of this research includes: (1) The period reviewed is the regulation of renewable energy utilization in Iceland and Indonesia until 2023, considering the latest developments in policies and regulations in both countries, (2) Research on renewable energy sources in Iceland and Indonesia focuses on geothermal (geothermal), hydropower (hydropower), solar power (solar), wind power (wind), and biomass, and (3)The regulatory aspects analyzed include renewable energy policy, budget, institutional, and governance aspects, as well as integration with related sectors such as electricity, transportation, and industry.

With this purpose and scope, this research is expected to contribute to academic discussions on renewable energy regulation from a comparative legal perspective. The study results are also expected to be input for policymakers in developing more effective regulations to encourage the use of renewable energy in Indonesia by learning from Iceland's experience as a benchmark.

2. LITERATURE REVIEW

Renewable energy refers to energy sources that can be naturally renewable in a relatively short period, such as sunlight, wind, water, geothermal, and biomass. The main types of renewable energy include solar, wind, hydro-energy, geothermal, and bioenergy. Utilizing renewable energy aims to reduce dependence on fossil fuels, reduce greenhouse gas emissions, and support sustainable development (Ammar, 2023).

Iceland has become a global leader in utilizing renewable energy. By 2023, almost 100% of Iceland's electricity needs will be met by renewable sources, mainly geothermal and hydropower. Progressive energy policies, investment in research and development,

and close cooperation between government, industry, and society underpin Iceland's success (Breyer et al., 2022).

In Indonesia, the use of renewable energy is still in its early stages. Despite having great renewable energy potential, the renewable energy mix in Indonesia's electricity production will only reach 13.09% in 2023. The Indonesian government has set a target to increase its renewable energy mix to 23% by 2025. Efforts include policy and regulatory development, budget provision, and investment promotion in the renewable energy sector (Paramita & Pranchiska, 2024).

Legal comparison is a study comparing legal systems in different countries or jurisdictions to identify similarities, differences, and factors influencing them. In the context of renewable energy regulation, comparative laws can be used to analyze regulatory approaches in different countries, identify best practices, and formulate recommendations for improvement (Majid, 2020).

3. RESEARCH METHOD

This research uses a comparative study method with a normative juridical approach. A comparative study is a research method that compares two or more objects of study to identify similarities, differences, and factors that influence them (Esser & Vliegenthart, 2017).In this study, the object being compared is the regulation of renewable energy utilization in Iceland and Indonesia.

The normative juridical approach reviews laws and regulations, policies, and other legal documents related to renewable energy regulations in both countries (Firdaus, 2022).This approach involves analyzing primary legal sources, such as laws and government regulations, and secondary legal sources, such as academic literature and official reports.

Data collection is carried out through library research and online searches. A literature study involves collecting and analyzing legal documents, policies, and scientific publications relevant to the research topic. Online searches are used to access the latest data sources, such as statistical reports, press releases, and policy documents available on the official websites of governments and international organizations (Anissa & Djuyandi, 2021).

Data analysis is carried out qualitatively using content analysis techniques and comparative analysis. Content analysis was used to identify key themes, patterns, and trends in renewable energy regulation in Iceland and Indonesia. A comparative analysis was conducted to compare the two countries' similarities and differences in regulation and the factors influencing them (Esser & Vliegenthart, 2017).

The validity of the data is ensured through triangulation of data sources, i.e., by comparing and confirming findings from different data sources. In addition, this research also follows the principles of research ethics, such as objectivity, transparency, and respect for copyright (Soekanto, 2007).

4. RESULTS AND DISCUSSION

4.1. Comparison of Renewable Energy Regulations in Iceland and Indonesia

Iceland has a comprehensive and ambitious renewable energy policy. The Icelandic government has set targets to achieve carbon neutrality by 2040 and phase out fossil fuels

by 2050. Iceland's energy policy focuses on the optimal utilization of geothermal and hydropower resources and the development of infrastructure that supports the energy transition (Apriliyanti & Rizki, 2023).

Indonesia has also set renewable energy targets in the National Energy General Plan (RUEN). RUEN targets increasing its renewable energy mix to 23% by 2025 and 31% by 2050. However, implementing renewable energy policy in Indonesia still needs to improve due to a lack of coordination between institutions, overlapping regulations, and limited institutional capacity.

The Icelandic government provides various budgets and investment support to encourage the use of renewable energy. The budget includes subsidies, concessional loans, and funding schemes for renewable energy projects. Iceland also has a carbon pricing mechanism that supports the transition to clean energy (Breyer et al., 2022).

Feed-in tariffs, subsidies, and fiscal relief are just a few of the regulations controlling Indonesia's renewable energy budget. However, the effectiveness of the budget still needs to be improved due to a lack of legal certainty, complex administrative processes, and budget constraints. The Indonesian government needs to strengthen the budget mechanism and simplify procedures to attract more investment in the renewable energy sector (PWC, 2023).

