P- ISSN: 2985-5691
Vol. 1. 2023

PROCEEDING
ICFL 2022

INTERNATIONAL CONFERENCE
FACULTY OF LAW, UNIVERSITAS PEKALONGAN

"Society 5.0 In The Concept Of The Modern Rule Of Law"

Pekalongan, 30 January 2022

FACULTY OF LAW
PEKALONGAN UNIVERSITY
SRIWIJAYA STREET, NUMBER 3, PEKALONGAN CITY, JAWA TENGAH

Proceeding International Conference Faculty Of Law 2022
Pekalongan University

The analysis of interfaith marriage was reviewed by Law Number 1 of 1974 (as amended by Law Number 16 of 2019) and Law Number 23 of 2006

Vivia Damayanti[1], Isti Sulistyorini[2], Sri Pujiningsih[3]

[1]Faculty Of Law Pekalongan University, E-mail : viviadynti2@gmail.com
[2]Faculty Of Law Pekalongan University

[3]Faculty Of Law Pekalongan University, E-mail : spningsih.unikal@gmail.com

ABSTRACT

Marriage of different religions in Indonesia is not a new phenomenon anymore. At first, these marriages were referred to as mixed marriages. However, after the enacting of Law No. 1 of 1974 on Marriage the meaning of mixed marriage is marriage between two different nationalities, not marriages of different religions. The issues raised are how the arrangement of marriages is different religions according to Law No. 1 of 1974 (as amended by Law No. 16 of 2019) on marriage and how the recording of marriages of different religions according to Law No. 23 of 2006 concerning population administration. The purpose of the authorship of scientific work in the form of this journal is to understand the arrangement of marriages of different religions reviewed by Law No. 1 of 1974 (as amended by Law No. 16 of 2019) on Marriage and to analyze the recording of marriages of different religions according to Law No. 23 of 2006 on Population Administration. The method used in the writing of this research is the method of normative juridical approach. The types of data sources used are primary and secondary data. The method of data collection used is the collection of data by interviews and data collection from literature, and data analysis using qualitative descriptive methods. The results obtained in this study showed that, in Law No. 1 of 1974 on Marriage prohibits the existence of religious groups. Law No. 23 of 2006 concerning population administration of the implementation of marriages of different religions can be done in two ways. Namely, the determination of the court and marriage is carried out abroad but after returning to Indonesia must be recorded in the Civil Records Office. However, not all Civil Records Offices want to record marriages of different religions. The Office of Population and Civil Registration will ask for the subjugation of one of the religions to be recorded.

Keywords: Marriage of different religions,, Marriage Law, Population Administration Law

A. Introduction

a. Background

Indonesia is a legal country that recognizes various religions, namely Islam, Hinduism, Buddhism, Christianity, and Catholicism.Interestingly, various religions have their own procedures or rules, including in terms of marriage. Each religion embraced by Indonesian citizens regulates also about the intricacies of marriage in accordance with its teachings.

According to Article 1 of Law No. 1 of 1974, Devinisi marriage is the inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Supreme Deity.

Along with the development of society, the problems that occur are increasingly complicated. Related to marriage. If two people who love each other but they have different religions still maintain each other's faith. They eventually decided to marry a different religion.

Interfaith marriage before the birth of Law Number 1 of 1974 (Marriage Law) was dubbed mixed marriage. Before the birth of the Marriage Law, interfaith marriage in Indonesia was declared legal.

After the release of Law No. 1 of 1974 on marriage, the definition of mixed marriage is contained in Article 57, namely marriage between two people who in Indonesia are subject to different laws, because of differences in citizenship and one of the parties has Indonesian citizenship.

In Article 2 Paragraph (1) of Law No. 1 of 1974 states that "marriage is valid, if it is performed according to the law of each religion and belief". With the formulation in Article 2 Paragraph (1), there is no marriage outside the law of each religion and belief. That means there is a prohibition to perform interfaith marriages according to the article.

In practice, there are many who practice interfaith marriages. According to Ahmad Nurcholish from the Indonesian Conference on Religion and Peace (ICRP), their organization provides counseling for 3000 interfaith couples and has facilitated about 827

interfaith couples in Indonesia.[1]

There are several ways to get married in different religions. One of them is the determination by the court. The court may decide whether the couple is allowed to enter into an interfaith marriage.

Other problems can also be encountered after the occurrence of interfaith marriages. One of them is the issue of administrative registration of marriage by the Civil Registry Office and the Office of Religious Affairs. Marriage is registered in order to obtain a marriage certificate. A marriage certificate is evidence that a marriage has occurred or is taking place, not that it determines whether or not a marriage is valid. In fact, a marriage that is only performed under religious law can be equated with a serial marriage.

In Article 2 Paragraph (2) of Law No. 1 of 1974 states that "every marriage is recorded according to applicable laws and regulations" marriage registration is a marriage Administration data collection handled by the Registrar of marriages (VAT) with the aim to create legal order.

In Article 35 of Law No. 23 of 2006 concerning Population Administration, marriage registration also applies to: marriages determined by the court; and marriages of foreign citizens conducted in Indonesia at the request of the foreign citizen concerned.

This shows a gap in Indonesian law, one of which is Article 35 of Law No. 23 of 2006 on Population Administration which states that marriage registration can be done if it meets the determination of the court. From the explanation of the law, the registration in question is interfaith marriage. So often in the application for marriage of different religions, the article is used as a basis for submitting the application.

[1] Arzia Tivany Wargadiredja, "said Who in Indonesia can not marry different religions", https://www.vice.com/id_id/article/wjpb4q/kata-siapa-di-indonesia-tak-bisa-menikah-beda-agama accessed on August 8, 2021 at 23:55

To prevent the complexity of interfaith marriages, usually the parties perform marriages abroad, in countries that do not prohibit the existence of interfaith marriages so that this gives rise to legal smuggling in marriage law in Indonesia.

Law No. 24 of 2013 on amendments to Law No. 23 of 2006 on Population Administration which indirectly provides opportunities for interfaith marriage. Because couples who perform interfaith marriages abroad, upon returning to Indonesia, register the marriage with the occupation and Civil Registration Office.[2]

This is also regulated in the provisions of Article 56 paragraph (2) of the Marriage Law which states that in order for a marriage outside the territory of the Republic of Indonesia to be valid and recognized under Indonesian law, the proof of marriage from abroad must be registered at the Department of Population and civil registration of the place of residence of the husband and wife, as stipulated in Article 37 paragraph (4) of the Population Administration Law.

A couple who recently had an interfaith marriage abroad is Dimas Anggara (Muslim) with Nadine Candrawinata (Catholic). The wedding, which took place in 2018, was held in the country of Bhutan.

Because of the inconsistency between Article 2 Paragraph (1) and Paragraph (2) of Law No. 1 of 1974 on marriage with Article 35 of Law No. 23 of 2006 on Population Administration, it can be an incentive for researchers to conduct research by examining more deeply which later the results of the study will be applied in a thesis entitled "analysis of interfaith marriage reviewed according to Law No. 1 of 1974 (as amended by Law No. 16 of 2019) and Law No. 23 of 2006".

b. Problem Formulation.

1. How is the regulation of interfaith marriage reviewed according to Law Number 1 of 1974 (as amended by Law Number 16 of 2019) on marriage?

[2] Novita Lestari, The Legality Of Interfaith Marriage According To Law Number 1 Of 1974 On Marriage And Law Number 23 Of 2006 On Population Administration, Vol.2 No.2 Years2017 accessed from https://jurnal.unived.ac.id/index.php/jhs/rticle/view/421/356, pasa on August 9, 2021 at 00: 00 wib

2. How is the registration of interfaith marriages according to Law Number 23 of 2006 on Population Administration?

B. Research Methods

Legal research is a know-how activity in legal science, not just know-about. As a know - how activity, legal research is carried out to solve the legal content faced.[3]

The method of approach used in this study is a method of normative juridical approach, namely legal research that prioritizes how to research library materials or so-called secondary data materials, in the form of positive law and how its implementation in practice[4].

The specification of the study was conducted in a descriptive analytical. As well as data sources that will be used in this study include primary data in the form of interviews and secondary data obtained from library studies or Document Archive data related to the study.

This study also uses a data analysis method which is a stage of the research process where the data that has been collected will be used as a qualitative descriptive analysis method. Using descriptive qualitative because it describes the problem being investigated by logic-based truth.[5]

C. Research Results And Discussion

1. Overview of interfaith marriage in Indonesia.

The phenomenon of religious diversity is one of the problems in the concept of marriage in Indonesia. Interfaith marriage is juridically formal, regulated in the law of the Republic of Indonesia Number 1 of 1974 on marriage and instructions of the president of the Republic of Indonesia Number 1 of 1991 on the compilation of Islamic law. Both products of this legislation regulate issues related to marriage including interfaith marriage.

Based on Law No. 1 of 1974 on marriage, interfaith marriage is prohibited in

[3] Soerjono Soekanto, 2012, introduction to legal research (jakarta: Universitas Indonesia press), P. 264
[4] Ibid, P.67
[5] Ronny Hanitijo Soemitro, 1990, Jakarta, Legal and Jurimetric Research Methodology, Ghalia Indonesia, P.108

Indonesia. With the unification of the law on marriage, in Law No. 1 of 1974 confirmed implicitly that marriages performed on different backgrounds can occur due to differences in nationality (nationality). This means that marriage laws exclude the possibility of religious differences in marriage. In addition, Law No. 1 of 1974 states that, "a marriage must be based on the Supreme Deity and performed according to the religion practiced."

The provision lays down the provisions of the same religious norms adopted by married couples in the implementation of interfaith marriages in Indonesia can occur both domestically and abroad.

Domestic marriage arrangements are contained in Article 35 of Law No. 23 of 2006 on Population Administration which states that the registration of marriage as referred to in Article 34 also applies to: marriages determined by the court; and marriages of foreign citizens conducted in Indonesia at the request of the foreign citizen concerned.

The explanation of Article 35 letter A states that what is meant by marriage determined by the court is marriage between people of different religions.

Law No. 23 of 2006 on Population Administration as amended by Law No. 24 of 2013 on Population Administration which indirectly provides opportunities for interfaith marriage. Because couples who perform interfaith marriages abroad, upon returning to the country of Indonesia are required to register the marriage with the occupation and Civil Registration Office.

Interfaith marriages abroad became a contrast occurred among Indonesian artists such as Marcell Siahaan (Buddha) with Rima Melati Adams (Islam) which took place in Singapore in 2009, Ari Sihasale (Christian) and Nia Zulkarnaen (Islam) married in Australia in 2003, Rio Febrian (Christian) and Sabrina Kuno (Islam) married in Thailand in 2010, Frans Mohede (Christian) and Amara (Islam) married in Hong Kong 1991, Neil G Furuno (Christian) Islam) married in the United States in 2015 and Dimas Anggara (Islam) and Nadine Chandrawinata (Catholic) married in Nepal in 2018.[6]

One of the reasons for the Indonesian citizens who marry different religions abroad is

[6] Stella Azasya, 6 Indonesian artist who married abroad because of different religions. idntimes.com, accessed December 10, 2021, at 09: 23 WIB.

the complexity of the procedure for filing for different religions in Indonesia. Because when applying for interfaith marriage in Indonesia, it is not uncommon for the court to reject the marriage application. And if the application for interfaith marriage in Indonesia has been accepted by the court and legalized for marriage, another problem occurs at the time of marriage registration. Population and civil registration offices in some cities do not want to register interfaith marriages before one party submits one of its religions.

2. Analysis Of Interfaith Marriage Arrangements Reviewed According To Law Number 1 Of 1974 As Amended By Law Number 16 Of 2019 On Marriage.

Before the enactment of Law No. 1 of 1974 on marriage, interfaith marriage was included in the type of mixed marriages.

Meanwhile, in Article 57 of Law No. 1 of 1974 on marriage, mixed marriage is a marriage between two people who in Indonesia are subject to different laws, because of differences in citizenship and one of the parties is a foreign citizen and one of the parties is an Indonesian citizen. So, mixed marriages are not interfaith marriages.

Regarding the system of marriage law, namely Law Number 1 of 1974 on marriage that is desired at the time of its formation process is divided into three streams : the first stream requires a law that applies to all (unification); the second stream requires that each group has its own law (differentiation); the third stream that wants there is a basic law that is generally accepted, then for each group held Organic Law (differentiation in unification)

In Indonesia, juridically, marriage in Indonesia is regulated in Law Number 1 of 1974 on marriage and instruction of the president of the Republic of Indonesia Number 1 of 1991 on the compilation of Islamic law. Both products of this legislation regulate issues related to marriage including interfaith marriage. In the law of the Republic of Indonesia Number 1 of 1974 on marriage Article 2 Paragraph (1) stated: "Marriage is valid, if it is carried out according to the law of each religion and belief".

In this formulation it is known that there is no marriage outside the law of each religion and belief. Based on the above explanation, marriages performed in the territory of Indonesian law must be carried out with one religion, meaning that interfaith marriages are

not allowed to be carried out and if they are still forced to carry out interfaith marriages, it means that the marriage is invalid and violates the law.

So, according to the applicable positive law, namely Law Number 1 of 1974 on marriage does not recognize interfaith marriage.

3. Registration Of Interfaith Marriages According To Law No. 23 Of 2006 On Population Administration.

Marriage between two different brides is not a simple thing in Indonesia. In addition to having to go through many convoluted procedures. No wonder that many couples with differences in beliefs end up choosing to marry abroad. Couples who decide to marry abroad will get a marriage certificate from the country concerned or from the local representative of the Republic of Indonesia (embassy). After returning to Indonesia, they can register their marriage at the civil registry office to get a Certificate of reporting of Foreign Marriage.

However, this does not mean that marriage with religious differences cannot be realized in the country. In fact, based on the Supreme Court Decision No. 1400 K/Pdt/1986, different-faith couples can request a court determination. The jurisprudence states that the registry office may perform interfaith marriages, because the duty of the registry office is to record, not legalize. However, not all registry offices are willing to accept interfaith marriages. Civil registry offices that are willing to accept interfaith marriages will later record the marriage as a non-Islamic marriage. Couples can still choose to marry under the terms of their respective religions. The trick is to look for religious leaders who have different perceptions and are willing to marry couples according to their religious teachings, for example Islamic-style marriage contracts and Christian blessings.

Department of Population and civil registration of Pekalongan through Tocok Tri Hariyanto, AP. As the head of Civil Registration Service gave an opinion on interfaith marriage in Pekalongan city. He confirmed that so far in the city of Pekalongan, no community has applied for the registration of interfaith marriages. Because according to him article 34,35, and 36 of Law Number 23 of 2006 means that the marriage may be performed in a different religion according to the religious decision of each party, but the marriage

registration is still subject to one religion.[7]

In practice in Indonesia, Interfaith Marriage can be carried out by adhering to either the religious law or the beliefs of the husband or future wife. This means that one of the other candidates follows or submits to one of the religious laws or beliefs of his partner.[8]

And for interfaith marriages performed abroad by spouses of Indonesian citizens, after returning from abroad, they can be reported to the Department of Population and civil registration by subordinating one of the religions.

For example in Pekalongan city, if interfaith marriage has been carried out, then the next step is to report the marriage registration to the Department of Population and civil registration of Pekalongan city.

According to Article 35 of the Population Administration Law, marriages established by the court are required to be reported. As explained in the elucidation of Article 35 letter A of the Population Administration Law, marriages established by the court are marriages performed between people of different religions.

The reporting procedure is regulated in Article 34 of the Administrative Law. Mandatory reporting is carried out no later than sixty days from the date of marriage. Then, based on the report, the Civil Registration Officer records the marriage certificate Register and issues an extract of the marriage certificate. Meanwhile, residents who are Muslims report it to the Office of Religious Affairs (KUA). The article stipulates that interfaith marriages that can be registered in the civil registry office are only those outside the Islamic religion.

Because of these regulations, the Department of Population and civil registration does not record interfaith marriages that have not been determined by the court, even though all the requirements are complete and there is already a blessing letter from religious leaders as proof of the validity of marriage based on religion. This is because the interpretation of the civil registry that interfaith marriage can not be implemented and is not valid under

[7] Results of an interview with Tocok Tri Hariyanto, AP (head of Pekalongan city Civil Registration Service), accessed on Tuesday, December 28, 2021, at 10:30 WIB
[8] Soedharyo Soimin, 2002, Law of Persons and families, Jakarta: Sinar Grafika, P.95.

Article 2 Paragraph (1) of Law No. 1 of 1974 on marriage.

In the event of a refusal by an employee of the Civil Registration Office, Article 21 paragraph (1) to Paragraph (4) of Law No. 1 of 1974 on Marriage explains that if the employee of the marriage registrar is of the opinion that the marriage is prohibited under this law, then he will refuse to perform the marriage. In the event that the refusal occurs, the request of one of the parties wishing to perform the marriage by the marriage registration officer will be given a written statement of the refusal accompanied by the reasons for the refusal. The parties to whom the marriage has been refused shall have the right to apply to the court in whose jurisdiction the employee of the Registrar of marriages conducting the management is domiciled to render a decision with the submission of the above-mentioned certificate of refusal.

Next, the court will examine the case with a brief and will give a determination, whether he will strengthen the refusal or order that the marriage be carried out [9].

Because if the marriage registration of a couple of different religious marriages is rejected, then it will also give legal consequences to the status of children born in marriage. Or the child will only have a civil relationship with the mother and the mother's family.

Department of Population and civil registration of Pekalongan through Tocok Tri Hariyanto, AP as head of Civil Registration Service provides information about the terms and process to obtain a court ruling.[10]

The requirements that must be met are as follows: attach Identity Card (KTP), Family Card, Application Letter for determination of marriage registration from Disdukcapil, certificate from village head, and Witness 2 (two) people. These letters in accordance with the Stamp Duty Act must be affixed with a stamp duty of Rp.6000, -, signed and stamped by The Post Office.

The letters are then attached to the application as a means of evidence in the civil

[9] Results of an interview with Tocok Tri Hariyanto, AP (head of Pekalongan city Civil Registration Service), accessed on Tuesday, December 28, 2021, at 10:35 WIB
[10] Results of an interview with Tocok Tri Hariyanto, AP (head of Pekalongan city Civil Registration Service), accessed on Tuesday, December 28, 2021, at 10:37 WIB

case in court. Usually for this application, an administrative fee is charged, not more than 500 thousand rupiah. Excess costs can be requested back after the application is completed and it is known the amount of costs incurred that is listed at the end of the court determination.

After the application is registered in the civil section of the relevant District Court, the interfaith marriage partner will receive a subpoena that has been determined date and time. Before coming to the place of trial, the opposite sex couple is asked to bring the original papers attached to the application, as well as 2 (two) witnesses to the court. Usually, if the papers are considered complete and the testimony of witnesses is considered sufficient, in one trial the case can be decided by a single judge, and then given a determination letter. After receiving a letter of determination of the court then taken to Disdukcapil at the place of domicile of interfaith marriage couples.

D. Conclusion

1. The regulation of interfaith marriage in Indonesia is contained in Law Number 1 of 1974 on marriage. According to the explanation of the provisions of Article 2 Paragraph (1) of Law Number 1 of 1974 on marriage, there is no marriage outside the law of his religion and beliefs. So it can be concluded that interfaith marriage is prohibited in positive law in Indonesia.
2. Registration of interfaith marriages is regulated in Law Number 23 of 2006 concerning Population Administration. Interfaith marriages can occur if a court ruling is obtained and if the marriage is carried out abroad. However, not all population and civil registry offices want to register interfaith marriages. For example, the Pekalongan city population and Civil Registration Office will only register the interfaith marriage if the parties first submit one of their religions or if they have received a court decision.

BIBLIOGRAPHY

Soekanto, S. (2012). Introduction To Legal Research. Jakarta: Universitas Indonesia press.

Soemitro, R. H. (1990). Legal and Jurimetric research methodology. Jakarta: Ghalia Indonesia.

Soimin, S. (2002). The law of people and families. Jakarta: Sinar Grafika.

Arzia Tivany Wargadiredja " " said Who in Indonesia can not marry different religions", https://www.vice.com/id_id/article/wjpb4q/kata-siapa-di-indonesia-tak-bisa-menikah-beda-agama

Novita Lestari, The Legality Of Interfaith Marriage According To Law Number 1 Of 1974 On Marriage And Law Number 23 Of 2006 On Population Administration,(2017), Vol.2, No.2 accessed from https://jurnal.unived.ac.id/index.php/jhs/rticle/view/421/356,

Stella Azasya, 6 Indonesian artist who married abroad because of different religions. Diction of https://www.idntimes.com/hype/entertainment/stella/artis-indonesia-yang-menikah-di-luar-negeri-karena-beda-agama

Law No. 1 Of 1974 On Marriage ((Statute Book Of The Republic Of Indonesia Of 1974 No. 1, Supplement To Statute Book Of The Republic Of Indonesia No. 3019)

Law Number 16 Of 2019 On Marriage (Statute Book Of 2019 Number 186, Supplement To Statute Book Number 6401)

Government Regulation No. 9 Of 1975 Concerning The Implementation Of Law No. 1 Of 1974

Law No. 23 Of 2006 On Population Administration (Statute Book Of The Republic Of Indonesia Year 2006 Number 124, Supplement To Statute Book Of The Republic Of Indonesia Number 4674)

Law No. 24 Of 2013 On Population Administration (Statute Book Of The Republic Of Indonesia Year 2013 Number 232, Supplement To Statute Book Of The Republic Of Indonesia Number 5475)

ISSN 2985-5691

Criminal Law Perspective on the Formulation of Ordinary Delik Changes to Complaints on Copyright Law for Creators

Fajar Dian Aryani[1] Riski Romadhoni[2]
Faculty of Law, Pancasakti University Tegal.
Fajardi4n@@gmail.com

Abstract

The concept of changing the offense in the law, cannot be separated from the copyright law in general following the direction of the development of today's society. This is so that the applicable law can continue to run properly. However, this change of offense certainly has its own consequences or consequences, even more so for the creator or copyright holder who is the main actor behind the birth of a work of creation.

This study aims to find out the formulation of changes in ordinary offenses into complaint offenses in copyright law for creators in the perspective of criminal law and to describe the consequences of criminal law arising from changes in offenses against copyright infringement. This research is a legal research with the type of library research (library research) with a normative legal approach. The main data source is secondary data. The data analysis used in this research is descriptive qualitative data analysis.

The results of this study indicate that Article 66 of Law No.19 concerning the Year 2002 concerning Copyright states that the state still has the authority to enforce the law for direct copyright infringement, in contrast to Law No.28 of 2014 concerning Copyright contained in Article 120 allows the state to take legal action if there is a complaint process beforehand. The consequences resulting from the change in the offense for the creator are that the creator has two access to settlements in the event of a violation of his creation, namely settlement outside the court and in court.

Based on the results of this research, it is hoped that it will become information and input for students, academics, practitioners, and all parties in need in the Faculty of Law, Pancasakti University, Tegal.

Keywords: Offense, Copyright, Creator.

A. Problem Background

Today, copyright is a very fundamental issue, where the works of copyright holders or creators need to be maintained. But with the rapid or high results of the work produced by the creator is not accompanied by legal certainty against the creator of kerya, therefore many of the results of his work are stolen or taken by individuals without the permission of the creator. In Law No. 28 of 2014 on Copyright is now used known as copyright. Copyright itself is the exclusive right of the creator that arises automatically based on declarative principles after a creation is realized in real form without prejudice to restrictions in accordance with the

provisions of the laws and regulations.[1]

This is the basis of why the creator's work should not be taken over without the permission of the creator. Copyright itself is one part of the intellectual wealth that has the most wide scope of protected objects, because it includes science, art, and literature that include computer programs. The exclusive rights referred to in the above sense consist of moral rights and economic rights. That is, by having this economic right the creator can benefit economically from his creation. It should be understood that exclusive rights are rights intended only for creators or legitimate copyright holders, so that others should not utilize a creation without the permission of the creator or copyright holder. Other parties who wish to use a work may become copyright holders with the creator's permission through the agreement.[2]

Before the existence of Law - No. 28 of 2014 concerning Copyright, what we use is Law No. 19 of 2002 concerning Copyright. However, along with the development of the times and to meet the elements of need in society, changes or revisions are made to Law no. 19 of 2002 concerning Copyright into Law No. 28 of 2014 concerning Copyright. In which the previous law has no longer valid and has been replaced by a new law.This is in line with the principle of Lex posterior derogate legi priori, according to Peter Mahmud Marzuki, he argues that this principle means that the new legislation overrides the old legislation. The use of this principle requires that what is faced is two laws and regulations in the same hierarchy.[3]

There are several changes made by the creators of the copyright law. One of them is about changing the nature of the offense in the copyright law.In Law No. 19 of 2002 uses ordinary offenses in cracking down on copyright infringement. Then after the issuance of Law no. 28 of 2014 concerning copyright, we use a complaint offense, which of course is very different in the application of legal principles later. Ordinary offenses are criminal acts that can be prosecuted without the need for a complaint.[4]In the ordinary nature of the offense, it imposes an obligation on law enforcement officers to actively follow up on criminal violations without having to wait for a report from the victim.

[1]Article 1 paragraph (1) of Law no. 28 of 2014 concerning Copyright.
[2]https://libera.id/blogs/contoh-hak-cipta/
[3]Peter Mahmud Marzuki, Legal Research. Revised Edition. Jakarta. Golden publishing company Prenada Media Group. 2013.. Hal. 141-142.
[4]https://indonesiare.co.id/id/article/perbedaan-delik-aduan-dan-delik-biasa.

The change in the nature of the offense of copyright infringement from an ordinary offense to a complaint offense is influenced by community conditions and political factors, of course this has an impact on the process of law enforcement and protection. In terms of law enforcement, copyright infringement will be processed by the police to conduct an investigation if there is a complaint made by the copyright holder or creator. In terms of protection, changing a copyright offense to a complaint offense will cause the economic rights protection of the creator to be weaker.

Copyright protection is closely related to copyright infringement. Considering the purpose of copyright protection itself, to protect the rights of the creator from infringing actions that can harm the creator or copyright holder. The stipulation of ordinary offenses in Law Number 19 of 2002, hereinafter referred to as the Copyright Law of 2002, is intended to ensure better protection than before.[5]The creator is one or several people who individually or together produce a creation that is unique and personal.[6]This means that the creator has a main role in creating an invention or creation of a work.

Creation is any creative work in the fields of science, art, and literature that is produced on the inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form..[7]The creation or the work of this creator must of course be protected.The change in this offense for the creator is certainly a problem in itself, because the creator must be more active in controlling when problems or plagiarism occur in their creations as early as possible by reporting to the authorities so that the legal process can apply quickly. Because currently the copyright law uses complaint offenses. A complaint offense (klackt offense) is an offense that can only be processed if there is a complaint from the aggrieved party.[8]This copyright infringement must be based on reports from victims who feel aggrieved.

The state, in this case, is carried out by the relevant law enforcement officials who cannot anticipate and carry out direct supervision of copyright infringement if it occurs. Because changing the offense of copyright infringement into a complaint offense will result in copyright infringement being processed when there is a complaint from the creator who feels

[5]Prakosa Kartiko Yudi, The juridical implications of changing the type of offense in law No. 28 of 2014 concerning copyright, Malang: Thesis Journal of the Faculty of Law, Universitas Brawijaya, 2018., hlm 5.
[6]Article 1 paragraph (2) of Law no. 28 of 2014 concerning Copyright.
[7]Article 1 paragraph (3) of Law no. 28 of 2014 concerning Copyright.
[8]Eddy O.S. Hieriej, Principles of Criminal Law, (Yogyakarta: Cahaya Atma Pustaka, 2014). See also P.A.F. Lamintang and Simons, Book of Criminal Law Studies (Bandung: Pioneir Jaya), hlm. 145.

aggrieved. In complaint offenses, the state provides protection in terms of facilitating law enforcement efforts. Or it can be said that now our law enforcement officers are passive, before there was a complaint from the creator.

From the results of the above description, the author wants to make a study entitled *"Criminal Law Perspectives on the Formulation of Changes in Ordinary Offenses into Complaints in the Copyright Act for Authors"*

B. Research Method

The legal research method used by the researcher is a type of normative legal research. This type of research focuses on positive law, namely in the form of laws and regulations. The source of the data used is secondary data, where in this study the researchers collected data through library research.

C. Formulation of the problem

Based on the above background, in this paper the author will examine the national legal response to corporate crime, with the following problems: *First*, how is the formulation of changing ordinary offenses into complaint offenses in copyright law for creators in the perspective of criminal law; *second*, what are the consequences of the application of changing an ordinary offense into a complaint offense for the creator?

D. Results and Discussion

1. **The formulation of changes in ordinary offenses into complaint offenses in the copyright law for creators in the perspective of criminal law.**

The law in Indonesia that specifically regulates copyright has actually been going on for a long time, it has been recorded that there have been 6 changes in the copyright law since the Dutch colonial era. The first time to regulate copyright was the Dutch inheritance law, namely Auteurwet in 1912. After approximately 70 years, it was replaced by Law Number 6 of 1982. This law was the first law made by indonesia.

Then this law underwent 2 changes. The first change occurred in 1987 with the issuance of Law Number 7 of 1987 concerning amendments to Law Number 6 of 1982 concerning Copyright. The second amendment occurred in 1997 through Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright as amended by Law Number 7 of 1987. In 2002, this Law Number 7 of 1987 revoked and replaced by Law Number 19 of 2002 concerning Copyright. In the end, Law Number 19

of 2002 was replaced by Law Number 28 of 2014 concerning Copyright which is valid until now.[9]

Along with changes in the law from the Dutch era to the present on this copyright law, it is also accompanied by changes in the nature of the offense that applies. Each offense contains different elements and meanings, which of course are also based on the law enforcement process. The following is a change in the nature of the offense in each law from the Dutch colonial period until now:

a. During the colonial period, namely Auteurwet in 1912 or it could also be called Staatsblad 1912 Number 600, it used a complaint offense. Which in the Dutch law has actually been enforced in the country of origin, which then based on the principle of concordance is also applied to Europeans in their colonies including the archipelago.
b. In Law Number 6 of 1982 concerning Copyright, the formulation of a complaint offense is used, as clearly stated in this law contained in Article 45 which reads "Criminal acts as referred to in Article 44 cannot be prosecuted except on complaints from copyright holder." This indicates that in Law No. 6 of 1982 concerning Copyright, a complaint offense is used.
c. In contrast to Law Number 7 of 1987 concerning amendments to Law Number 6 of 1982 concerning Copyright, this use the formulation of an ordinary offense. As this can be found, Article I Number 17 in paragraph 1 stipulates: "The abolition of the provisions of Article 45 of Law Number 6 of 1982, resulting in copyright infringement no longer being a criminal offense, but an ordinary crime" Then in article 45 which reads "Creations or goods resulting from copyright infringement are confiscated for the State to be destroyed" thus action can be taken immediately without waiting for a complaint from the Copyright Holder whose rights have been violated.
d. Then Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright is still using the usual offense formula. It is proven by Article 43B which reads "The right to file a lawsuit as referred to in Article 42 does not

[9]Amrani Hanafi, Urgency of Changing Ordinary Offenses to Complaints and Their Relevance to Copyright Protection and Enforcement, Law: Jurnal Hukum, Vol. 1 No. 2 (2018): 347-362. DOI: 10.22437/ujh.1.2.347-362.

reduce the State's right to file criminal charges against Copyright infringement." So the state through the elements of state equipment is given the authority to take direct action if there is a copyright infringement.

e. In Law Number 19 of 2002 concerning Copyrights, the formulation of ordinary offenses is also still used. We can see in the description contained in Article 66 which reads "The right to file a lawsuit as referred to in Article 55, Article 56, and Article 65 does not reduce the State's right to carry out criminal charges against Copyright infringement". in the previous law which used the usual offense formulation.

f. In contrast to the law that we have used up to now, namely Law Number 28 of 2014 concerning Copyright, this formula uses the formulation of a complaint offense. It is clearly explained in Article 120 which reads "Criminal acts as referred to in this Law constitute a complaint offense." So in the process of enforcing the law, it must interfere with the complaint first.

Of course, this indicates a difference in every applicable law enforcement process. Where in the usual offense formulation does not require a complaint by the aggrieved party, it is different from the complaint offense formulation which focuses on the existence of a complaint first. Of course, the use of ordinary offenses and complaint offenses in each law was based on the conditions of the community at that time. because this is also related to matters of law enforcement later.

If examined more deeply, from the early days of this copyright arrangement in the Dutch era (Auteurwet in 1912) using the complaint offense formulation, until the birth of the first law made by the Indonesian people. This is because people who feel aggrieved by their creation immediately report it to law enforcement. Then in a period of approximately 15 years we use a formula that all offenses complain, become ordinary offenses. Until finally with the issuance of Law No. 28 of 2014 concerning copyright using ordinary offenses.

2. The consequences of applying for a change in an ordinary offense are a complaint offense for the creator.

The change of an ordinary offense into a complaint offense does not necessarily protect the exclusive rights of the creator himself. However, the state has provided a clear

platform and protection for creators so that they can then file complaints for copyright infringement. The creator himself knows that the results of his creation are used by other parties with irresponsible things. Therefore, it is necessary to have a permanent legal force to protect the work of the creator

The reasons for the choice of applying a complaint offense in a copyright crime are as follows:

a. Law enforcement officials will not be able to determine whether a copyright crime has occurred only by comparing the goods resulting from copyright infringement with the original creation. Only the creator or copyright holder can be more sure which is the original creation and which is the non-original or imitation of the original creation, so that they can immediately report the violation of the exclusive rights of their creation.
b. In carrying out the legal process, law enforcement officers may not immediately know whether a party has obtained permission to publish or reproduce a work. Therefore, there must be a first complaint from the creator or copyright holder.
c. In practice, if there is a copyright infringement, the party whose copyright is violated prefers compensation from the party who infringes the copyright rather than the copyright violator being subject to imprisonment.[10]

Then the changes have a very detrimental effect on the victim. Because the application of the complaint offense means that the aggrieved party must file a complaint on every violation that occurs or it can be said to also report in each different legal area. Because of this copyright infringement, there is no place limit especially if the infringement is done through electronic media. This also adds more losses to the aggrieved parties.

The enforcement of complaint offenses on the other hand has a positive impact on the police. In the application of ordinary offenses, the level of complexity in the investigation process and the investigation of copyright infringement offenses often arises, because the police have difficulties in collecting evidence because the injured party does not know or does not complain, or even knows but does not want to complain because he does not want to deal with law.

[10]Rasyid Fitri Pratiwi, Study of the relevance of complaint offenses on the implementation of copyright laws, Department of Civil Law, Faculty of Law, Hasanuddin University, Volume 32, Number 2, June 2020.hlm 221.

While the use of complaint offenses in the process of eradicating copyright infringement offenses makes it easier for the police in the process of collecting evidence that is used as evidence in the investigation and investigation process, due to the awareness and willingness of the victim to carry out legal proceedings against the party that harms him, so that with awareness from the victim's side to assist the police in terms of data on their copyrighted works used by irresponsible parties, to be further used by the police in terms of evidence.

Another impact is the application of the complaint offense in UUHC No. 28 of 2014, which also provides protection for creators in terms of protecting the rights they have, namely the freedom to use their rights to defend their creations or not, because Copyright is a personal right owned by the creator. In this case, the application of the complaint offense in addition to providing protection for the rights of the creator on whether or not to use his rights to defend his creation, also respects the rights of the creator if he does not want to complain.

The nature of copyright, which is the personal right of the creator, provides legal protection for the creator in choosing whether or not to use his rights in a legal process if the work of his creation is used by other parties without his permission..[11]This also provides an opportunity for the creator if he finds a violation of his creation to take legal action or not. Because not all problems that are dealt with by law must be resolved in court.

C. Closing

Starting from the discussion above, the conclusions that can be drawn from the results of the research and discussion that have been presented include:

1. The formulation of changes in ordinary offenses into complaint offenses in the copyright law for creators in the perspective of criminal law is in Law no. 19 of 2002 concerning Copyright in article 66 shows that the state through its law enforcement elements has the space to take direct action if there is an infringement against the creator without a complaint process. This is different from the law that we now use, namely Law No. 28 of 2014 concerning Copyright in Article 120 confirms that in the provisions of this Law, complaints offenses are used. Where law enforcement can be

[11]Wulan Evi Retno, Kuswanto Heru, *Juridical study of article 120 of the copyright law number 28 of 2014 regarding complaint offenses for copyright infringement*, lex journal: law & justice studies, 2021. DOI : http://ejournal.unitomo.ac. id/index.php/law.

processed, it must first go through a complaint from the party who feels aggrieved.

2. The consequence of the application of changing an ordinary offense into a complaint offense for the creator is that the creator or copyright holder must be able to better protect the results of his creation so that the audience or third parties cannot take actions that can harm the creator. In the process of resolving the case, the creator can choose or be given space to resolve the problem process related to this copyright infringement, going through a family process (outside court) or choosing to take the problem to law.

Bibliography

Books :

Amrani Hanafi, *Urgency of Changing Ordinary Offenses to Complaints and Their Relevance to Copyright Protection and Enforcement*, Law: Jurnal Hukum, Vol. 1 No. 2 (2018): 347-362. DOI: 10.22437/ujh.1.2.347-362.

Eddy O.S. Hieriej, *Principles of Criminal Law*, (Yogyakarta: Cahaya Atma Pustaka, 2014). See also P.A.F. Lamintang and Simons, Book of Criminal Law Studies (Bandung: Pioneir Jaya).

Peter Mahmud Marzuki, *Legal Research*. Revised Edition. Jakarta. Golden publishing company Prenada Media Group. 2013.

Prakosa Kartiko Yudi, *The juridical implications of changing the type of offense in law No. 28 of 2014 concerning copyright*, Malang: Thesis Journal of the Faculty of Law, Universitas Brawijaya, 2018.

- Articles or Scientific Journals:

Rasyid Fitri Pratiwi, *Study of the relevance of complaint offenses on the implementation of copyright laws*, Department of Civil Law, Faculty of Law, Hasanuddin University, Volume 32, Number 2, June 2020.

Wulan Evi Retno, Kuswanto Heru, *Juridical study of article 120 of the copyright law number 28 of 2014 regarding complaint offenses for copyright infringement*, lex journal: law & justice studies, 2021. DOI : http://ejournal.unitomo.ac. id/index.php/law.

- Legislation:

Law No. 28 of 2014 concerning Copyright.

➢ Internet :

https://libera.id/blogs/contoh-hak-cipta/.

https://indonesiare.co.id/id/article/perbedaan-delik-aduan-dan-delik-biasa.

ISSN 2985-5691

Food Safety and Legal Protection in Indonesia

Mutimatun Niami[1], Lintang Dwi Anti[2], Rokhman Adi Putera[3], Yustika Kusuma Ningrum[4]

Muhammadiyah University of Surakarta

Email : [1]mn272@umas.ac.id, [2] rokhmanadi19012000@gmail.com,
[3]yustikakusumanigrum15@gmail.com, [4]lintangdwianti16@gmail.com

Abstract

Indonesia's MSMEs are growing rapidly in line with the reduced job opportunities due to the Covid-19 pandemic. However, food products made by the home industry are still unable to compete with various manufactured products in the modern market and traditional markets. Circulation permit constraints need to receive serious attention and be addressed immediately. This study uses a survey to find out whether food safety is the main concern of people who want to stay healthy during the Pandemic. The results of the study indicate that the public pays attention to the existence of a distribution permit as a guarantee of food safety. Regarding the problem of obtaining distribution permits for MSMEs, the government facilitates by providing a budget for testing and mentoring on how to properly process food products. In addition, BPOM periodically conducts sampling tests on products on the market to maintain composition, labels and ingredients to ensure food safety for the community.

Keyword : Food Safety, Legal Protection, Indonesia

A. Introduction

The pandemic has changed people's lifestyles. The threat of disease, its transmission and the death rate which has become a trending topic for the past 2 years has raised awareness on matters related to health, food products are one of them. Hygiene and food safety are the main considerations in choosing food products today.

On the one hand, the Covid-19 pandemic and the layoffs made MSMEs in the food and beverage sector appear. However, the increase in the number of MSME actors is not in line with the knowledge of beginner MSMEs who only focus on production and sales without paying attention to the legality of the safety of the products being marketed. Some MSME actors think that their products are safe because they do not use hazardous materials, but it turns out that the use of prohibited materials was found on the market and eventually confiscated by the authorities.

On the other hand, MSMEs are an important point in saving the economic situation of the Indonesian people. Micro, Small and Medium Enterprises as contributors to the National Gross Domestic Product (GDP) have an important role for Indonesia's economic recovery. Based on data from the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM) in March 2021, the number of MSMEs reached 64.2 million with a contribution to Gross Domestic Product of 61.07 percent or Rp. 8,573.89 trillion. MSMEs are able to absorb 97 percent of the total workforce, and can collect up to 60.42 percent of the total investment in Indonesia.[1]

B. Discusion

1. Food Safety and Legal Protection for Citizens

MSMEs that already have a BPOM permit will make the public believe in the quality of the products sold because they have passed the test and contain safe ingredients to use.[2] It is hoped that it will increase sales turnover and expand the marketing area and can even continue to international markets.

The obligation for distribution permits is enshrined in Law Number 18 of 2012 concerning Food and Government Regulation Number 86 of 2019 concerning Food Safety. In PP No. 86 of 2019 what is meant by food is everything that comes from biological sources of agricultural, plantation, forestry, fishery, animal husbandry, water and water products, both processed and unprocessed which are intended as food or drinks for human consumption, including raw materials. Food additives, Food raw materials and even others used in the process of preparing, processing and/or making food or beverages.