Iceland has solid institutions and is integrated into renewable energy governance. The Ministry of Environment and Natural Resources formulates energy policy, while the National Energy Authority (*Orcustofnun*) regulates, licenses, and supervises the energy sector. Iceland also has a Renewable Energy Agency (*Landsvirkjun*) that manages state-owned renewable power plants.

In Indonesia, renewable energy governance involves various institutions, such as the Ministry of Energy and Mineral Resources, the National Energy Council (DEN), and PLN. However, coordination between agencies remains challenging, with overlapping authorities and regulatory fragmentation. Indonesia must strengthen renewable energy institutions, increase transparency, and ensure policy consistency to create a conducive investment environment.

Iceland has successfully integrated renewable energy with other sectors, such as transport and industry. The Icelandic government is pushing for transport electrification, with budgets for electric vehicles and the development of charging infrastructure. Geothermal energy is also widely utilized for heating, agriculture, and industry.

In Indonesia, integrating renewable energy with other sectors still needs to be improved. Despite efforts to promote electric vehicles, the supporting infrastructure still needs to be improved. Given the dominance of fossil fuels, the utilization of renewable energy in the industrial sector is also still low. Indonesia must develop a clear roadmap to integrate renewable energy with critical sectors such as transportation, industry, and construction (PWC, 2023).

The comparison of renewable energy regulations between Iceland and Indonesia reveals several significant similarities and differences.

Similarities:

1. Both Iceland and Indonesia have established targets and policies aimed at increasing the utilization of renewable energy sources. This acknowledgment underscores the imperative of transitioning towards clean energy to mitigate greenhouse gas emissions and foster sustainable development.

2. Both nations allocate financial resources and offer investment support for renewable energy projects, albeit with varying degrees of effectiveness. Such financial backing encompasses subsidies, concessional loans, and fiscal incentives.
3. Iceland and Indonesia each possess institutional frameworks tasked with overseeing renewable energy governance, including energy ministries, regulatory bodies, and state-owned energy enterprises.

Differences:

1. Iceland boasts a more comprehensive and ambitious renewable energy policy compared to Indonesia. Iceland has set the goal of achieving carbon neutrality by 2040 and entirely phasing out fossil fuels by 2050, whereas Indonesia's targets are relatively more conservative.
2. Iceland's financial commitments and investments in renewable energy exhibit greater efficacy and consistency in comparison to Indonesia's efforts. Notably, Iceland has implemented a robust carbon pricing mechanism, while Indonesia encounters challenges in the implementation of budgetary measures.
3. Renewable energy governance in Iceland is characterized by greater integration and efficiency, with clearly delineated responsibilities among ministries, energy authorities, and state-owned enterprises. Conversely, Indonesia's governance framework remains fragmented, marked by overlapping jurisdictional authority among institutions.
4. Iceland has successfully integrated renewable energy initiatives with other sectors such as transportation and industry, leveraging electrification and geothermal utilization. In contrast, Indonesia's endeavors to integrate renewable energy across sectors require further enhancement.
5. The technological and infrastructural capacities for renewable energy in Iceland surpass those of Indonesia. Iceland has made significant strides in the development of geothermal and hydropower technologies, while Indonesia is in the nascent stages of building its renewable energy infrastructure.

The differences in renewable energy regulations between Iceland and Indonesia reflect differences in economic development, resource availability, and policy priorities. Nevertheless, Indonesia can learn from Iceland's experience in developing more comprehensive, consistent, and integrated regulations to encourage optimal use of renewable energy.

4.2. Factors Affecting the Different Regulations on the Use of Renewable Energy in Iceland and Indonesia

Various internal and external factors influence the difference in renewable energy regulations between Iceland and Indonesia. Some of the main factors influencing such differences include:

a) Geographical conditions and availability of resources

Iceland has a geographical advantage with abundant geothermal and hydropower potential. These conditions supported the development of renewable energy from the beginning and allowed Iceland to achieve a high renewable energy mix. On the other

hand, Indonesia has diverse renewable energy potentials, such as solar, geothermal, and biomass power. However, its utilization still needs to be improved due to geographical and infrastructure constraints.

b) The level of economic development and policy priorities

Iceland is a developed country with a high GDP per capita, so it can allocate substantial resources for the development of renewable energy. Energy transition is also a top priority on Iceland's policy agenda. Meanwhile, as a developing country, Indonesia still faces challenges in balancing economic growth with environmental sustainability. Indonesia's energy policy priorities are still focused on energy security and access.

c) Energy market structure and stakeholder roles

Iceland's energy market is dominated by state-owned energy companies, such as *Landsvirkjun*, which is mandated to develop renewable energy. This allows for better coordination and consistent policy implementation. In Indonesia, the energy market is more fragmented, with various stakeholders, including private companies and local governments. Coordination and alignment of interests among stakeholders remain a challenge.

d) Institutional capacity and human resources

Iceland has a strong institutional capacity in renewable energy governance, supported by competent and experienced human resources. Institutions such as *Orcustofnun* and *Landsvirkjun* have a clear and influential role in developing renewable energy. In Indonesia, institutional capacity must be strengthened with improved coordination, transparency, and adequate human resources.

e) Public support and public awareness

Icelanders are highly aware of the importance of renewable energy and support energy transition policies, which creates a conducive environment for implementing renewable energy regulations. In Indonesia, public support for renewable energy still needs to be increased through education and awareness campaigns. Resistance from certain interest groups, such as the fossil fuel industry, can also hinder renewable energy development.