Based on data that has been summarized regarding public knowledge about food distribution licensing, out of 43 respondents 83.3% know that the food consumed must have a distribution permit even though some people are also familiar with several food permits in Indonesia such as MUI halal permits, BPOM, PIRT (Home Industry Food

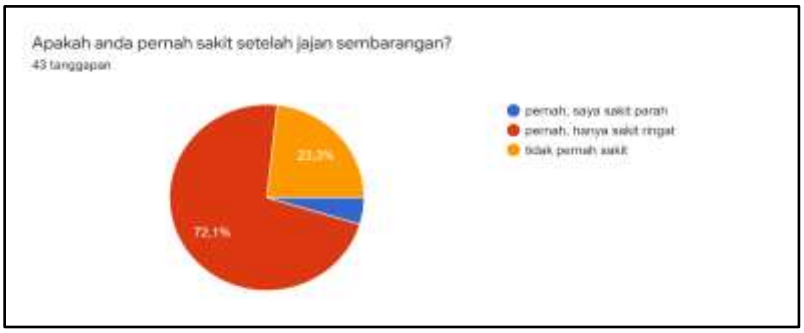
[1] https://www.kemenkeu.go.id/publikasi/berita/pemerintah-perkuat-umkm-melalui-berbagai-bentuk-bantuan

[2] https://smesco.go.id/berita/acara-memilki-nomor-izin-edar-bpom

Production Licensing), and SIUP (Trade Business Permit). However, some people do not understand and do not know that the circulating food should have a distribution permit first. Because with a distribution permit on every food consumed, it will have a good impact on the community. This is certainly an important challenge for the government in overseeing the legality and food safety of food in circulation.

The survey proves that the community really needs the legality and feasibility of food in the food that people consume. Food is the right of every living human being. This right relates to everything that is good and safe to eat. That the government's role is very influential on food security for the community. don't let the community have to struggle alone to choose food that is suitable for consumption, with the implementation of rules regarding food safety and legal protection, people no longer need to worry about the food to be eaten. 7.) information regarding halal, expiration date, month, and year.[3]

The government plays an important role for the welfare of the community, so the government needs to strictly enforce all kinds of rules that have been stated in the law, but on the other hand many business actors are doing various ways to get as much profit as possible by committing fraud. These frauds include using hazardous chemicals, not paying attention to the cleanliness of the production site, using materials that are no longer suitable for use, using kitchen utensils and various other types of fraud.



Gambar 1.4 Food hazards are not of standardized

[3] Wiku Adisasmito, "Analisis Kebijakan Nasional MUI dan BPOM dalam Labeling Obat dan Makanan," *Case Study: Analisis Kebijakan Kesehatan*, 2008, 1–25 <https://staff.blog.ui.ac.id/wiku-a/files/2013/04/kebijakan-nasional-mui-dan-bpom-dalam-labeling-obat-dan-makanan.pdf>.

The impact of cheating business actors to get a lot of profits makes many people experience pain after consuming these foods. Public complaints about unhealthy food have an impact on health after consuming food which results in stomach pain, diarrhea, cough, inflammation, fever, itchy throat, and digestive system disorders. the circulation of food products currently has circulated to all corners of the country. The welfare of the people in obtaining proper food is a constitutional right that is closely held. The community has a constitutional right to obtain legal protection for food and other products to ensure their health. Therefore they need to be given legal protection in the form of guarantees for licensing from BPOM to get proper food after going through research at BPOM.

To follow on food that does not have a distribution permit and has a dangerous impact on the community, BPOM can play a role in investigating the fraud by (a) stopping the production and marketing of food products until the permit is issued (b) conducting inspections and withdrawing the circulating products. in the market (c) registering the product with the Indonesian Food and Drug Supervisory Agency to obtain a distribution permit (d) re-marketing of food products that meet the licensing standards that have obtained distribution permits from the Food and Drug Supervisory Agency of the Republic of Indonesia.[4]

Cases of fraud that occur in the community can no longer be handled, to minimize the losses caused when buying the wrong food, the public can check the official website that has been provided by the Food and Drug Administration.

Gambar 1.5 food legality.

[4] Regita Lestari Cahyani dan Universitas Sriwijaya, "PENEGAKAN HUKUM OLEH BADAN PENGAWAS OBAT DAN MAKANAN TERHADAP MAKANAN DAN OBAT TANPA IZIN EDAR - Regita Lestari Cahyani," October, 2019.

Many people are worried about the food they eat. To find a solution whether the food in circulation is suitable for consumption, BPOM has provided a forum for people who want to check the suitability of the food they eat by visiting the official BPOM website. That way people no longer need to worry about the food they will eat and can be even more careful.

2. Distribution permit as a form of food safety guarantee

Food Act No. 18 of 2012 states that the government has the authority to supervise the circulating food. The supervision includes the fulfillment of food requirements, food quality, and food nutrition, as well as food label and advertisement requirements for processed food(BPOM)[5]

In order to ensure the safety of the food to be distributed, business actors need to pay attention to the food distribution permit. Based on a survey conducted by business actors, they already understand food licensing so that food is safe for distribution to the public. The interests of consumers are the main thing that must be considered by business actors.

According to Ali Mansyur there are four interests that are the main things to pay attention to, namely: physical interests relating to the body or body relating to the security and safety of the body and soul in the use of goods and/or services, besides that it is necessary to pay attention to the health and safety of the soul. These are things that

[5] Adhi S Lukman dan Feri Kusnandar, "Keamanan Pangan untuk Semua Food Safety for All," *Jurnal Mutu Pangan*, 2.2 (2015), 152–56.

must be considered by entrepreneurs. Social and environmental interests are the realization of consumers' desire to obtain optimal results from the use of their economic resources in obtaining goods and services which are necessities of life, so that consumers get concrete and correct information about the products to be consumed, because if business actors do not Paying attention to food safety before being circulated can cause social turmoil if consumers consume these unsafe products.[6]

Gambar 1.7 legality of food products for business Men

About 72.2% of the 18 respondents stated that the food being distributed already has an official permit. The food permits obtained are in the form of SIUP, NIB (Business Permit Number), PIRT, Halal, IUMK, MUI, HAKI, Lab Tests for Nutritional Value. But there are still business actors who have not fulfilled the food licenses that are circulated, so it is very necessary to educate business actors so that the processed food products have official permits.

For MSME actors, the government through BPOM has prepared various efforts to provide convenience in obtaining EDA permits. Based on the information from the Head of BPOM of Yogyakarta Province that the relevant agencies, namely the Department of Industry and Trade, the Department of Cooperatives and SMEs, the Department of Agriculture and Food Security and LIPI facilitated the distribution permit assistance. MSMEs that register will be selected by the relevant agencies and assisted in applying for marketing permits. The facilities obtained are material testing in

[6] Ahmad Zazili, "Urgensi Pengawasan Keamanan Pangan Berbasis Sistem Manajemen Risiko Bagi Perlindungan Konsumen," *Supremasi Hukum: Jurnal Penelitian Hukum*, 28.1 (2019), 57–70 <https://doi.org/10.33369/jsh.28.1.57-70>.

the BPOM laboratory free of charge, the financing has been budgeted by the relevant agency. Besides that, MSMEs can apply for assistance in good food production processes.

In the process of applying for a distribution permit, there are things that business actors need to pay attention to, namely:

a. The place of production is not integrated with the household kitchen. It is feared that quality safety and benefits are not guaranteed. Associated with washing, processing and packaging. Can be done under the same roof with the house but must be provided a separate place for the production process.
b. Fulfillment of aspects that include water supply, the production site should not be adjacent to a garbage disposal site and adequate waste disposal
c. Special guidance for CPPOB (Good Processed Food Processing) can be carried out by BPOM even online. So that when the product is tested, it has complied with the provisions of the distribution permit.

In an effort to maintain food safety on an ongoing basis, BPOM will periodically conduct a sampling of products that have obtained a distribution permit from BPOM. If it is later found that a product has used a different material when applying for a distribution permit and this has an impact on food safety, the government in this case BPOM will ask to withdraw all these products and destroy them.

C. Conclusion

Food safety which is manifested in the distribution permit of BPOM and PIRT for MSMEs is not an obstacle. The government through BPOM and related agencies has a budget to support the ability of MSMEs to expand their product marketing. However, access to these facilities needs to be socialized so that assistance and good processing methods of processed food can be carried out and distribution permits can be obtained so as to raise the Micro Business class to the small and medium business class.

Biography

Adhi S Lukman dan Feri Kusnandar, "Keamanan Pangan untuk Semua Food Safety for All," *Jurnal Mutu Pangan*, 2.2 (2015), 152–56.

Ahmad Zazili, "Urgensi Pengawasan Keamanan Pangan Berbasis Sistem Manajemen Risiko Bagi Perlindungan Konsumen," *Supremasi Hukum: Jurnal Penelitian Hukum*, 28.1 (2019), 57–70 <https://doi.org/10.33369/jsh.28.1.57-70>.

Regita Lestari Cahyani dan Universitas Sriwijaya, "PENEGAKAN HUKUM OLEH BADAN PENGAWAS OBAT DAN MAKANAN TERHADAP MAKANAN DAN OBAT TANPA IZIN EDAR - Regita Lestari Cahyani," October, 2019.

Wiku Adisasmito, "Analisis Kebijakan Nasional MUI dan BPOM dalam Labeling Obat dan Makanan," *Case Study: Analisis Kebijakan Kesehatan*, 2008, 1–25 <https://staff.blog.ui.ac.id/wiku-a/files/2013/04/kebijakan-nasional-mui-dan-bpom-dalam-labeling-obat-dan-makanan.pdf>.

https://www.kemenkeu.go.id/publikasi/berita/pemerintah-perkuat-umkm-melalui-berbagai-bentuk-bantuan

https://smesco.go.id/berita/acara-memilki-nomor-izin-edar-bpom

ISSN 2985-5691

Food Safety and Legal Protection in Indonesia

Mutimatun Niami[1], Lintang Dwi Anti[2], Rokhman Adi Putera[3], Yustika Kusuma Ningrum[4]

Muhammadiyah University of Surakarta

Email : [1]mn272@umas.ac.id, [2] rokhmanadi19012000@gmail.com,
[3]yustikakusumanigrum15@gmail.com, [4]lintangdwianti16@gmail.com

Abstract

Indonesia's MSMEs are growing rapidly in line with the reduced job opportunities due to the Covid-19 pandemic. However, food products made by the home industry are still unable to compete with various manufactured products in the modern market and traditional markets. Circulation permit constraints need to receive serious attention and be addressed immediately. This study uses a survey to find out whether food safety is the main concern of people who want to stay healthy during the Pandemic. The results of the study indicate that the public pays attention to the existence of a distribution permit as a guarantee of food safety. Regarding the problem of obtaining distribution permits for MSMEs, the government facilitates by providing a budget for testing and mentoring on how to properly process food products. In addition, BPOM periodically conducts sampling tests on products on the market to maintain composition, labels and ingredients to ensure food safety for the community.

Keyword : Food Safety, Legal Protection, Indonesia

A. Introduction

The pandemic has changed people's lifestyles. The threat of disease, its transmission and the death rate which has become a trending topic for the past 2 years has raised awareness on matters related to health, food products are one of them. Hygiene and food safety are the main considerations in choosing food products today.

On the one hand, the Covid-19 pandemic and the layoffs made MSMEs in the food and beverage sector appear. However, the increase in the number of MSME actors is not in line with the knowledge of beginner MSMEs who only focus on production and sales without paying attention to the legality of the safety of the products being marketed. Some MSME actors think that their products are safe because they do not use hazardous materials, but it turns out that the use of prohibited materials was found on the market and eventually confiscated by the authorities.

On the other hand, MSMEs are an important point in saving the economic situation of the Indonesian people. Micro, Small and Medium Enterprises as contributors to the National Gross Domestic Product (GDP) have an important role for Indonesia's economic recovery. Based on data from the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM) in March 2021, the number of MSMEs reached 64.2 million with a contribution to Gross Domestic Product of 61.07 percent or Rp. 8,573.89 trillion. MSMEs are able to absorb 97 percent of the total workforce, and can collect up to 60.42 percent of the total investment in Indonesia.[1]

B. Discusion

1. Food Safety and Legal Protection for Citizens

MSMEs that already have a BPOM permit will make the public believe in the quality of the products sold because they have passed the test and contain safe ingredients to use.[2] It is hoped that it will increase sales turnover and expand the marketing area and can even continue to international markets.

The obligation for distribution permits is enshrined in Law Number 18 of 2012 concerning Food and Government Regulation Number 86 of 2019 concerning Food Safety. In PP No. 86 of 2019 what is meant by food is everything that comes from biological sources of agricultural, plantation, forestry, fishery, animal husbandry, water and water products, both processed and unprocessed which are intended as food or drinks for human consumption, including raw materials. Food additives, Food raw materials and even others used in the process of preparing, processing and/or making food or beverages.

Based on data that has been summarized regarding public knowledge about food distribution licensing, out of 43 respondents 83.3% know that the food consumed must have a distribution permit even though some people are also familiar with several food permits in Indonesia such as MUI halal permits, BPOM, PIRT (Home Industry Food

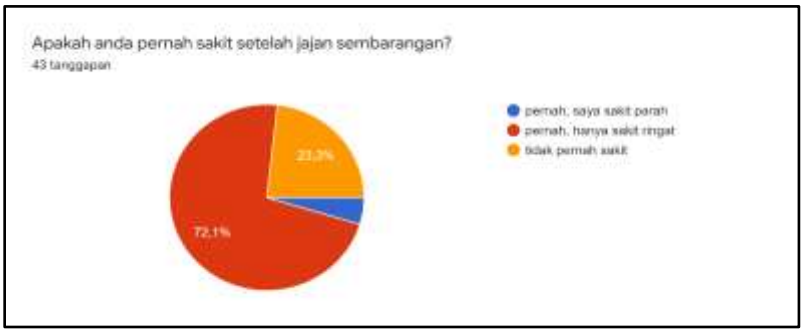
[1] https://www.kemenkeu.go.id/publikasi/berita/pemerintah-perkuat-umkm-melalui-berbagai-bentuk-bantuan

[2] https://smesco.go.id/berita/acara-memilki-nomor-izin-edar-bpom

Production Licensing), and SIUP (Trade Business Permit). However, some people do not understand and do not know that the circulating food should have a distribution permit first. Because with a distribution permit on every food consumed, it will have a good impact on the community. This is certainly an important challenge for the government in overseeing the legality and food safety of food in circulation.

The survey proves that the community really needs the legality and feasibility of food in the food that people consume. Food is the right of every living human being. This right relates to everything that is good and safe to eat. That the government's role is very influential on food security for the community. don't let the community have to struggle alone to choose food that is suitable for consumption, with the implementation of rules regarding food safety and legal protection, people no longer need to worry about the food to be eaten. 7.) information regarding halal, expiration date, month, and year.[3]

The government plays an important role for the welfare of the community, so the government needs to strictly enforce all kinds of rules that have been stated in the law, but on the other hand many business actors are doing various ways to get as much profit as possible by committing fraud. These frauds include using hazardous chemicals, not paying attention to the cleanliness of the production site, using materials that are no longer suitable for use, using kitchen utensils and various other types of fraud.



Gambar 1.4 Food hazards are not of standardized

[3] Wiku Adisasmito, "Analisis Kebijakan Nasional MUI dan BPOM dalam Labeling Obat dan Makanan," *Case Study: Analisis Kebijakan Kesehatan*, 2008, 1–25 <https://staff.blog.ui.ac.id/wiku-a/files/2013/04/kebijakan-nasional-mui-dan-bpom-dalam-labeling-obat-dan-makanan.pdf>.

The impact of cheating business actors to get a lot of profits makes many people experience pain after consuming these foods. Public complaints about unhealthy food have an impact on health after consuming food which results in stomach pain, diarrhea, cough, inflammation, fever, itchy throat, and digestive system disorders. the circulation of food products currently has circulated to all corners of the country. The welfare of the people in obtaining proper food is a constitutional right that is closely held. The community has a constitutional right to obtain legal protection for food and other products to ensure their health. Therefore they need to be given legal protection in the form of guarantees for licensing from BPOM to get proper food after going through research at BPOM.

To follow on food that does not have a distribution permit and has a dangerous impact on the community, BPOM can play a role in investigating the fraud by (a) stopping the production and marketing of food products until the permit is issued (b) conducting inspections and withdrawing the circulating products. in the market (c) registering the product with the Indonesian Food and Drug Supervisory Agency to obtain a distribution permit (d) re-marketing of food products that meet the licensing standards that have obtained distribution permits from the Food and Drug Supervisory Agency of the Republic of Indonesia.[4]

Cases of fraud that occur in the community can no longer be handled, to minimize the losses caused when buying the wrong food, the public can check the official website that has been provided by the Food and Drug Administration.

Gambar 1.5 food legality.

[4] Regita Lestari Cahyani dan Universitas Sriwijaya, "PENEGAKAN HUKUM OLEH BADAN PENGAWAS OBAT DAN MAKANAN TERHADAP MAKANAN DAN OBAT TANPA IZIN EDAR - Regita Lestari Cahyani," October, 2019.

Many people are worried about the food they eat. To find a solution whether the food in circulation is suitable for consumption, BPOM has provided a forum for people who want to check the suitability of the food they eat by visiting the official BPOM website. That way people no longer need to worry about the food they will eat and can be even more careful.

2. Distribution permit as a form of food safety guarantee

Food Act No. 18 of 2012 states that the government has the authority to supervise the circulating food. The supervision includes the fulfillment of food requirements, food quality, and food nutrition, as well as food label and advertisement requirements for processed food(BPOM)[5]

In order to ensure the safety of the food to be distributed, business actors need to pay attention to the food distribution permit. Based on a survey conducted by business actors, they already understand food licensing so that food is safe for distribution to the public. The interests of consumers are the main thing that must be considered by business actors.

According to Ali Mansyur there are four interests that are the main things to pay attention to, namely: physical interests relating to the body or body relating to the security and safety of the body and soul in the use of goods and/or services, besides that it is necessary to pay attention to the health and safety of the soul. These are things that

[5] Adhi S Lukman dan Feri Kusnandar, "Keamanan Pangan untuk Semua Food Safety for All," *Jurnal Mutu Pangan*, 2.2 (2015), 152–56.

must be considered by entrepreneurs. Social and environmental interests are the realization of consumers' desire to obtain optimal results from the use of their economic resources in obtaining goods and services which are necessities of life, so that consumers get concrete and correct information about the products to be consumed, because if business actors do not Paying attention to food safety before being circulated can cause social turmoil if consumers consume these unsafe products.[6]

Gambar 1.7 legality of food products for business Men

About 72.2% of the 18 respondents stated that the food being distributed already has an official permit. The food permits obtained are in the form of SIUP, NIB (Business Permit Number), PIRT, Halal, IUMK, MUI, HAKI, Lab Tests for Nutritional Value. But there are still business actors who have not fulfilled the food licenses that are circulated, so it is very necessary to educate business actors so that the processed food products have official permits.

For MSME actors, the government through BPOM has prepared various efforts to provide convenience in obtaining EDA permits. Based on the information from the Head of BPOM of Yogyakarta Province that the relevant agencies, namely the Department of Industry and Trade, the Department of Cooperatives and SMEs, the Department of Agriculture and Food Security and LIPI facilitated the distribution permit assistance. MSMEs that register will be selected by the relevant agencies and assisted in applying for marketing permits. The facilities obtained are material testing in

[6] Ahmad Zazili, "Urgensi Pengawasan Keamanan Pangan Berbasis Sistem Manajemen Risiko Bagi Perlindungan Konsumen," *Supremasi Hukum: Jurnal Penelitian Hukum*, 28.1 (2019), 57–70 <https://doi.org/10.33369/jsh.28.1.57-70>.

the BPOM laboratory free of charge, the financing has been budgeted by the relevant agency. Besides that, MSMEs can apply for assistance in good food production processes.

In the process of applying for a distribution permit, there are things that business actors need to pay attention to, namely:

a. The place of production is not integrated with the household kitchen. It is feared that quality safety and benefits are not guaranteed. Associated with washing, processing and packaging. Can be done under the same roof with the house but must be provided a separate place for the production process.
b. Fulfillment of aspects that include water supply, the production site should not be adjacent to a garbage disposal site and adequate waste disposal
c. Special guidance for CPPOB (Good Processed Food Processing) can be carried out by BPOM even online. So that when the product is tested, it has complied with the provisions of the distribution permit.

In an effort to maintain food safety on an ongoing basis, BPOM will periodically conduct a sampling of products that have obtained a distribution permit from BPOM. If it is later found that a product has used a different material when applying for a distribution permit and this has an impact on food safety, the government in this case BPOM will ask to withdraw all these products and destroy them.

C. Conclusion

Food safety which is manifested in the distribution permit of BPOM and PIRT for MSMEs is not an obstacle. The government through BPOM and related agencies has a budget to support the ability of MSMEs to expand their product marketing. However, access to these facilities needs to be socialized so that assistance and good processing methods of processed food can be carried out and distribution permits can be obtained so as to raise the Micro Business class to the small and medium business class.

Biography

Adhi S Lukman dan Feri Kusnandar, "Keamanan Pangan untuk Semua Food Safety for All," *Jurnal Mutu Pangan*, 2.2 (2015), 152–56.

Ahmad Zazili, "Urgensi Pengawasan Keamanan Pangan Berbasis Sistem Manajemen Risiko Bagi Perlindungan Konsumen," *Supremasi Hukum: Jurnal Penelitian Hukum*, 28.1 (2019), 57–70 <https://doi.org/10.33369/jsh.28.1.57-70>.

Regita Lestari Cahyani dan Universitas Sriwijaya, "PENEGAKAN HUKUM OLEH BADAN PENGAWAS OBAT DAN MAKANAN TERHADAP MAKANAN DAN OBAT TANPA IZIN EDAR - Regita Lestari Cahyani," October, 2019.

Wiku Adisasmito, "Analisis Kebijakan Nasional MUI dan BPOM dalam Labeling Obat dan Makanan," *Case Study: Analisis Kebijakan Kesehatan*, 2008, 1–25 <https://staff.blog.ui.ac.id/wiku-a/files/2013/04/kebijakan-nasional-mui-dan-bpom-dalam-labeling-obat-dan-makanan.pdf>.

https://www.kemenkeu.go.id/publikasi/berita/pemerintah-perkuat-umkm-melalui-berbagai-bentuk-bantuan

https://smesco.go.id/berita/acara-memilki-nomor-izin-edar-bpom

ISSN 2985-5691

Legal Protection Of Intellectual Property Rights In The Utilization Of Lecturers' Works

Yustiana Dwirainaningsih[1], Aria Mulyapradana[2], Andri Nur Cahyo[3]

[1]Institut Teknologi dan Sains Nahdlatul Ulama Pekalongan
Email : dwirainaningsih@gmail.com
[2]Politeknik Pusmanu
Email: ariamulyapradana@gmail.com
[3]Politeknik Pusmanu
Email: andrinc.an@gmail.com

Abstract

Intellectual Property Rights (IPR) are rights to ownership of works that arise or are born due to intellectual abilities in the fields of science and technology. These works are intangible objects as a result of the intellectual ability of a lecturer in the field of science and technology through his creativity, taste, initiative and work. Besides that, Intellectual Property Rights is a legal instrument that provides protection for one's rights to all the results of creativity and the embodiment of intellectual works and gives the owner the right to enjoy economic benefits from the ownership of these rights. The purpose of this study is to find out to what extent the protection of intellectual property rights in the benefits of the work of lecturers, the results of this study use a normative juridical approach, namely library law research which is carried out by examining library materials or secondary data by prioritizing the protection of intellectual property rights. from the results of research and dedication. In the Higher Education environment, legal protection for Intellectual Property Rights is a form of producing an investment that obtains copyrights and patents, therefore the protection of intellectual property is absolute to be supported, facilitated and facilitated by all parties.

Keywords: Legal protection, Intellectual Property Rights, Lecturer's Work

A. Introduction

Intellectual Property Rights or Intellectual Property Rights which in foreign languages are often referred to as IPR terms are obtained from Intellectual Property Rights (IPR) which have been regulated in Law Number 7 of 1994 and concerning the ratification of the World Trade Organization (WTO). That the government is serious about supporting a free and open economic system, the higher the quality produced will spur the development of technology that supports this need.

Therefore, the need for the role of intellectual property rights in supporting a technological development. If we look at the applications for intellectual property rights, including copyrights, trademarks, patents and industrial designs, quite a few have been submitted to the Directorate General of Intellectual Property Rights, Ministry of Justice and Human Rights. Moreover, with Indonesia's participation as a member of the WTO and the consequences of implementing TRIPS (Agreement on Trade Related Aspects of Intellectual Property Right).[1] Moreover, with Indonesia's participation as a member of the WTO and the consequences of implementing TRIPS (Agreement on Trade Related Aspects of Intellectual Property Right).

The role of government from various institutions and institutions, both in the government and private sectors, requires a solid coordination from all parties to support and achieve maximum results in the effective implementation of intellectual property rights. Intellectual Property Rights (IPR) are rights related to property arising from human intellectual abilities. Intellectual property rights can be divided into two categories, namely Copyright and Industrial Property Rights which include brands, industrial design patents, integrated circuit layouts, trade secrets and plant varieties.

The HKI system is a private right. This is where the characteristic of HKI is. A person is free to apply for or register his intellectual work. The exclusive rights granted by the state to individual IPR actors are nothing but an appreciation for their work and so that others are stimulated to further develop it, so that with the IPR system the interests of the community are determined by the market mechanism. The IPR system supports the establishment of a good documentation system for forms of human creativity so that the possibility of producing the same technology or other works can be prevented. With the support of this good documentation.

It is hoped that the community can make maximum use of it for their living needs or develop further in order to provide high added value.[2]

[1] Direktur Jenderal Industri Kecil Menengah Departemen Perindustrian, *Kebijakan Pemerintah dalam Perlindungan HAKI dan Liberalisasi Perdagangan Jasa Profesi di Bidang Hukum* (Jakarta : Direktur Jenderal Industri Kecil Menegah Departemen Perindustrian, 2007)

[2] Buku Panduan Hak Kekayaan Intelektual Direktorat Jenderal Hak Kekayaan Intelektual Kemntrian Hukum dan Hak Asasi Manusia R.I (Jakarta: Direktur Jenderal Hak Kekayaan Intelektual, 2013)

Understanding of IPR in Indonesia is still not working optimally, therefore Universities Research and Development Institutions (R & D) play a very important role as one of the income generators. Universities have the potential to produce intellectual property rights that have economic value, this is contained in an optimal management of intellectual property rights based on the results of the tridharma of higher education which includes research and community service which can be used as income generating activities in all activities which will be able to be highly competitive in the tridharma.[3]

The most important aspect when it comes to protecting intellectual works is the legal aspect. Therefore, the law must be able to provide protection for intellectual works, so as to be able to develop the creative power of the community which will later produce works that lead to intellectual property rights. Therefore, the researcher intends to conduct research with the title of perception of intellectual property rights in the usefulness of lecturers' work. Based on this description, the problem in this research is how to the perception of intellectual property rights in the usefulness of the lecturer's work.

B. Research Methods

This research uses a normative juridical approach, namely library law research which is carried out by examining library materials or secondary data. This research was conducted in order to obtain materials in the form of theories, concepts, legal principles and legal regulations related to existing problems, namely the perception of intellectual property rights in the usefulness of lecturers' work.

C. Discussion

1. Perception of Intellectual Property Rights in the Benefit of Lecturer's Work.

Intellectual Property Rights (HKI) began to be introduced and popularized to universities. Especially for lecturers. In 2016 many universities received training and socialization about the importance of IPR. As a developing country, Indonesia clearly lags far behind developed countries in terms of findings and research. There are many factors, one of which is the level of awareness of lecturers/researchers/inventors of Intellectual Property Rights. Thus, the results of research and findings are few that are

[3] Krisnani Setyowati, *et al*., *Hak Kekayaan Intelektual dan Tantangan Implementasi di Perguruan Tinggi* (Bogor: Kantor HKI IPB 2005)

registered in the state archives. In other words, the level of public awareness and appreciation of the work of Intellectual Property Rights is still quite low.

IPR socialization for lecturers is expected to be able to increase the work that is registered at the ministry of law and human rights. Remember, before being socialized about IPR, many works have not been patented. Unpatented works are at risk of being acquired and plagiarized by others. When this happens, the author can do nothing. Intellectual Property Rights are important for lecturers, considering that lecturers are identical with research results. IPR socialization is expected to encourage the registration of academic works to the Ministry of Law and Human Rights. Thus, the lecturers obtain copyright and patent rights legally. On the other hand, copyright will provide protection for the lecturer's work, if his work is plagiarized.[4]

A lecturer is an educator who has a very important role in the world of education. One of the pillars of the tridharma in higher education is research, besides that there is teaching and dedication that must be carried out in its work in the world of education. Higher education is an institution that produces investment works that can protect intellectual property rights. Lecturers who carry out or carry out research activities should get legal protection for the results of their research, especially in the fields of patents and copyrights.

In addition to copyright protection, there are also laws related to patents. The Patent Law regulated in number 3 of 2016 regulates the definition of patents, patent holders, substantive requirements regarding patents, types of patents, patent subjects, patent procedures and specifications for patent applications. This law also discusses the period of patent protection, patent cancellation and the rights and obligations of patent holders. Patenting IPR can be done for all products and works that have benefits. Patented works are works that provide benefits and empowerment for human life. Exclusive works are easier to patent, which is then this process is called copyright.[5]

In his opinion, if a lecturer is to conduct research, at least he must know the process of understanding or giving meaning to an information on a stimulus, within the

[4] Nabil Zurba, ***Manggrove dan Strategi Penggelolaannya*, Universitas Teuku Umar – Aceh , 2017**
[5] Irukawa Elisa, *Peranan Penting Hak atas Kekayaan Intelektual (HaKI) untuk Hasil Penelitian Dosen* (Dunia dosen, 2017)

scope of IPR, especially in Copyright and Patents. The regulations regarding IPR are Law No. 28 of 2014 which regulates and includes, the definition of creation, protected works, and procedures for recording copyright to the Intellectual Property Rights Institution. Besides that, there are still those related to the results of lecturers' research, namely about patents contained in Law Number 3 of 2016.

A patent is an exclusive right granted by the state to its investors for the results of their investments in technology, for a certain time to carry out their own investments for other parties to implement them. Meanwhile, an invention is an inventor's idea that is poured into a specific problem solving activity in the field of technology, which can be in the form of a process or a product. Therefore, the resulting party in an employment relationship is the employer. Lecturers can also obtain patents from their work as long as there is an agreement with the university on the results of their inventions for the wider community. In this context, it is necessary to make and confirm in a Collective Labor Agreement with Universities through Research and Community Service Institutions by stipulating that lecturers have the right to patents from investments made through research activities.[6]

Intellectual Property Rights in this study are devoted to lecturers who make discoveries whose results will be patented and related copyrights for the benefits of the works of lecturers are highly expected and needed by the community, efforts to protect an academic work of lecturers who have conducted research are required to register their findings to Intellectual Property Rights (IPR).

Intellectual Property Rights are intangible assets that originate from someone's intellectual property, besides that Intellectual Property Rights is the right to enjoy economically the results of intellectual creativity. Objects regulated in IPR are works that arise or are born due to human intellectual abilities. The doctrine of legal protection of IPR must be applied effectively and binding on everyone, so that IPR owners are obliged to register themselves and be proven by a certificate of registration.[7]

[6] Abdulkadir Muhammad, Kajian Hukum Ekonomi HAk Kekayaan Intelektual(Bandung:PT.Citra Aditya Bakti, 2007)
[7] Yusuf Arifin dan Siti Rodiaj"Perlunya Hak Kekayaan Intelektual di Perguruan Tinggi" http://klinikhaki.unpas.ac.id/perlunya-hak-kekayaan-intelektual-hki-di-perguruan-tinggi/,2015.

D. Conclusion

1. In the Higher Education environment, legal protection of Intellectual Property Rights as a form of producing an investment that obtains a patent, therefore the protection of intellectual property is absolutely necessary to be supported, facilitated and facilitated by all parties.
2. Through Intellectual Property which can have moral values, lecturers will automatically be branded as creators
3. Improving the management of Intellectual Property of Higher Education in order to be able to seek the establishment of IPR centers in accordance with existing capacities.
4. Lecturers in higher education are expected to have a high awareness of the importance of IPR in the tridharma

BIBLIOGRAPHY

ArifinYusuf dan Siti Rodiaj, 2015 *Perlunya Hak Kekayaan Intelektual di Perguruan Tinggi* http://klinikhaki.unpas.ac.id/perlunya-hak-kekayaan-intelektual-hki-di-perguruan-tinggi/,2015.

Buku Panduan, Direktur Jenderal Hak Kekayaan Intelektual , 2013 Hak Kekayaan Intelektual Direktorat Jenderal Hak Kekayaan Intelektual Kemntrian Hukum dan Hak Asasi Manusia R.I , Jakarta:, 2013

Direktur Jenderal Industri Kecil Menengah Departemen Perindustrian, 2007 *Kebijakan Pemerintah dalam Perlindungan HAKI dan Liberalisasi Perdagangan Jasa Profesi di Bidang Hukum*, Jakarta

Irukawa Elisa, 2017, *Peranan Penting Hak atas Kekayaan Intelektual (HaKI) untuk Hasil Penelitian Dosen* , Jakarta Dunia dosen,

Krisnani Setyowati, *et al*., 2005 *Hak Kekayaan Intelektual dan Tantangan Implementasi di Perguruan Tinggi*, Bogor: Kantor HKI IPB

Muhammad, Abdulkadir, 2007 *Kajian Hukum Ekonomi Hak Kekayaan Intelektual* , Bandung:PT.Citra Aditya Bakti.

Nabil Zurba, 2017 *Manggrove dan Strategi Penggelolaannya*, Universitas Teuku Umar – Aceh.

ISSN 2985-5691

Juridical Overview of the Implementation of Mortgage Registration Services Through an Online Integrated System for Land Deed Maker Officials (PPAT) in the City of Pekalongan

Destiana Dayu Damayanti[1], Suryani[2], Sri Pujiningsih[3]
[1]Faculty of Law Pekalongan University
[2]Faculty of Law Pekalongan University
[3]Faculty of Law Pekalongan University
email: destianadestiana12@gmail.com[1]

Abstract

The implementation of Electronic Liability Rights was carried out simultaneously on 8th of April, 2020. In its implementation, there are still frequent obstacles faced by PPAT.Based on these problems, first, how is the implementation of mortgage registration services through an online integrated system for Land Deed Making Officials (PPAT) in the Pekalongan City Region? Second, what are the obstacles faced in implementing mortgage registration services through an online integrated system for Land Deed Maker Officials (PPAT) in the Pekalongan and how to solve them?This research is a sociological juridical research, with a qualitative approach. The sampling technique used was purposive sampling. The data analysis technique used is data reduction.

Researchers conclude, the first conclusion is obtained, the implementation of mortgage registration services through an online integrated system for Land Deed Maker Officials (PPAT) in the Pekalongan City Region, runs well, efficiently, and quickly. Second, the obstacles that are often faced are related to the system, so that in solving it, users must often coordinate with the local Land Office.

Keywords: Electronic mortgage services; PPAT; implementation.

A. Introduction

Advances in technology are no longer denied in its development, it provides many benefits for everyday life for people in various parts of the world. Access to technological sophistication makes it easier for people to obtain their needs. This also has an impact on the office management system.[1]

Technological developments as described above, provide innovation to the Land Office agency. The Ministry of Agrarian and Spatial Planning/National Land Agency

[1]Media Publications, "Pengaruh Pemanfaatan Teknologi Informasi Dan Pengendalian Intern Terhadap Kinerja Instansi Pemerintah (Studi Pada Satuan Kerja Perangkat Daerah Kabupaten Kampar)",https://media.neliti.com/media/publications/8841-ID-pengaruh-pemanfaatan-teknologi-informasi-dan-pengendalian-intern-terhadap-kinerj.pdf/ (Diaksestanggal24September 2021, 21.52).

(ATR/BPN) has launched land services electronically, marked by the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency Number 9 of 2019 concerning Electronically Integrated Mortgage Services, and simultaneously make changes to the rules regarding HT-el registration as amended by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronic Integrated Mortgage Services, which was then promulgated on April 8, 2020.[2]

Since the issuance of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 5 of 2020 concerning Electronically Integrated Mortgage Services which came into force since its promulgation on April 8, 2020, implementation has not always run smoothly.There are many obstacles experienced by Land Deed Making Officials in Pekalongan City. This affects the performance and efficiency of the implementation of mortgage registration services through an online integrated system.[3]

The Deed of Granting Mortgage (APHT) stipulates the terms and conditions regarding the granting of Mortgage from the debtor to the creditor in relation to debts that are guaranteed by the Mortgage. The granting of this right is intended to give priority to the creditor concerned (preferred creditor) over other creditors (concurrent creditors) as regulated in Law Number 4 of 1996. The granting of Mortgage Rights is a guarantee of repayment of debtor debt to creditors in connection with with the relevant loan/credit agreement. Land as an object of Mortgage may include other objects which are an integral part of the land.[4]

This is possible because of its physical nature to become one unit with the land, both existing and future, in the form of permanent buildings, perennials and works of art, provided that these objects belong to the right holder or to another party (if the object belongs to the right holder or other party). -the object belongs to another party, the person concerned/owner must also sign the APHT).[5]

[2]Pandam Nurwulan, 2021. "Implementasi Pelayanan Hak Tanggungan Elektronik Bagi Kreditor dan Pejabat Pembuat Akta Tanah". Jurnal Hukum Ius Quia Iustum, Vol. 28, No. 1, Januari, 2021. Hlm 183.
[3] Ibid. Hlm. 187
[4]Supriyadi, 2008. *Hukum Agraria.* Jakarta: Sinar Grafika. Hlm 176.
[5] Hukum Online, "Akta Pemberian Hak Tanggungan",

The imposition of Mortgage Rights must meet the requirements stipulated in the UUHT, namely:[6]

1. The granting of Mortgage is preceded by a promise to provide Mortgage as collateral for the settlement of certain debts which are stated in and are an inseparable part of the credit agreement in question or other agreements that give rise to the debt.
2. Granting of Mortgage must meet the special requirements which include: the name and identity of the holder and giver of the Mortgage, the domicile of the parties, the holder and giver of the Mortgage, a clear designation of the debt or debts whose repayment is guaranteed with the Mortgage, the value of the mortgage, and clear description of the object of Mortgage.
3. Granting Mortgage must fulfill publicity requirements through registration of Mortgage at the local Land Office (Municipality/Regency).
4. The Mortgage Certificate as proof of the Mortgage Right contains an executorial title with the words "For the sake of Justice Based on the One Godhead".
5. Canceled by law, if it is agreed that the holder of the Mortgage will have the object of the Mortgage if the debtor is in default (default).[7]

The procedure for assigning Mortgage begins with the stage of granting Mortgage in front of the Authorized Land Deed Official (PPAT) and is evidenced by the Deed of Granting Mortgage (APHT) and ends with the stage of registration of Mortgage at the local Land Office.[8]

Based on the description of the problems above, a study was made with the title "Juridical Review of the Implementation of Mortgage Registration Services Through an Online Integrated System for Land Deed Makers (PPAT) in the Pekalongan City Region" with 2 problem formulations: (1) How to implement mortgage registration services through an online integrated system for Land Deed Making Officials (PPAT) in the Pekalongan City Region?, (2) What are the obstacles faced in implementing mortgage registration services

https://www.hukumonline.com/klinik/a/apht-akte-pemberian-hak-tanggungan-cl944/(Diakses tanggal 24September 2021, 22.15).
[6] Ibid.
[7] Ibid.
[8]Supriyadi, 2008. Op. Cit. Hlm 192.

through an online integrated system for Land Deed Making Officials (PPAT) in the Pekalongan City Region and how to solve them?

B. Research Methods

The writing method in this research is using a sociological juridical approach, namely legal research that analyzes and examines the workings of law in society. The object of the study is about community behavior. The behavior of the people studied is the behavior that arises as a result of interacting with the existing norm system. Interaction appears as a form of public reaction to the implementation of a positive statutory provision and can also be seen from community behavior as a form of action in influencing the formation of a positive legal provision.[9]

Sociological juridical research can also be used to examine the effectiveness of the operation of law in society. Several legal aspects that influence people's behavior when interacting with laws and regulations. Some of these social aspects include: political, economic, social, cultural, educational, gender, demographic, environmental, and religious aspects. While the legal aspects include; textual laws and regulations, regulated community values and interests, procedures for implementing regulations.[10]

C. Results and Discussion

1. Research Result

The discussion was carried out descriptively and analyzed from the data obtained through research activities.

The implementation of online integrated mortgage registration services for Land Deed Making Officials (PPAT) in the Pekalongan City area, has shown a significant development, since the promulgation of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Mortgage Services Integrated Electronically. With the electronic service system, work becomes more efficient.

[9]Muhaimin, 2020. *Metode Penelitian Hukum.* Mataram-NTB: Mataram University Press. Hlm 86.
[10]Mukti Fajar ND dan Yulianto Achmad, 2010. *Dualisme Penelitian Hukum: Normatif & Empiris.*Yogyakarta: Pustaka Pelajar. Hlm 53.

The implementation of mortgage registration services through an online integrated system for Land Deed Making Officials (PPAT) in the Pekalongan City Region has been going well. However, there are still significant obstacles, namely problems with the IT system and data discrepancies between the physical certificate held by the right holder and the database in the local Kantah internal system.

The data discrepancy can be caused by several factors, one example of which is the certificate to be registered with the electronic mortgage, which has previously been re-measured because of the old blank. In the measurement division database, there are new data, such as changing kelurahan, different land area due to road widening, different measurement methods, which data were obtained during the review and re-measurement of the certificate object.