These factors are interrelated and influence the difference in renewable energy regulations between Iceland and Indonesia. Understanding these factors can help formulate strategies and policies appropriate to each country's national context while learning from other countries' best practices.

4.3. Policy Recommendations

Iceland's success in developing renewable energy offers several recommendations that Indonesia can consider to increase the use of renewable energy. Some of these recommendations include:

a) The need for a comprehensive renewable energy policy

Indonesia can learn from Iceland's approach to setting renewable energy targets and developing comprehensive policies to achieve them. Indonesia's renewable energy policy must cover energy mix, energy efficiency, electrification, and reduction of greenhouse gas emissions. The policy must also be accompanied by a clear and consistent roadmap to provide certainty for investors and stakeholders.

b) Budget strengthening and investor support

Iceland has managed to attract investors in renewable energy through an effective combination of budget and investment. Indonesia can adopt best practices from Iceland,

such as competitive feed-in tariffs, targeted subsidies, and innovative funding schemes. The budget needs to be adjusted to the circumstances in Indonesia and evaluated regularly to ensure its effectiveness. In addition, Indonesia could also consider implementing a carbon pricing mechanism to encourage the transition to clean energy.

c) Improved coordination and institutional capacity

Indonesia can learn from Iceland's integrated and efficient renewable energy governance model. This involves strengthening coordination between agencies, such as energy ministries, regulatory agencies, and state-owned energy companies. A clear division of duties and responsibilities and an effective coordination mechanism can ensure consistent implementation of renewable energy policies. Indonesia must also improve institutional capacity through human resource development and technology transfer.

d) Integration of renewable energy with other sectors

Iceland has shown how renewable energy can be integrated with other sectors, such as transport and industry, to achieve wider decarbonization. Indonesia can adopt a similar approach by developing policies and infrastructure supporting transportation electrification, geothermal industrial utilization, and energy efficiency in various sectors. This Integration requires collaboration between relevant ministries and institutions and active involvement of the private sector.

e) Increased public awareness and participation

High public awareness and support for renewable energy have been a critical factor in the success of Iceland's energy transition. Indonesia can learn from Iceland's approach to engaging communities through education, socialization, and bottom-up initiatives. Increased public awareness and participation can create an environment conducive to renewable energy development and reduce resistance to change.

When adopting Icelandic policies, Indonesia must consider geographical conditions, economic structure, and socio-political dynamics. However, with suitable adjustments and strong commitment, Indonesia can accelerate the transition to renewable energy and achieve the target of a more sustainable energy mix.

5. CONCLUSION

A comparative analysis of laws regulating renewable energy use between Iceland and Indonesia shows significant differences in policy, budgetary, institutional approaches, and integration with other sectors. Iceland has a comprehensive, consistent, and effective regulatory framework supporting renewable energy utilization, supported by favorable geographical conditions, solid political commitment, and advanced technological capacity. In contrast, renewable energy regulation in Indonesia needs to be more cohesive, with challenges in institutional coordination, budget implementation, and integration with other sectors. Various factors, such as resource availability, level of economic development, energy market structure, institutional capacity, and public support, influence regulatory differences between the two countries. Although Indonesia faces different challenges from Iceland, Iceland provides valuable recommendations for developing more effective renewable energy regulations. The recommendations include the need for comprehensive policies, strengthening budgets and investments, improving coordination and institutional capacity, integration with other sectors, and increasing public awareness and participation.

Based on the research findings, some recommendations for the development of renewable energy regulations in Indonesia include: Formulate a comprehensive renewable energy policy with clear targets, a consistent roadmap, and measurable evaluation mechanisms. Strengthen budgets and investments for renewable energy projects, including competitive feed-in tariffs, targeted subsidies, and innovative funding schemes. Consider implementing carbon pricing mechanisms to drive the energy transition. Improve coordination and institutional capacity by clarifying the division of duties and responsibilities between institutions, strengthening coordination mechanisms, and developing competent human resources. Develop policies and infrastructure that support integrating renewable energy with other sectors, such as transportation, industry, and construction. Encourage electrification, geothermal utilization, and energy efficiency in various sectors. Increase public awareness and participation through education campaigns, socialization, and bottom-up initiatives. Involve communities in decision-making and implementation of renewable energy projects. Strengthen international cooperation and technology transfer by learning from best practices in other countries, such as Iceland, and adapting them to suit Indonesia's circumstances. Further research is needed to explore specific aspects of renewable energy regulation in Indonesia, such as policy impact analysis, project feasibility studies, and budget effectiveness evaluations. The research can provide deeper insights to improve renewable energy regulations in Indonesia and support the transition to a more sustainable energy system.

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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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