The data update is only carried out by one system in one division. So, when the mortgage registration service will be carried out through an electronic integrated system, there will be differences in data.

Therefore, the electronic mortgage service officer must first adjust the data between the IT system and the land book in the Pekalongan City Land Office, so that the certificate checking process can be carried out, and then proceed with the mortgage registration service process through an electronic integrated system (entitlement). electronic liability).

D. Closing

1. Conclusion

The conclusions from the results of research that have been carried out are as follows:

a. Implementation of mortgage registration services through an online integrated system for Land Deed Making Officials (PPAT) in the Pekalongan City Region, has been running well. With the existence of mortgage registration services through an online integrated system, Land Deed Making Officials (PPAT) benefit from the timeliness in the process of completing the mortgage registration process.

b. Obstacles encountered in the implementation of mortgage registration services through an online integrated system for Land Deed Making Officials (PPAT) in the Pekalongan City Region, lies in the error system, in which if these problems occur, some problems can be resolved and corrected at the Land Agency Office. Pekalongan City, there are also those whose completion and repairs are carried out by the Data and Information Center (Pusdatin). In the event that the repair of obstacles must be carried out by the Data and Information Center (Pusdatin), the completion time cannot be estimated, so that it greatly hampers the Land Deed Making Officer (PPAT) in the Pekalongan City Region in completing their work.

2. Suggestion

Based on the research that has been done, there are suggestions as follows:

a. It would be nice if the ministry as the organizer could further maximize and improve the readiness of the electronic mortgage system for users.

b. It is hoped that the ministry can minimize the occurrence of system problems, even if an error or maintenance occurs it can be resolved immediately, and in a not too long time. Thus, it can further expedite, simplify, and perfect the implementation of mortgage registration services through an online integrated system for users throughout the country.

Bibliography

Books

Achmad, Mukti Fajar ND dan Yulianto, 2010. *Dualism of Legal Research: Normative & Empirical.*Yogyakarta: Pustaka Pelajar.

Muhaimin, 2020. *Legal Research Methods*. Mataram: Mataram University Press.

Supriadi, 2008. *Agrarian Law*. Jakarta: SinarGrafika.

Journal

Nurwulan, Pandam. *"Implementation of Electronic Mortgage Services for Creditors and Land Deed Maker Officials".*FakultasHukumUniversitas Islam Indonesia Yogyakarta Indonesia (2021).

Laws and regulations

PeraturanMenteri Negara Agraria/Kepala BPN Nomor 9 Tahun 2019 TentangPelayananHakTanggunganTerintegrasiSecaraElektronik (Berita Negara Republik Indonesia Nomor 686 Tahun 2019).

PeraturanMenteri Negara Agraria/Kepala BPN Nomor 5 Tahun 2020 TentangPelayananHakTanggunganTerintegrasiSecaraElektronik (Berita Negara Republik Indonesia Nomor 349 Tahun 2020).

Internet

Publications, Media. 2011. "The Effect of Utilization of Information Technology and Internal Control on the Performance of Government Agencies (Study on the Kampar Regency Regional Work Unit)", https://media.neliti.com/media/publications/8841-ID-pengaruh-pemanfaatan-teknologi-informasi-dan-pengendalian-intern-terhadap-kinerj.pdf/

Online, Hukum. 2019. "Deed of Granting Mortgage", https://www.hukumonline.com/klinik/a/apht-akta-pemberian-hak-tanggungan-c1944/

ISSN 2985-5691

Risk Management for Mitigation of "Corruption" Fraud Risk: Profiling Techniques

Arum Ardianingsih[1], Dwi Edi Wibowo[2], Juandy Seiver Langelo[3]

Accounting Study Program, FEB, Pekalongan University [1]
Law Study Program, Faculty of Law, Pekalongan University [2]
BPJS Employment, Branch of Pekalongan [3]

Email: arumbundavina@gmail.com[1], dwiedi.unikal@gmail.com[2], juandy.seiver@gmail.com[3]

Abstract

Risk management provides signs for key areas in the company that contain risks. Risk management manages and profiles risk classification so that the company is more responsive in preventing fraud or fraud risk. Corruption is a form of fraud risk that causes the most losses to the state. Corruption that occurs in various private, government and state-owned organizations can be minimized by understanding the risk classification profile and profiling techniques. This study uses a descriptive method with secondary data from the 2016-2020 Association of Certified Fraud Examiner (ACFE) survey report. The author concludes that the fraud prevention process with a risk management approach is one of the strategies in an effort to prevent fraud by using profiling techniques.

Keywords: *Risk Management, Corruption, Profiling*.

A. Introduction

In the Asia Pacific region including Indonesia, the Report to the Nations(2018) issued by the Association of Certified Fraud Examiner (ACFE) shows that there have been cases of corruption with a percentage of 51%. This figure covers various types of acts of corruption, small to the largest scale. The Association of Certified Fraud Examiner (ACFE) investigations show that corruption is the largest fraud case that occurs in the Asia Pacific region. According to Umar (2016), since 1999 corruption has been classified as a crime that has an impact on various aspects of life, thus requiring strong handling and commitment. Corruption can lead to reduced budget allocations for services to the poor in the regions; budget for education services; budget for infrastructure development, budget for health services, as well as budgets related to various community interests (Hadi, 2010).

Every day we will face uncertainty both individually and organizationally. All these uncertainties which we later refer to as risk. Risks that are not managed properly can lead to deviations from normal conditions. A company with good and strong internal control if it is not accompanied by the commitment and integrity of human resources in the company, there is a great chance of being exposed to the risk of fraud. Karyono (2013) states that in every organizational activity there will always be uncertainty that is identical to risk, so management must be responsible for managing risks that have great opportunities to be faced in the future. Risk management in business organizations is an important thing to do.

According to the Association of Certified Fraud Examiners (ACFE) in the Fraud Examiners Manual (2016), fraud is defined as relating to the benefits obtained by someone through bad ways and violating regulations such as deception, dishonesty and harm to other parties. ACFE: Report To the Nations on Occupational Fraud and Abuse (2016), describes the forms of fraud in business organizations in 3 (three) major groups, namely corruption, misappropriation of assets and fraud in financial statements. Corruption can be broken down into: (a) conflicts of interest, namely personal and organizational interests; (b) bribe, namely the act of giving a sum of money, goods or in kind to obtain something; (c) unofficial levies, namely payments outside the official rules or rates; and (d) extortion, which is forcing a person or organization to do something such as paying a sum of money to acquire a project.Misappropriation of assets can consist of (a) misappropriation of cash such as cash theft, unauthorized disbursement of cash, intentional errors in recording cash, while misappropriation of inventories and other assets such as theft of inventories, (b) intentional errors in recording inventories. Fraud in financial statements consists of (a) understatement of assets or income and (b) intentional overstatement of assets or income.

Corruption can occur in several government agencies, private companies or state-owned enterprises. The involvement of companies in corrupt practices and embezzlement of state assets are some examples of fraud that occurs in Indonesia. Several corruption cases in Indonesia are the Century Bank, the Hambalang case, the head of the regional government is involved in corruption such as the Nganjuk Regent, the Kutai Kartanegara Regent and most recently the alleged corruption of the North Penajam Paser Regent in 2021. Strategies and designs are needed for each organization or company to prevent fraud in accordance with the

characteristics of each organization. Research by Spira, Laura F., Page, Michael, 2003 concluded that fraud can be mitigated by implementing the framework of organizational governance, risk management, accountability, audit and internal control. The risk management applied by companies in Indonesia is ISO 31000:2009 referring to The Committee of Sponsoring Organizations (COSO). Based on ISO 31000:2009 risk management is presented in more detail, easy to apply, closer to practice and can be applied to all industries, both small and large. Meanwhile, The Committee of Sponsoring Organizations (COSO) approach is more theoretical, complex and more suitable for large organizations.

ISO 31000:2009 explains the benefits of risk management for business organizations, namely: creating a competitive advantage, streamlining decision-making processes, anticipating losses, providing added value to the company, encouraging better organizational governance and helping organizations identify and take advantage of strategic opportunities. Boiral, Olivier (2012) concluded that ISO 31000:2009 on risk management is a standard and can be applied effectively, integrated with practices, experiences and certain goals that the organization wants to achieve. Because for the purpose of mitigating fraud, the design and risk management framework need to be developed, including identifying anti-fraud principles, mapping anti-fraud principles to risk management designs.

The fraud prevention method by profiling is carried out by recognizing and studying the behavior and characteristics of potential fraud perpetrators who are trusted to safeguard assets. Profiling means collecting various pieces of information and data or intelligence related to criminal acts or criminals. The information collected is then formulated into a profile that can be used to model potential fraud perpetrators in the future. This method is part of an effective anti-fraud management program. Profiling is used to fight occupational fraud, behavioral signs to watch out for, motivations and opportunities as indicators of fraud behavior, and to profile individual behavior and characteristics of a fraud perpetrator. Companies can obtain and collect pieces of information, the process of building a fraud profile, and the role of personnel department in the employee recruitment process helps the profiling process. Profiling in the pre-employment stage is aimed at minimizing the possibility of talent with low integrity.

B. Research Methods

This study uses a descriptive method by providing an overview of who the perpetrators of fraud are from a demographic review. The analysis uses data from the Association of Certified Fraud Examiners (ACFE) which produces the Indonesian Fraud Survey (SFI). ACFE Chapter Indonesia compiles the Indonesia Fraud Survey (Indonesian: SFI) based on the guidelines from ACFE Global. SFI is expected to provide awareness to the organization on the occurrence of fraud risk.

C. Results and Discussion

Fraud is a deliberate act by one or more individuals in management or those charged with governance, employees and third parties involving the use of deception to obtain an unfair or unlawful advantage (SA 240, 2013). According to SAS No. 99 financial statement fraud can be carried out as follows: (1). Manipulation, falsification, or alteration of accounting records, supporting documents of the prepared financial statements. (2). Intentional mistake or omission in information that is significant to the financial statements. (3). Deliberately abuse the principles relating to the amount, clarification, manner of presentation, or disclosure.

Corrupt behavior (fraud) is basically a sociological phenomenon that has economic and political implications. Robert K. Merton (1967) put forward his theory that corruption is a human behavior caused by social pressure, thus causing a violation of norms. Every social system has a goal and humans try to achieve it through agreed means. Achsin (2010) revealed that investigative audit assignments require the auditor to make extra efforts, namely the auditor must go into the depth of the problem. The hypothetical construction of crime becomes the main radar in searching, finding and collecting evidence to uncover cases of fraud or corruption.

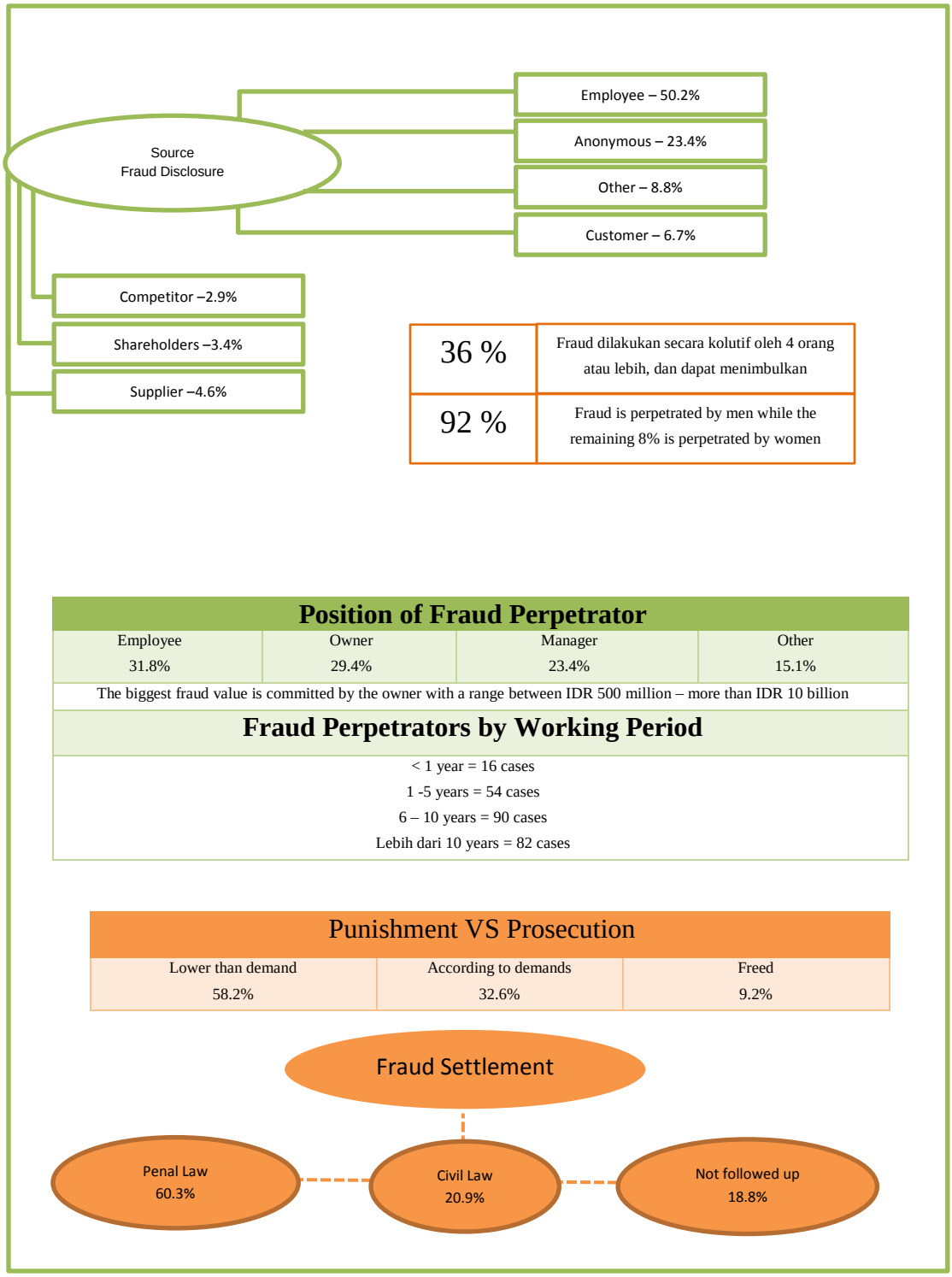
The definition of a criminal act of corruption is based on Article 2 Paragraph (1) of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (UU Tipikor) which later

underwent another change in the Decision of the Constitutional Court Number 25/PUU-XIV/2016 are:

"Everyone who unlawfully commits an act of enriching himself or another person or a corporation that is detrimental to state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

The definition of a criminal act of corruption from Article 2 Paragraph 1 of the Corruption Law, there are 3 (three) elements, namely against the law, to enrich oneself, and loss to the state. These three elements must be interconnected and can be proven to exist. The types of corruption crimes are divided into 7 (seven) groups as referred to in Article 2 to Article 12C of the Anti-Corruption Law, namely: (1) Corruption Crimes that are detrimental to state finances (Article 2 and Article 3); (2) Corruption in the form of bribery (Article 5 paragraph (1) letters a and b, Article 13, Article 5 paragraph (2), Article 12 letters a and b, Article 11, Article 6 paragraph (1) letter a and b, Article 6 paragraph (2), Article 12 letter c and letter d; (3) Corruption crime in the form of embezzlement in office (Article 8, Article 9, Article 10 letter a, letter b and letter c); (4) Corruption in the form of extortion (Article 12 letter e, letter f and letter g); (5) Corruption crime in the form of cheating (Article 7 paragraph (1) letter a, letter b, letter c and letter d, Article 7 paragraph (2), Article 12 letter h; (6) Corruption crime in the form of conflict of interest in procurement (Article 12 letter i); (7) Corruption crime in the form of gratification (Article 12 B in conjunction with Article 12 C). The following is a picture of fraud that occurred in Indonesia during the range of 2020.

Figure 1: Data processed by ACFE, 2020.



The results of a survey conducted by the ACFE Indonesia Chapter on 239 respondents showed that the most common fraud in Indonesia was corruption with a

percentage of 64.4% or chosen by 154 respondents. The next type of fraud is Misuse of State and Company Assets/Wealth with a percentage of 28.9% or chosen by 69 respondents, while Financial Report Fraud is 6.7% or chosen by 16 respondents. The positions of the perpetrators of fraud are 31.8% employees, 29.4 owners, 23.4% managers and 1% others. Fraud is usually carried out in groups of about four (4) people with a percentage of 36%. Fraud perpetrators are 92% male and eight(8)% female. Fraud perpetrators have varying tenures of less than 1 year with 16 cases and the highest is having a tenure of more than ten years (10) with a total of eighty-two cases (82). Then the settlement of fraud cases is in the aspect of criminal law by 60.2% of all cases, civil law by 20.9% and not being followed up by 18.8 %.

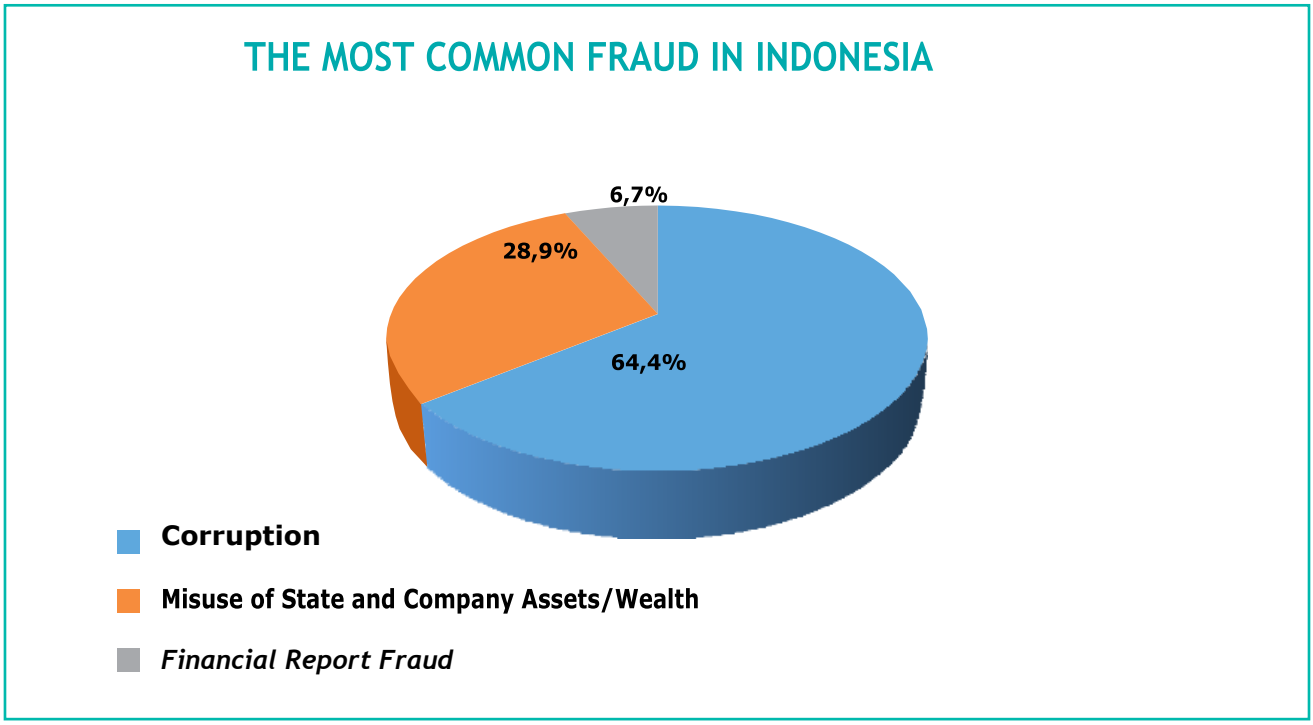


Figure 2: The most common fraud in Indonesia

The results of the ACFE survey show that the most detrimental fraud in Indonesia is corruption. Sequentially as many as 167 respondents or 69.9% stated that corruption is the most detrimental fraud act in Indonesia. The next order as many as 50 respondents or 20.9% stated that the Misuse of State & Company Assets/Wealth caused losses. While the third as many as 22 respondents or 9.2% stated that financial statement fraud caused losses.

The results of this survey show that the largest proportion of fraud perpetrators in Indonesia is 36-45 years old, which is 42%, followed by the 46-55 years age group, which is 32%. This condition indicates that most of the perpetrators of fraud are from the mature and productive age group, which on average have entered the middle manager level and above. Meanwhile, the lowest age group is the age group <26 years and >66 years, each with a percentage of 1%. Fraud in the form of corruption is the most for losses below Rp. 10 million. Fraud in the form of corruption, financial statement fraud and asset misappropriation, the majority of cases are under Rp. 10 million, but the frequency of occurrence with total losses is below Rp. 10 million at most. On the other hand, there are the fewest incidents in corruption cases but the biggest loss is above Rp. 10 billion. The following table presents the value of losses caused by fraud (cheating).

Table 1: Value of Losses due to Fraud

VALUE OF LOSS	Corruption	Fraud Financial statements	Misuse of State and Company Assets/Wealth
Rp. ≤10 Million	48.1%	67.4%	63.6%
Rp.10 Million - 50 Million	4.2%	2.9%	3.3%
Rp.50 Million - 100 Million	8.4%	5.4%	8.8%
Rp.100 Million - 500 Million	11.7%	6.7%	9.6%
Rp.500 Million - 1 Billion	10.9%	6.7%	2.9%
Rp.1 Billion - 5 Billion	5.9%	3.8%	3.8%
Rp.5Billion-10Billion	5.4%	2.1%	3.4%
Rp. >10 Billion	5.4%	5.0%	4.6%

Source: ACFE Data, 2020

The fraud prevention process with a risk management approach is one of the strategies that can be taken as an action to prevent fraud. This approach requires commitment and responsibility from all members of the organization from the top management level to the implementing staff. The fraud risk management framework starts with mapping the potential sources of the fraud originating. Sources of fraud risk can come from (1) audit results issues, namely based on previous audit results which indicated fraud, (2) cases of fraud and violations of regulations that have occurred, and schemes that have the potential to occur in the organization. The next step after mapping the potential sources of fraud is to identify the risks that may occur. The risk identification process is mapped according to the fraud area in the organization and the schemes carried out. The fraud risk identification process will produce a risk register.

The next stage is an assessment of the risks contained in the risk list. The assessment involves aspects of the occurrence and impact of the fraud risk on the organization. Fraud risk assessment formula by multiplying the occurrence and impact to form a score for each risk. These risk scores are then mapped to form a risk map with areas from the lowest to the highest risk. The process of identifying fraud risk and producing this risk map can be accomplished by means of data reviews, focus group discussions (FGD), feedback from the parties concerned or a combination of these procedures. Meanwhile, the involvement of organizational members in the preparation of fraud risk management is comprehensive, participatory and independent.

Fraud risk management framework, starting from mapping the potential sources of fraud originating. These sources can come from (1) audit results issues, namely based on the results of previous audits that indicated fraud, (2) cases of fraud and violations of regulations that have occurred, and potential fraud schemes can be sourced from issues of audit results that have the potential to indicate fraud, cases of fraud or compliance violations that have occurred and the schemes used in fraud cases consist of: (1) fraud by management, namely potential fraud committed by organizational management, (2) fraud by employees, namely potential fraud committed by employees, (3) fraud by parties outside the organization, namely potential fraud committed by parties outside the organization. Hery (2015) states

that every member of the organization is a risk owner. So that this area of fraud involves frauds originating from management, employees and parties outside the organization.

Risk management will produce a risk map that describes the potential fraud risk in the organization in areas from very low to very high. Areas with a risk score of 1 – 4 indicate very low risk to low risk. Areas with a risk score of 5 – 9 indicate moderate risk to high risk. Meanwhile, areas with a risk score of 10-25 indicate a very high risk. Mapping this fraud risk serves to determine the priority scale and control aspects that need to be followed up immediately. The most important thing is in a very high area so that it does not have a very large impact on the organization or company.

Profiling the Fraudster as a process to identify the characteristics of a fraud perpetrator (corruption) and when a fraud will occur. Based on this, employee profiling is carried out at the pre-employment stage, employment stage and post-employment stage. Profiling at the pre-employment stage is intended to minimize the possibility of recruiting talent with low commitment and integrity. Steps that can be taken through background check. In order to prevent fraud, the institution must develop anti-fraud awareness, identify vulnerabilities and employee profiling (know your employee). Profiling is important to be applied before an employee is accepted into the company through the process of identifying/recognizing the characteristics of people who have been successful and the characteristics of fraud perpetrators as well as identifying factors that support the success of human resources who do not commit fraudulent acts. The results of the profiling are followed up with the preparation of pre-employee screening procedures. The application of this model is expected to be able to produce human resources with integrity and quality and form a work culture. The profiling process should be carried out in an integrated manner through clear systems and methods related to performance, remuneration and work standards.

D. Conclusion

Corruption cases are a form of fraud or deception that causes the most losses, carried out in groups. Fraud is revealed mostly because of the number of bank accounts owned. Disclosure patterns must be followed and traced from behavior, accounts, to habits.

Disclosure of cases requires disguises in order to know the patterns and the paths leading to evidence of corruption. Investigative activities cannot be carried out instantly and quickly, but require a long time.

The strategy to prevent fraud is a demand for business organizations to protect the sustainability of their business. The fraud prevention process with a risk management approach is one of the strategies that can be taken as an action to prevent fraud. This approach requires commitment and responsibility from all members of the organization from the top management level to the implementing staff. The absence of commitment from the organization will make the implementation of this prevention strategy fail.

Profiling technique is a search for characteristic information from fraud perpetrators in the form of corruption starting from the pre-employment stage, employment stage and post-employment stage. Profiling techniques require examples from leaders or superiors to form a conducive work culture so as to create accountability, transparency of performance appraisals and rewards for employees. This will reduce the motivation of the perpetrators of corruption to commit fraud (corruption).

BIBLIOGRAPHY

ACFE Indonesia Chapter#111. (2016). Survai Fraud Indonesia, Association of Certified fraud Examiners.

_____, (2017). Survai Fraud Indonesia, Association of Certified fraud Examiners.

_____, (2018). Survai Fraud Indonesia, Association of Certified fraud Examiners.

_____, (2019). Survai Fraud Indonesia, Association of Certified fraud Examiners.

_____. (2020). Survai Fraud Indonesia, Association of Certified fraud Examiners.

Achsin, 2010. Forensic Accounting Visum in Corruption Crime. Dissertation. Malang : Faculty of Economics, Brawijaya University.

Hery. (2015). Business Risk Management: Enterprise Risk Management "Every Employee is Risk Owner". Jakarta. PT. Grasindo.

Karyono. (2013). Forensic Fraud: Recognizing, Preventing, and Detecting Fraud. Yogyakarta. Andi Offset.

Merton. Robert K. 1967. On theoretical sociology. New York: The Free Press.

Spira, Laura F., Page, Michael (2003). Risk management: The reinvention of internal control and the changing role of internal audit. Accounting, Auditing & Accountability Journal Vol. 16 Issue: 4, pp.640-661.

Umar, Haryono. (2016). *Corruption The Devil*. Jakarta: Penerbit Universitas Trisakti.

Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Acts of Corruption Crime.

Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Acts of Corruption Crime.

Constitutional Court Decision Number 25/PUU-XIV/2016 on corruption crimes.

ISSN 2985-5691

Juridical Analysis Of Criminal Activities Of Criminal Violence In Household In Justice Perspective

Nurul Ariffah[1], Loso[2], Anik Kunantiyorini[3]
Faculty of Law, Pekalongan University Jalan Sriwijaya number 3 Pekalongan
E-mail:nariffah7@gmail.com

Abstract

Domestic Violence or what we often know as domestic violence is a crime that is very worrying. Based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence, domestic violence causes physical, sexual, emotional misery and misery and/or domestic violence, intimidation, coercion against people, especially women.
In cases of criminal acts of domestic violence that have been reported to the court, the judge must treat the case fairly in accordance with the applicable rules for criminal acts of domestic violence. In fact, whether the judge decided the case in accordance with the applicable rules and whether the judge's decision brought justice to the victim, especially with regard to cases of criminal acts of domestic violence.

This study uses a normative juridical method, carried out by collecting data in the form of primary data and secondary data. Primary data were obtained from interviews with judges who handled cases of domestic violence in case number: 68/Pid.Sus/2021/PN Pkl. While the secondary data, obtained from the literature study.

Based on the results of this study, that the case in case number: 68/Pid.Sus/2021/PN Pkl stated, From the chronology of what happened and equipped with evidence, the defendant legally committed a crime of domestic violence against the victim, namely his wife. Thus, the judge handed down witnesses to the defendant in case number 68/Pid.Sus/2021/PN Pkl was a logical and appropriate decision. The reason is that the defendant committed an act that injures, inflicted pain on a wife, causing injury as evidenced by the results of the Visum Et Repertum.

Keywords: Juridical Analysis of Sentencing, Perpetrators of Domestic Violence, Justice Perspective

A. Introduction

Crime is the act of a person or group that can harm other people, so that the perpetrator is sentenced or sanctioned in accordance with the law. Various crimes have been grouped together and occurred in various countries, especially Indonesia.

[1]Nurul Ariffah, Student of the Faculty of Law, University of Pekalongan
[2]Loso, Lecturer at the Faculty of Law, Pekalongan University
[3]Anik Kunantiyorini, Lecturer at the Faculty of Law, Pekalongan University

Domestic Violence or what we often know as domestic violence is a crime that is very worrying. Based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence, domestic violence causes physical, sexual, emotional misery and misery and/or domestic violence, intimidation, coercion against people, especially women, as well as unlawful deprivation of liberty within the household. . It is contained in Article 1 number 1.

According to Article 1 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, it is stated that the husband-wife bond is based on the One Godhead, marriage is a sacred bond, coexistence with husband and wife is not only sexual relations, but to create a happy, safe and harmonious family between husband and wife. Often encounter some household conditions that are not in accordance with what is desired. The emergence of conflict between husband and wife is often the beginning of criminal acts of domestic violence. Whereas marriage is one of the sacred promises between the two sides of a man and a woman to form a happy family.

Integrity and family harmony are disturbed if the quality and self-control cannot be controlled so that domestic violence can occur, resulting in feelings of insecurity and injustice to people who are in household conditions.[4]

Victims of domestic violence are often silent, even though these acts of violence require special handling from the authorities. Victims must report to the police so that the government can provide legal protection. In addition, the Police can work together with parties who can provide protection for victims of domestic violence such as LPPAR (Institution for the Protection of Women, Children and Youth) and other parties who take part in protecting cases of domestic violence.

In cases of criminal acts of domestic violence that have been reported to the court, the judge must treat the case fairly in accordance with the applicable rules for criminal acts of domestic violence. This is Law Number 48 of 2009 concerning Judicial Power which is regulated in Article 4 paragraphs (1) and (2) namely, in paragraph (1) it states, the Court judges according to law without discriminating against people and while in paragraph (2) stated that the Court helps seek justice and tries to overcome all obstacles and obstacles to achieve the value of justice between the defendant and the victim of a crime. In addition to

[4]Guse Prayudi, "Various Aspects of Domestic Violence", Merkid Press, Yogyakarta, 2015, p. 9.

that article, article 8 paragraph (2) states the severity of the crime, so the judge must consider the good and evil nature of the defendant.[5]

In the PKDRT Law contained in Article 55, the procedure for proving whether or not the perpetrator (the defendant) has committed a crime of domestic violence is that the witness of the victim commits domestic violence. If there is further evidence.

Court judges are people who carry out judicial duties, investigate and decide cases, and resolve criminal cases and civil cases at the first level. In fact, whether the judge decided the case in accordance with the applicable rules and whether the judge's decision brought justice to the victim, especially with regard to cases of criminal acts of domestic violence.

Based on the description above, it is very interesting to conduct a research with the title "Juridical Analysis of Criminalization Against Criminals of Domestic Violence (Case Study at the Pekalongan City District Court". The case of the Pekanbaru District Court Decision Number 192/Pid.B/2009.[6]

In the application of criminal sanctions against perpetrators of criminal acts of domestic violence in case number: 192/Pid.B/PN.Pbr where the Panel of Judges tried the case by presenting witness statements of 7 (seven) people consisting of 6 (six) co-defendants, 1 (one) expert witness and 2 pieces of evidence. The perpetrator violates Article 306 paragraph (2) and is sentenced to 2 (two) years and 6 (six) months in prison.

After considering and obtaining legal facts in court and observing the chronology of events until the death of the victim Ermawati (the defendant's wife), several considerations were made by the judge in deciding the case Number: 192/Pid.B/2009/PN.Pbr, namely the panel of judges had carried out construction in article 306 paragraph (2) the Criminal Code and does not make Law no. 23 of 2004 concerning domestic violence as a benchmark in resolving the main case.[7]Proof of the element of offense is carried out by connecting the rule of law with legal facts related to the element of the offense.

FactThe law is obtained from witness testimony, expert testimony, letters, instructions and statements of the defendant. And the panel of judges using a syllogistic

[5]Law Number 48 of 2009 concerning Judicial Power
[6]Nuroso, "Criminalization of Criminal Acts of Domestic Violence (Case Study of the Decision of the Pekanbaru District Court Number: 192/Pid.B/2009", JOM Faculty of Law, Vol. II No. 1 (Febuary, 2015), 4.

[7]Ibid, p.13

thought process and legal facts have fulfilled the elements of the offense formulated in the law so that the final decision completely depends on the judge's belief and is added with other aggravating considerations and lightens the defendant's sentence.[8]

B. Problem

1. What is the Judge's Consideration in Sentencing Criminal Acts of Domestic Violence Perpetrators in Case Number: 68/Pid.Sus/2021/PN Pkl?
2. How are Judges Consideration in Sentencing Criminals Against Criminals of Domestic Violence in terms of Justice Perspective?

C. Research methods

1. Approach Method

   The method used in this research is normative juridical or also known as library law research. This is done by using library materials or secondary data. This research is a normative juridical research on the issue of punishment for perpetrators of criminal acts of domestic violence (a case study at the Pekalongan City District Court).

2. Research Specification

   The specifications carried out by the author are descriptive analytical research. Analytical descriptive research means that it is a research that seeks to describe legal problems, the legal system, and examines them or analyzes them according to the needs of the relevant research regarding the Juridical Analysis of Sentencing Against Perpetrators of Criminal Acts of Domestic Violence (Case Study at the Pekalongan City District Court).

3. Research Location

   The research was conducted by the author in Pekalongan City, Central Java.

4. Types and Sources of Data

   In every research using the right method, it is also necessary to be able to choose the relevant data collection method. Data is an important factor in research because every research requires data. The data sources used are:

   a. Primary data

      The primary data used by the author is data taken directly during the research, which is obtained from research activities at the Pekalongan City District

[8] Ibid, p. 14

Court.

b. Secondary Data

The secondary data used by the author is to collect data sourced from library research, in the form of research journals according to the author's title, as well as sources from books related to the author, as well as sources from research methodology books and other book sources according to the material covered. discussed by the author.

5. Data Collection Method

Data collection method is a technique or method used to collect data. The author uses the following data collection methods:

a. Primary Data:

Obtained by means of interviews, namely the acquisition of sources obtained from respondents are Judges of the District Court of Pekalongan City.

b. Secondary Data:

- Library

Writing namely by studying literature books on legal materials in the form of legislation, books, journals, articles or newspapers as well as other materials related to national law and the punishment of perpetrators of criminal acts of domestic violence.

- Documentation Study

Retrieval of data in the form of images obtained directly at the time of research at the District Court of Pekalongan City.

6. Data Analysis

The data analysis used by the author in this research is by examining legal cases that are currently and have been carried out by a study.[9]In addition, it can be done by collecting data sources from the library, both primary and secondary data, then processed and analyzed.

7. Data Presentation

A data presentation is an organizational assembly that allows research conclusions to be made. By looking at a presentation of data, researchers will

[9]Peter Mahmud, 2016, Legal Research, Kencana, Jakarta Page 244

understand what will happen and make it possible to do something on the analysis or other actions based on that understanding. After that, conclusions are drawn. Drawing conclusions, namely conclusions drawn with all the things contained in data reduction and data presentation. Basically the meaning of the data must be tested for validity so that the conclusions drawn are better.

D. Research Results and Discussion

a. Judges' Considerations in Sentencing Crimes Against Violent Criminals In the House hold in Case Number 68/Pid.Sus/2021/PN Pkl

An Indonesian criminal law contains important things in determining the things that give rise to a criminal act, whether carried out in a planned or unplanned manner. This can be accounted for and how the sanctions are imposed for a criminal act committed. As in the case of domestic violence in case number 68/Pid.Sus/2021/PN Pkl, what factors caused domestic violence to occur. Then what are the legal events in case number 68/Pid.Sus/2021/PN Pkl.

Sometimes in an event a criminal act experiences several obstacles in determining who should be responsible for all actions that have occurred because basically the key to determining who the perpetrator or mastermind is from the cause of the occurrence of a criminal act can be seen from the cause of an act. itself, as in the case of case number 68/Pid.Sus/2021/PN Pkl. In it there are causes for the occurrence of a criminal act, namely a criminal act of domestic violence.

Judgein considering a case based on the facts in the trial first. Then in the facts in the trial whether it fulfills the elements of the article indicted. If it does not fulfill then the defendant is acquitted and if it fulfills then the defendant is proven guilty.[10]

Judge tooit is necessary to look at the good and bad sides of the perpetrators of criminal acts of domestic violence to determine the verdict or punishment to be imposed on the defendant. The decision on the results of the trial is based on confidential negotiations carried out by judges consisting of the Chief Judge, Member Judge 1 and Member Judge II. At trial, the judge is obliged to express written arguments against the

[10]Interview with Judge Hilarus GrahitaSetyaAtmaja, SH

case being examined and become an integral part of the decision. If there is a difference of argument between the judges, then the argument must be stated in the decision.[11]

Court decisions must not only contain the reasons and basis for the decision, but also contain certain articles from the relevant laws and regulations or unwritten legal sources based on trying the perpetrators or defendants in a criminal act.[12]The proof system for a criminal act of domestic violence is based on the judge's belief in the mistakes made by the perpetrator with a minimum of 2 valid pieces of evidence, contained in Article 184 of the Criminal Procedure Code.[13]

(a) Toolvalid evidence is:

1.Witness testimony;

2.Expert testimony;

3. Letters;

4.Instruction;

5.Defendant's statement.[14]

(b) Things that are generally known do not need to be re-proven.[15]

The court is obliged to provide knowledge regarding the decision and the cost of the trial in the course of a trial to the public, so that the public knows the outcome of a case that is submitted. In deciding a case the judge is responsible for all decisions that are charged to the perpetrators of a criminal act based on a proper and correct legal basis by taking into account the values of humanity and justice based on the point of view of the judge handling the case or the course of the trial.

To see how the Sentencing of Criminal Acts of Domestic Violence Perpetrators in Case Number 68/Pid.Sus/2021/PN Pkl is as follows:

Based on the results of research conducted at the District Court of Pekalongan City in case number 68/Pid.Sus/2021/PN Pkl, it was found that domestic violence in the form of abuse was carried out by the husband and caused injuries to the victim, namely the wife.

[11]Personal Interview with Hilarus Grahita Setya Atmaja, SH, Judge of the Pekalongan City District Court, Thursday, November 25, 2021, 15.00 WIB.
[12]Law Number 48 Year 2009
[13]Guse Prayudi, "Various Aspects of Domestic Violence", Yogyakarta, 2015, p. 134.
[14]Ibid, p. 134.
[15]Ibid, p. 134.

The picture is obtained, in accordance with Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the defendant if he commits physical violence in the household is threatened with a maximum sentence of 10 years or a maximum fine of 30,000,000 (thirty million rupiah) and in the case of case number 68/Pid.Sus/2021/PN Pkl the defendant Tarjuki Bin Ranyan has committed physical violence in the household.

InIn this case, the judge has imposed a sanction in the form of imprisonment for 1 (one) year and 3 (three) months and charged the defendant to pay court fees of Rp. 5,000.00 (five thousand rupiah). From this research, several things were considered by the judge in case number 68/Pid.Sus/PN Pkl during the trial process at the Pekalongan City District Court, namely:

In the processOn examination, several pieces of evidence were found, namely 1 (one) piece of blue jacket with the words "Fila" in it and 1 (one) piece of green floral-print negligee. In addition, it is proven by Visum Et Repertum number: 2050/IV.6.AU/I/2020, October 30, 2020 RSI PKU Muhammadiyah, Pekalongan Regency signed by dr. Widjdan Kadir as the Director of RSI PKU Muhammadiyah who explained, Yeni Reza Zelfia is a doctor who examines the victims of criminal acts of domestic violence case number 68/Pid.Sus/2021/PN Pkl.

Fromthe entire evidence attached to the trial examination took place, legal facts were found that could reveal criminal acts of domestic violence in accordance with the article indicted, namely article 351 paragraph (1) of the Criminal Code as well as the provisions of the articles in the Criminal Procedure Code and the laws and regulations - other laws related to the case.

Defendant Tarjuki bin Ranyan on Thursday, October 22, 2020 at 22.00 WIT located in front of a shop located in a rice mill (Paddy Mill) having its address at Hamlet Karyomukti, Karyomukti Village, Kesesi District, Pekalongan Regency, has assaulted the victim witness, namely brother of Nur Hidayah bint Moharis.

Witness Nur Hidayah bintMoharis and his nephew, witness Yusuf Afidz Maulana Bin Sobirin, will buy rice in the area of Watu Gajah Village, Kesesi District, Pekalongan Regency, Then witness Nur Hidayah and Yusuf Afidz Maulana arrived in

Mbukur Village, then witness Nur Hidayah was stopped by the defendant at Gembiro Bridge, District session.

The defendant at that time drove 1 (one) unit of Yamaha Mio Soul vehicle (DPB/8/II/2021/Reskrim) and then chased and stopped witness Nur Hidayah and said, "arepnangndikowe?" (Where are you going?) Then witness Nur Hidayah stopped and answered "areptuku nasi" (want to buy rice), then the defendant asked the witness Nur Hidayah to bring the defendant together with witness Sukron Bin Musa.

Witness Nur Hidayah andThe defendant argued because the defendant suspected that witness Nur Hidayah would stay at the place of witness Sukron bin Musa. The accusations made by the accused's brother, Tarjuki bin Ranyan, were not true, so witness Nur HidayahbintMoharis asked the defendant to follow the witness' brother, Nur HidayahbintMoharis, to buy rice. Witness Yusuf Maulanatogether with witness Nur Hidayah walked on a motorbike and the defendant Tarjuki Bin Ranyan followed behind to the rice mill. After arriving at the gembiro dam area, witness Nur Hidayah was kicked by the defendant Tarjuki Bin Ranyan on the left buttocks of witness Nur Hidayah. Then witness Nur Hidayah asked the defendant Tarjuki Bin Ranyan not to argue. However, the defendant still asked that witness Nur Hidayah show the destination of witness Nur Hidayah. Then witness Nur Hidayah continued his journey back. Then the defendant Tarjuki Bin Ranyan again argued with witness Nur HidayahbintMoharis.

Tarjuki Bin Ranyan Asked witness Nur HidayahbintMoharis to call witness Sukron bin Musa to meet the witness' brother Nur Hidayah bin Moharis at the rice mill. When the witness Sukron bin Musa arrived at the place, an argument broke out between Tarjuki bin Ranyan and the witness Sukron bin Musa, saying, "By the way, you're demenibojone, I'm ki opo less wong, wong ono thousands of wongkenopobojone me?" (Do you like the defendant's wife, do you lack people?, there are thousands of people, why is the defendant's wife?) The defendant then said "please let go, my family is disturbing me", (please let go, don't disturb the defendant's family).

Seeing this incident, witness Nur Hidayah tried to separate the two and asked to solve the problem at home. However, the defendant did not accept it. Then the

defendant again argued with witness Sukron bin Musa. Seeing this incident, witness Nur Hidayah who felt weak finally sat in front of the shop.

On At that time, Yusuf Maulana's brother called witness Candra AprilianbintTariin to approach witness Nur Hidayah at the rice mill. After 20 minutes, witness Candra AprilianbintTariin came to witness Nur Hidayah but was silent.

Witness Nur Hidayahagain argued with the defendant Tarjuki bin Ranyan. Because the defendant Tarjuki bin Ranyan was emotional, the defendant immediately headed 1 (one) sriwedari cigarette (DPB/6/I/2021) which was still burning into the face of witness Nur Hidayah, hitting the victim's left eye once with the defendant's hand slapping witness Nur's right cheek. Hidayah used the defendant's left hand.

The defendant also pushed the head of witness Nur Hidayah until it hit the wall/door of the shop made of wood. Then the defendant poked the eye of witness Nur Hidayah on the right with the two fingers of the defendant's right hand while the defendant insulted witness Nur Hidayah with harsh words. The defendant was then separated from the witness Yusuf Afidz Maulana until finally, the witness' brother, Nur Hidayah, and the defendant returned home.

Fromchronology of what happened and equipped with evidence, the defendant legally committed a crime of domestic violence against the victim, namely his wife. Thus, the judge handed down witnesses to the defendant in case number 68/Pid.Sus/2021/PN Pkl was a logical and appropriate decision.

The reason is, the defendant committed an act that injured, caused pain to a wife, causing injury as evidenced by the results of Visum Et Repertum number: 2050/IV.6.AU/I/2020, October 30, 2020 RSI PKU Muhammadiyah, Pekalongan Regency which signed by dr. Widjdan Kadir as Director of RSI PKU Muhammadiyah who explained Yeni Reza Zelfia.

Looking at the legal facts revealed at the trial, the unregistered marriage carried out by the defendant Tarjuki bin Ranyan and witness Nur HidayahbintMoharis cannot be imposed on Article 44 paragraph (1) of Law Number 23 of 2004, because the defendant and the victim witness cannot show their marriage certificate. or the marriage between the defendant Tarjuki Bin Ranyan and witness Nur

HidayahbintMoharis is not legally registered. Therefore, the defendant must be subject to Article 351 paragraph (1).

Judge InSentencing against perpetrators of criminal acts of domestic violence must cover all aspects, both from the victim's side and from the perspective of the perpetrator's motive for committing the act.

Further more, the consequences of criminal acts of domestic violence are also seen. Has the victim suffered any injuries (either ordinary, light or serious injuries), is there psychological trauma with mild or severe parameters, is there peace between the victim and the perpetrators of domestic violence. Ifall aspects have been considered then the Public Prosecutor representing the state, the victim filed a claim. In Case number 68/Pid.Sus/2021/PN Pkl the demands are 1 (one) year and 3 (three) months. After being fully considered, the Panel of Judges assessed what demands were put forward by the Public Prosecutor. Then reconsidered, so that the defendant was sentenced to imprisonment for 1 (one) year and 3 (three) months.

b. Judges' Considerations in Sentencing Crimes Against Violent Criminals In the Household in Case Number 68/Pid.Sus/2021/PN Pkl in terms of Justice Perspective

In Judge's consideration, the policy in deciding a case is "fair according to the judge". Justice is subjective. So the judge judges based on the knowledge learned, based on what has been considered entirely. From all aspects that have been considered, the value of justice emerges. The fair value emphasizes more if the victim gets protection from the judge and from the defendant's side he gets sanctions in accordance with the actions that have been carried out without degrading the degree or dignity of the defendant himself.

Judgeresponsible to God Almighty in accordance with every decision that includes, ***For Justice Based On The Almighty God.*** Thus, judges can be said to be representatives of God who adjudicate a case based on God Almighty and judges must be accountable to God in the future. As a result, if there is no irrah ***For Justice Based On Almighty God,*** the decision read by the judge is null and void. Maybe justice according to the layman is not fair but justice in the trial. When the judge has tried, the

judge declares the decision to be fair. Therefore, justice is said to be subjective.[16]

In the processThe trial is carried out "for the sake of justice based on the One Supreme Godhead" contained in article 29 of the 1945 Constitution which determines a country based on the One Supreme Godhead and guarantees the independence of each occupation to embrace their respective religions and to worship according to their religion and the beliefs of the population. each.[17]

Justice can be defined as the restoration of conditions as before. Punishment for perpetrators of criminal acts of domestic violence can actually be said to be a restoration of conditions as before.[18]The realization of the value of justice in society must be returned to its original order. Justice deals with the state and is the responsibility of the state. Justice is not only interpersonal, but also with the state. Justice cannot be observed with only the eyes, but with the senses. Justice is divided into two, namely formal justice and substantial justice.

Formal justice is embraced by one of the legal experts, namely John Rawls, who he termed as Formal Justice or Regulatory Justice by stating the basis for the implementation of individual rights and obligations in interactions between communities with one another. This justice refers to the laws in force in Indonesia.

If the law is realized in society, then justice is also realized for every society. In society, it is organized according to what is planned so that justice and prosperity are realized in the conditions of the community.[19]Perpetrators and victims submit to each other a very large petitium with different goals between perpetrators and victims. So that the realization of the concept of justice strengthens the bonds of togetherness in social life. The public design related to justice as a form of fundamental agreement of the human federation which is organized according to the desired design.[20]

Justice is related to the main issue of the distribution of rights and obligations related to social issues between individuals as well as a wider range. So that the

[16]Personal Interview with Hilarus Grahita Setya Atmaja, SH, Judge of the Pekalongan City District Court, Thursday, November 25, 2021, 15.00 WIB.
[17]Law Number 48 Year 2009
[18]Personal Interview with Hilarus Grahita Setya Atmaja, SH, Judge of the Pekalongan City District Court, Thursday, November 25, 2021, 15.00 WIB.
[19]John Rawls, "Theory of Justice", Student Library, Yogyakarta, 2011, p. 5.
[20]Ibid, p. 5.

realization of justice that can prosper society.[21]The law and its supporting institutions regulate the existence of the community in a formal setting. Furthermore, the law also stipulates minimum equality for all citizens.

Substantial justice guarantees the rights of the parties, both the perpetrator and the victim. Not only that, but to restore harmony to the condition of society. So that in resolving a case, both parties are satisfied with the judge's decision. Justice must be realized in law enforcement. In substantial justice, it is known that Restorative Justice is an alternative dispute resolution which is more directed at crimes committed by fellow individuals or members of the community than crimes against the state.

PurposeLaw is the achievement of the values of justice, legal certainty and expediency. In reality, legal certainty often clashes with the value of justice or even clashes with expediency. A fair decision according to the judge for the perpetrators and the victims, but in reality it is often detrimental to the wider community and if the wider community is given justice then justice for certain people is often sidelined.

Legal Expert,Radburch provides provisions for the priority principle, namely the first principle must be justice and the second principle is to use expediency and the third is legal certainty so that the value of justice is realized in social life.[22]

Scholar of Law, Aristotledivides justice into two, namely distributive justice and corrective justice. Each section applies differently, namely distributive justice applies to public law, the most important thing in distributive justice is that equal rewards are given to equal achievements and while corrective justice applies to criminal and civil law, the most important thing that is the problem is the existence of inequality or balance between the parties.[23]

John Rawls explains in the theory of justice that has principles as a way for utilitarianism as conveyed by Hume, Bentham and Mill, a society governed by utilitarianism means that people will lose self-respect, service for the common good will disappear and never come back again. Reaffirming that justice enforcement programs with a dimension of justice must pay attention to two principles of justice, namely being

[21]Koerniatmanto Soetorawiro, 2010,"Justice as Justice", Pro Justitia Legal Journal, Vol, 28 number 2, p. 28.
[22]Muhamad Taufiq, "Criminal Case Settlement with Substantial Justice", Surakarta, Yustisia Vol.2 No.1 , p. 27.
[23]Ibid, p.27.

able to reorganize the socio-economic gaps that occur so that they can provide mutually beneficial benefits for everyone and for those who come from lucky and unlucky groups for each other. . (John Rawls, 2006)

Prosecutorit is not justified to propose parties who do not meet the requirements of both formal and material requirements to be sentenced as defendants in court. This statement is very contrary to the value of justice, the truth which includes facts and a sense of humanity in the Act.

The defendant, after being sentenced, then leaving the prison, he will become an ordinary human being, will not repeat the crime, become a useful human being. From the victim's point of view, while undergoing the trial process, he felt that it was fair if the perpetrator who had injured himself in accordance with case number 68/Pid.Sus/2021/PN Pkl was snared for a minimum of 1 (one) year 3 (three) months. Then there are also many things that are not paid attention to, for example in the juvenile justice system in the context of domestic violence.

There should be a post-traumatic recovery stage. The victim in case number 68/Pid.Sus/2021/PN Pkl, Witness Nur Hidayah, also needs protection from the family, police, court prosecutors, advocates, social institutions, LPPAR, so that witnesses can recover after the trauma of cases of domestic violence. what he experienced. Recovery of the condition as before is very necessary not only from the victim but also from the perpetrator to get psychological recovery. So that there is no continuous trauma and the creation of character from the side of the perpetrator/defendant to be better and not to repeat his actions.

The justice system must be built on an extraordinary basis with a strong and solid foundation. In prison, defendants of criminal acts of domestic violence will be equipped with good morals with the hope that when they leave prison they will become useful figures for the country and the surrounding community.

Indecide the judge's case must be fair and there is no sentence of opinion in the decision. Thus, in case number 68/Pid.Sus/2021/PN Pkl, it is appropriate and includes the value of justice from both the victim and the accused side.

The punishment is based on the psychology and psychology of the perpetrator or the defendant in the actions that have been committed in the crime of domestic violence.

In this case, the perpetrator must be held accountable for his actions against the victims of domestic violence and for his actions in the case number 68/Pid.Sus/2021/PN PKl. Witness Nur Hidayah is the wife of the Defendant Tarjuki bin Ranyan, so that in his sentencing there is no distinction, whether it is siri or legal. In fact, cases of criminal acts of domestic violence are measured by the actions of the defendant, namely psychological and physical.

Case The crime of domestic violence is a very sensitive case because this case is about privacy in one's household conditions where the slightest problem as much as possible, other people do not know about it. Therefore, in handling this case, it is necessary to have a special view from the authorities to protect the victim and provide sanctions for perpetrators of domestic violence.

In case number 68/Pid.Sus/2021/PN Pkl is a criminal case of domestic violence where this case was committed by a husband against his wife. This action is very detrimental to the victim, especially his wife. Where the victim experienced persecution with the proof of Visum Et Repertum number: 2050/IV.6.AU/I/2020, October 30, 2020 RSI PKU Muhammadiyah, Pekalongan Regency signed by Dr. Widjdan Kadir as the Director of RSI PKU Muhammadiyah who explained that Yeni Reza Zelfia was a doctor who examined the victims of the crime of domestic violence case number 68/Pid.Sus/2021/PN Pkl. The Visum stated that witness Nur Hidayah as a victim of a criminal act of domestic violence suffered injuries to the eyes and nose of the victim.

Fromthe judge's decision number 68/Pid.Sus/2021/PN Pkl, the judge has done justice to the victim because the judge has imposed sanctions for perpetrators of domestic violence in the form of persecution. Although the decision resulted from a decision in the criminal justice process, the decision prioritized justice for all parties, both from the victim side, namely witness Nur Hidayah and from the perpetrator side, namely the defendant Tarjuki bin Ranyan.

In terms of justice, the judge gave criminal sanctions for perpetrators of domestic violence, namely 1 (one) year and 3 (three) months and the defendant had admitted all his actions at the Pekalongan City District Court.

Judgehas proven the defendant's guilt based on valid evidence, namely the testimony of witnesses including Nur Hidayah and witness Sukron, expert testimony,

letters including post-mortem evidence from witness Nur Hidayah, instructions and statements of defendant Tarjuki Bin Ranyan. Thus, the judge has carried out in accordance with article 184 of the Criminal Procedure Code.

E. Closing

1. Conclusion

AfterThe author conducts research on criminal acts of domestic violence in a case study at the Pekalongan City District Court, the authors draw the following conclusions:

a. Judge's considerations in imposing criminal acts against perpetrators of violent crimes at home in case number: 68/Pid.Sus/2021/PN Pkl

Seeing that the defendant's actions have led to a criminal act of domestic violence against the victim, namely the wife of the defendant. Thus causing losses in the form of injuries to the eyes and nose as evidenced by Visum Et Repertum Number: 2050/IV.6.AU/I/2020, October 30, 2020 RSI PKU Muhammadiyah, Pekalongan Regency.

Judge InSentencing against perpetrators of criminal acts of domestic violence must cover all aspects, both from the victim's side and from the perspective of the perpetrator's motive for committing the act. Furthermore, the consequences of criminal acts of domestic violence are also seen.

Judge atin his trial seeing and hearing statements from witnesses, evidence and the motives of the perpetrators presented in the trial from the defendant's testimony, the defendant was sentenced to sanctions in accordance with article 351 paragraph (1), namely imprisonment of 1 (one) year and 3 (three) years. month.

b. Judge's consideration in imposing criminal acts against perpetrators of domestic violence in terms of justice perspective

InThe judge's consideration in deciding a case is "fair according to the judge". Justice is subjective. So the judge judges based on the knowledge learned, based on what has been considered entirely. From all aspects that have been

considered, the value of justice emerges. The judge is responsible to God Almighty in accordance with each decision which includes, ***For Justice Based On Almighty God,*** Justice can be defined as the restoration of conditions as before.

Fromthe judge's decision number 68/Pid.Sus/2021/PN Pkl, the judge has done justice to the victim because the judge has imposed sanctions for perpetrators of domestic violence in the form of persecution. Although the decision resulted from a decision in the criminal justice process, the decision prioritized justice for all parties, both from the victim side, namely witness Nur Hidayah and from the perpetrator side, namely the defendant Tarjuki bin Ranyan. In terms of justice, the judge gave criminal sanctions for perpetrators of domestic violence, namely 1 (one) year and 3 (three) months and the defendant had admitted all his actions at the Pekalongan City District Court.

2. Suggestion

Based on the above thesis, the author provides advice in sentencing perpetrators of criminal acts of domestic violence, so my suggestions are:

a. By paying attention to the case that occurred against the defendant Tarjuki Bin Ranyan which resulted in the victim, namely Nur Hidayah Binti Moharis as Siri's wife causing losses in the form of injuries to the eyes and nose as evidenced by Visum Et Repertum Number: 2050/IV.6.AU/I/2020 , October 30, 2020 RSI PKU Muhammadiyah, Pekalongan Regency in the District Court of Pekalongan City in particular and Indonesia in general.

   It is hoped that all authorities such as the police, the prosecutor's office and the judiciary will make effective contributions such as socializing not to commit criminal acts of domestic violence and not being easily emotional in solving problems due to jealousy that causes misunderstandings so that it disturbs local residents.

b. If there are problems in domestic relations and cause disputes, then it should be resolved properly without any acts of violence that can cause harm.

c. The importance of good communication on the husband and wife relationship so that it does not lead to misunderstandings with one another.

To law enforcement officers and elements in society so that they can carry out their duties and functions so that the incidence of criminal acts of domestic violence stairs do not happen again, especially in the area of Pekalongan City.

d. In terms of imposing a criminal offense against the perpetrator of a violent crime in the household as in the case number 68/Pid.Sus/2021/PN Pkl which was sentenced to imprisonment of 1 (One) Year 3 (Three) Months. the defendant will not repeat the crime of domestic violence against the victim Nur Hidayah bint Moharis.
e. Judges in deciding cases of criminal acts of domestic violence must think carefully, not only legally but also think about the future fate of the victim, including the child in the serial representation between the defendant Tarjuki bin Ranyan and the victim Nur Hidayah bint Moharis.
f. The judge in trying the defendant Tarjuki bin Ranyan and making a decision, should carry out supervision in the course of the decision up to the imposition of sanctions on the defendant Tarjuki bin Ranyan and must prioritize the value of justice.

Bibliography

Books:

GusePrayudi, *BerbagaiAspekTindakPidanaKekerasanDalamRumahTangga*, hlm. 9.

Peter Mahmud, 2016, *Penelitian Hukum*, Kencana, Jakarta. hlm. 181 dan hlm. 244.

John Rawls, *"TeoriKeadilan"*, Pustaka Pelajar, Yogyakarta, 2011, hlm. 5

KoerniatmantoSoetorawiro, 2010*,"Keadilan SebagaiKeadilan",*Jurnal Hukum Pro Justitia, Vol, 28 nomor 2, hlm. 28.

Journals:

Nuroso, "PemidanaanTerhadapPelakuTindakPidanaKekerasanDalamRumahTangga (StudiKasusPutusanPengadilan Negeri Pekan BaruNomor: 192/Pid.B/2009",JOM Fakultas Hukum, Vol. II No. 1 (Febuari, 2015), 4.

Muhamad Taufiq*,"PenyelesaianPerkaraPidana Yang BerkeadilanSubstansial"*, Surakarta, Yustisia Vol.2 No.1 , hlm. 27.

Laws and regulations:

Undang-UndangNomor 16 Tahun 2019 Tentang Perubahan Atas Undang-UndangNomor 1 Tahun 1974 Tentang Perkawinan

Undang-UndangNomor 39 Tahun 1999 TentangHakAsasiManusia

Undang-UndangNomor 23 Tahun 2004 tentangPenghapusanKekerasan Dalam Rumah Tangga

RUU KUHP Tahun 2019

Undang-Undang Negara Republik Indonesia Tahun 1945

Undang-UndangNomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

Interview result

Personal Interview with HilarusGrahitaSetyaAtmaja, SH, Judge of the Pekalongan City District Court, Thursday, November 25, 2021, 15.00 WIB. Decision on Case Number 68/Pid.Sus/2021/PN Pkl.

ISSN 2985-5691

Jurisdiction Overview Of The Implementation Of Diversion Against Children Who Complete The Criminal Act Of Assembling (Case Study In Pekalongan State Court)

Elizabeth Nurjelita[1], Loso[2], Anik Kunantiyorini[3]

Faculty of Law, Pekalongan University, E-mail: elizabethnurjelita2000@gmail.com

Abstract

Diversion is a process in the children's case settlement system, namely the transfer of the settlement process for children in conflict with the law from the criminal justice process to outside the criminal justice system. Diversion uses a restorative justice approach, which is a settlement of criminal cases by involving the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, not retaliation. Diversion is carried out to provide protection and rehabilitation to perpetrators in an effort to prevent children from becoming adult criminals. Diversion against child offenders is carried out by the three components of the criminal justice system in Indonesia, from the police, prosecutors to the courts.

The results of this study indicate that the Pekalongan District Court has succeeded in implementing diversion against children who commit crimes of abuse and of course in the application of diversion from the initial stage to the end it still prioritizes and provides children's rights that they should receive.

Keywords : Diversion, Restorative, SPPA Law

A. INTRODUCTION

Children are the future of the nation and state, children have a long life expectancy in which one day they will become the successors of a nation and state. Therefore, the protection of children's rights must be prioritized. Children have special characteristics (specific) compared to adults and are one of the vulnerable groups whose rights are still neglected, therefore it is important to prioritize children's rights. In general, what is meant as a child is someone who is still under a certain age and is not yet an adult and has not married. Every

[1] Mahasiswa Fakultas Hukum Universitas Pekalongan
[2] Dosen Fakultas Hukum Universitas Pekalongan
[3] Dosen Fakultas Hukum Universitas Pekalongan

child is basically in the process of growing and developing and immature both physically, psychologically and socially. The development that is being experienced by children is very vulnerable to being disturbed by internal and external factors, so that guarantees are needed for the child's development process by means of child protection.[4]

The report from the Indonesian Child Protection Commission (KPAI) noted that there were 123 cases of children in conflict with the law (ABH) as perpetrators until the end of 2020. The most crimes were physical violence as many as 30 cases, sexual violence 28 cases, traffic violence 13 cases, theft 12 cases, psychological violence 11 cases, 9 cases of possession of sharp weapons, 8 cases of sodomy, and 6 cases of abortion, cases of child crime dominated by physical violence. [5]One of the efforts to overcome juvenile delinquency (child criminal politics) is currently through the implementation of the juvenile justice system (Junevile Justice). The purpose of implementing the juvenile justice system is not solely aimed at imposing criminal sanctions for children who have committed criminal acts, but is more focused on the premise that the imposition of sanctions is a means of supporting the welfare of children who are perpetrators of criminal acts. Legal certainty needs to be sought for the continuity of child protection activities and to prevent abuses that have undesirable negative consequences in the implementation of child protection activities.[6]

This is emphasized in the 1945 Constitution of the Republic of Indonesia which states that, "every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination."

The implementation of the juvenile criminal justice system is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This new breakthrough in the juvenile criminal system is the settlement of out-of-court crimes, namely diversion. The concept of diversion is based on the fact that the criminal justice process against children perpetrators of criminal acts through the criminal justice system cause more harm than good.[7]

[4] PERMEN *Women's Empowerment and Child Protection R.I*. Number 15 of 2010, General Guidelines for Handling Children in Conflict with the Law, Ministry of Women's Empowerment and Child Protection R.I.
[5] Indonesian Child Protection Commission
[6] Candra Hayatul Imam, 2013, *Child Protection Legal Policy in Renewing the SPPA in Indonesia in the Journal of Law and Research*, p.359
[7] UU no. 11 of 2012 concerning *the Juvenile Criminal Justice System*

According to PERMA 4 of 2014 Diversion Deliberation is a deliberation between parties involving the child and his/her parents/guardians, victims and/or their parents/guardians, community advisors, professional social workers, representatives and other involved parties to reach a diversion agreement through an approach restorative justice. [8]The important point of PERMA is that judges are obliged to resolve problems with children who are in trouble with the law (ABH) by means of diversion and contain procedures for implementing diversion which are the judge's guidance in resolving child criminal cases.[9]

Diversion is carried out with the reason to provide an opportunity for lawbreakers to become good people again through non-formal channels by involving community resources. Diversion seeks to provide justice for cases of children who have already committed criminal acts to law enforcement officers as law enforcement parties. Both justices are presented through a study of circumstances and situations to obtain appropriate sanctions or actions (appropriate treatment). There are 3 types of implementation of the diversion program, namely:[10]

1) Implementation of social control (social control orientation), namely law enforcement officers hand over the perpetrators in the responsibility of supervision or observation of the community, with obedience to the approval or warning given. The perpetrator accepts responsibility for his actions and is not expected by the community to give the perpetrator a second chance.
2) Social services by the community to actors (social service orientation), namely carrying out functions to supervise, interfere, improve and provide services to perpetrators and their families. The community can interfere with the perpetrator's family to provide repairs or services.
3) Towards a process of restorative justice or negotiation (balanced or restorative justice orientation), namely protecting the community, giving the opportunity for the perpetrator to be directly responsible to the victim and the community and making a mutual agreement between the victim, the perpetrator and the community. In practice, all

[8] PERMA 4 of 2014
[9] Yul Ernis, 2016, *Diversion and Restorative Justice in the Settlement of Child Crime Cases in Indonesia, Scientific Journal of Legal Policy*, Vol 10 No 2
[10] Nicholas M.C Bala et al, 2002, *Juvenile Justice System an International Comparison of problems and solutions*, p. 57

relevant parties are brought together to reach an agreement on actions for the perpetrators.

Restorative justice is the effort of all parties involved in a particular crime to jointly solve problems and create an obligation to make things better by involving victims, children, and the community in finding solutions to repair, reconciliation, and reassurance that is not based on vengeance. The most basic substance in the SPPA Law is a strict regulation of restorative justice and diversion which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment naturally.

B. Research Methods

This research is a normative legal research that uses a normative juridical approach, namely research that examines document studies using various secondary data such as legislation, court decisions, legal theory, and can be in the form of opinions of scholars.

This study shows the importance of the Restorative Justice approach and the existence of diversion in the resolution of juvenile crime cases to change the paradigm of criminal punishment into the restoration of the perpetrator-victim-community relationship.

This type of normative research uses qualitative analysis, namely by explaining the existing data in words, using literature studies and field research.

C. Results and Discussions

1. Application of the Diversion System Against Children Who Commit the Crime of Persecution in the Pekalongan District Court

The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in article 1 paragraph 7 diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. However, the regulation in its implementation is regulated in the Supreme Court Regulation Number 4 of 2014 concerning guidelines for the implementation of diversion, the following is the explanation: The initial stages of implementing diversion are due to reports or complaints from the public to the police or courts about criminal acts committed by children, then the next process the report is in analysis and investigations and investigations are carried out

by child investigators or by the police, then proceed to prosecution by the public prosecutor's office by the child prosecutor, the public prosecutor is obliged to seek diversion for 7 days, after there are demands, children who are in conflict with the law will be examined, before At the stage of the ongoing case, whether at the police, court or prosecutor's stage, the agency will notify the complainant and the reported party to take their case through an out-of-court process, namely diversion. If the complainant, the reported party, and the party concerned agree or agree to take the case through the diversion route (there must be a mutual intention/faith for peace to achieve common interests), then the child who is in conflict with the law or the victim will receive assistance from the parents, father and son, and child psychology if needed. In the process of implementing the diversion, it takes 30 days to reach a final agreement according to with Article 29 paragraph 2 of the Juvenile Criminal Justice System Law no. 11 of 2012, the diversion process requires the role of many parties such as mentors or community leaders, professional social workers, and community social welfare workers if needed.

If the diversion process has been carried out and the final result is peace or successful diversion, the parties must request a diversion decision to the court and request a letter to terminate the prosecution, then the court will issue the results of the diversion agreement. And if the diversion process has been carried out but the final result is not amicable or the diversion is unsuccessful, then the case is continued through a court or legal process, and the case is transferred back to the court.

The Pekalongan District Court prioritizes diversion in the juvenile criminal process, because children are the hope of the nation and future leaders, whose morals, traits and character can be shaped for the better.

Based on the results of an interview on Tuesday, November 16, 2021 by Mrs. Elin Pujiastuti, SH. MH (Judge at the Pekalongan District Court as well as Diversion Facilitator) in the process of implementing diversion is in accordance with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and continues to prioritize the interests, rights, and comfort of children, carried out against children who are in conflict with the law.

In the diversion process of the Child case Number 16/Pid.Sus.Anak/2020/PN Pkl, a diversion agreement was reached with the following provisions: Party I admitted his mistake and apologized sincerely to party II and party II was willing to forgive sincerely, Party I is able and willing not to repeat their actions against party II or against other parties, Party I and party II are able to promise not to hold grudges in the future and are willing to live in harmony in the community, Party I has provided medical assistance to party II in the amount of Rp. 2,500,000,- (two million five hundred thousand rupiah), Party I is willing to provide Guidance and Supervision from Pekalongan BAPAS for 3 (three) months by carrying out mandatory reports to Pekalongan BAPAS every 1 (one) month, If this agreement is not fulfilled or violated by the parties, the examination process is continued in the trial process. This agreement was made by the parties without any element of coercion, error and fraud from any party.

The process of implementing diversion carried out at the Pekalongan District Court and the diversion agreement has fulfilled and is running in accordance with the provisions of the contents of the applicable law, the application of which prioritizes justice, the wishes and common interests of all parties concerned, especially and the main thing is children. who are in conflict with the law, so it is reasonable to be granted. Taking into account the provisions of article 12, article 52 paragraph 5 of Law No.11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 concerning the Criminal Procedure Code and other relevant laws and regulations. The existence of the Law on the Juvenile Criminal Justice System has a significant effect, so it can be concluded that with the settlement of child cases through this diversion, the number of child offenders in prison decreases and allows children to grow and develop, and the process returns to prison. live in society. Thus, children's human rights are better protected and the implementation of diversion in children's cases has been implemented properly.

2. Implementation of Diversion Against Children Who Do Crimes When Seen From the Perspective of Protecting Children's Rights

The Government of Indonesia signed the United Nations Convention on the Rights of the Child (UNCRC) as a result of the UN General Assembly which was

accepted on November 20, 1989. Indonesia has ratified the convention on the rights of the child by Presidential Decree No. 36/1990. children's rights in Indonesia, then the Indonesian government made it happen by issuing various laws and regulations, including Law No. 3 of 1997 on Juvenile Court and Law No. 23 of 2002 on Child Protection.

Indonesia has also provided protection for human rights and human freedoms without discrimination. Children have the right to be protected, especially for children who are in conflict with the law, which is one way to use diversion because diversion is a way to protect their human rights.

Based on the Convention on the Rights of the Child (CRC), the implementation of the juvenile justice process in conflict with the law needs to pay attention to four principles:

a. Non discrimination, namely acting fairly and not discriminating against all children
b. The best interests of the child, namely seeking all decisions, activities and support from influential parties solely for the best interests of the child
c. Prioritizing children's rights to life, survival and growth and development, namely activities arranged to improve children's development based on their abilities and developmental tasks
d. Respect the views of children, namely paying attention to and including the views of children in every process of discussion and decision making in each activity.

In Law Number 4 of 1979 concerning Child Welfare, it has also been explained indirectly that the concept of diversion is a concept that aims to fulfill human rights and children's rights. This is stated in Article 2 and Article 6 paragraphs (1) and (2) of Law no. 4 of 1979 which reads:

a. Article 2: Children have the right to protection of the environment that can harm or hinder their growth and development properly
b. Article 6 paragraph (1) Children who experience behavior problems are given services and care aimed at helping them to overcome obstacles that occur during their growth and development.
c. Article 6 paragraph (2): Services and care, as intended in paragraph (1), are also

provided to children who have been found guilty of violating the law based on a judge's decision.

The implementation of diversion with the principle of the best interests of children is the fulfillment of human rights and children's rights that are sovereign and fair for all parties involved. By forgiving each other in the diversion process, children who are in conflict with the law can be freed from discrimination and a deterrent effect will arise in their hearts so as not to repeat their actions again. So that diversion and human rights are closely related to realizing diversion and actually as a guarantee, diversion is here to provide legal protection for children who are in conflict with the law, so that they avoid stigma and children can return to the social community.

D. CONCLUSION

1. Diversion is explicitly regulated in the SPPA Law, with the aim of avoiding and keeping children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment properly. The application of diversion in the juvenile criminal justice system cannot be carried out in all cases of children. If the child's case meets the requirements for diversion, the Pekalongan District Court will prioritize this child's case to take the diversion route, the Pekalongan District Court has implemented diversion and has run fully as regulated in Law No. 11 of 2012 UU SPPA and PERMA Number 4 of 2014 concerning guidelines for the implementation of diversion in the SPPA, the application of diversion which prioritizes justice, the common wishes and interests of all parties concerned, especially and the main thing is children who are in conflict with the law.
2. The obstacles faced in the process of implementing diversion at the Pekalongan District Court are internal factors such as differences in perceptions of the meaning of justice by the parties concerned in the process of implementing diversion and an in-depth understanding of the contents of PERMA Number 4 of 2014 concerning Guidelines for Implementing Diversion in the SPPA, and external factors such as understanding of the community and other law enforcement officers on diversion is still lacking, the role of the community is still and the cooperation of other agencies

related to the implementation of diversion has not been going well.

3. Indonesia has ratified the convention on children's rights with Presidential Decree No. 36/1990. This ratification is intended as a concern for the Indonesian people in protecting the rights of children in Indonesia. The form of child protection in international relations has been regulated in the Convention on the Rights of the Child, in which children's rights must be protected and guaranteed in order to live, grow, develop, and excel in obtaining a decent and quality education. In order to realize the protection and welfare of children, there have been institutions and laws and regulations that can guarantee their implementation. The fulfillment of human rights and children's rights is very suitable to be applied to the process of implementing diversion, especially children who are in conflict with the law have the right to be protected, the obligation to implement diversion is the fulfillment of children's rights, the concept of diversion towards the fulfillment of human rights and children's rights has been accommodated so well by the Pekalongan District Court. The principle of the best interests of children is the fulfillment of human rights and children's rights that are sovereign and fair for all parties involved. In Law Number 4 of 1979 concerning Child Welfare, it has also been explained indirectly that the concept of diversion is a concept that aims to fulfill human rights and children's rights.

E. ACKNOWLEDGMENTS

Praise and gratitude I pray to God Almighty, because of His blessings and grace, I was able to finish this scientific paper. The writing of this scientific paper is carried out in order to fulfill one of the requirements to get free administration at the Faculty of Law, Pekalongan University. I realize that without the help and guidance of various parties, it would be quite difficult for me to complete this scientific paper.

Therefore I would like to thank:

a. Mr. Loso, SH., MH., as Lecturer of the Faculty of Law, University of Pekalongan
b. Mrs. Anik Kunantiyorini, SH., MHum., Lecturer of the Faculty of Law, University of Pekalongan

Bibliography

Candra Hayatul Imam, 2013, Child Protection Legal Policy in Renewing the SPPA in Indonesia in the Journal of Law and Research, p.359

Nicholas M.C Bala et al, 2002, Juvenile Justice System an International Comparison of/problems and solutions, p. 57

M.R. Ghoni, P. Pujiyono, 2020, "Legal Protection of Children in Conflict with the Law through the Implementation of Diversion in Indonesia", Journal of Indonesian Legal Development, vol. 2, pp. 331-342

Rini Fitriani, 2016, The Role of Child Protection Organizers in Protecting and Fulfilling Children's Rights, Samudra Justice Law Journal, Vol 11 no 2

S, Rahayu, 2015, Diversion as an Alternative for Settlement of Criminal Cases Perpetrated by Children in the SPPA Perspective, Jambi Legal Studies Journal

Yul Ernis, 2016, Diversion and Restorative Justice in the Settlement of Child Crime Cases in Indonesia, Scientific Journal of Legal Policy, Vol 10 No 2

PERMEN Women's Empowerment and Child Protection R.I. Number 15 of 2010, General Guidelines for Handling Children in Conflict with the Law, Ministry of Women's Empowerment and Child Protection R.I.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

Law Number 4 of 1979 concerning Child Welfare

PERMA 4 of 2014 Convention on the Rights of the Child Indonesian Child Protection Commission

ISSN 2985-5691

The Judge's Consideration In Sentencing The Perpetrator Of Theft In Incriminating Circumstances Against Convenience Store Losses Based On The Perspective Of Justice

Pragita Riscyana Nirmala Poetry, [1]Loso, S.H., M.H. [2]Anik Kunantiyorini, S.H., M.Hum. [3]

Faculty of Law, Pekalongan University, E-mail: pragitariscyana01@gmail.com

Abstract

The purpose of writing is to contribute ideas to the public regarding the judge's considerations in deciding a case against the crime of theft in aggravating circumstances and the imposition of a decision against the defendant in the perspective of justice, a quality decision that contains procedural justice and substantive justice so that the judge can be said to have fulfilled the principle of proportionality. This study uses a normative research type, and the results of this study suggest that judges consider the law by paying attention to the juridical, sociological, and philosophical aspects so as to produce quality decisions and contain a sense of justice that can be felt by perpetrators, victims, and the community.

Keywords: Theft, Judgment, Justice

A. INTRODUCTION

Criminal law is part of the law that applies in a country, which has the legal and legal foundations to ensure acts that cannot be done, prohibited, including threats or criminal sanctions for perpetrators who violate the prohibition. This is one of the efforts to overcome a social problem contained in the study of law enforcement policy. **According to Mezger**, criminal law can be defined as a rule of law that associates with an act that meets certain condition.[4] Any violation of existing legal regulations, will be subject to sanctions in the form of punishment in reaction to acts that violate the rule of law committed.

The act of theft is a social symptom that is faced at any time by the community, with various efforts made by the authorities and authorities to wipe, but these efforts are

[1] Pragita Riscyana Nirmala Poetry, as a Pekalongan university student
[2] Lecturer Faculty of Law, Pekalongan University
[3] Lecturer Faculty of Law, Pekalongan University
[4] Sudarto, 2018. *Hukum Pidana I (edisi revisi).*Semarang: Yayasan Sudarto. Hlm.10.

not easily realized as a whole but only reduced will not be eliminated easily.[5] The development of crime, namely the crime of theft is increasing, this makes a negative impact in the progress of the Indonesian state, the factor of someone doing theft is the existence of a worsening economic structure caused by frequent increases in the price of goods and high inflation, high unemployment rates make it difficult for people to find jobs. Other things that can trigger theft are derived from weak economic factors, differences in social strata, opportunities, and a supportive environment. [6]

Chapter XXII of the Criminal Code describes acts that can be categorized as criminal acts against self-enrichment against the law which is referred to as theft, when viewed in terms of deeds and their consequences, it can be qualified, among others: Ordinary Theft (Article 362), Theft by force (Article 363), Light theft (Article 364), Theft by violence (Article 365), Theft in the family (Article 367). This act has its own elements, but to state that someone has committed theft must have the element of taking an item. As according to Article 362 of the Criminal Code by **Soesilo** issued by Poelita that where the opportunity of the perpetrator to take goods, the goods are not yet in his power and are considered to be finished when the goods have moved places. [7]So that with the types of theft crimes, law enforcement needs to be careful in detail in applying the types of theft crimes.

In the last 3 (three) years, namely in 2019-2021 the type of criminal acts with the enactment there were 39 (thirty-nine) cases 8 (eight) of which are criminal acts of theft with the blessing of convenience store losses committed by Defendant Haryanto alias Turah Bin Sugito and Defendant Sawal Adwan Riyanto alias Sawal Bin (alm) Sarjuni. [8]

The judge's decision is juridical and non juridical, in determining a case with the judge's consideration of the article that is proven worthy based on the evidence revealed in the trial so that the verdict can be of a standard. In order for the accused not to be cut free by the judge, the indictment can play an important role in the trial process. So that

[5] Riyan Prayudi Saputra, 2019. *Perkembangan Tindak Pidana Pencurian Di Indonesia.* Jurnal Pahlawan Fakultas Hukum Universitas Pahlawan Tuanku, Nomor 2 Volume 2. Hlm. 2.
[6] [6]*Ibid. Hlm 2*
[7] Putusan Nomor 14/Pid.b/2021/PN.Pekalongan. Hlm.14.
[8] Riset Sat Reskrim Polres Pekalongan

researchers want to review the consideration of judges in dropping criminal perpetrators of theft in incriminating circumstances against convenience store losses in the perspective of justice in verdict number 14 / Pid.B / 2021 / PN. Street vendors.

B. Research Methods

The author in his research uses normative juridical methods in the form of judge's verdicts that are analyzed qualitatively using analytical descriptive then the data used is primary data in the form of results from research in the field with interviews and secondary data using literature studies in the form of literature, articles, journals.

C. Results and Discussions

In Law No. 48 of 2009 on The Power of Justice in Article 4 paragraph (1) which outlines against the law in court in trying not to discriminate people. The court in handling a case if the law is found incomplete or unclear so that there is a legal vacuum in the case then the judge is tasked with digging and obtaining the law to be used in resolving the case as a form of synchronization to the progress in society. [9]Article 4 paragraph (1) of Law No. 48 of 2009 states that adjudicating based on "law" is not based on law because in the legal sense states that the definition of law is broader, namely written law and unwritten law.

In realizing justice (*ex aequo et bono)* and legal certainty to the value of a judge's ruling, that the judge's considerations other than based on juridical aspects, sociological aspects, and philosophical aspects are also required to be done carefully, thoroughly, and well. If done otherwise, the judge's decision can be overturned by the High Court and the Supreme Court, so the judge's consideration is very important in a decision. [10]

So that the judge in giving a decision to a case must be based on the considerations of the judge first, the judgment of the judge based on aspects, namely juridical aspects, sociological aspects, and philosophical aspects. [11]

[9] Pasal 4 ayat (1) dalam Undang-Undang Nomor 48 tahun 2009 terkait kekuasaan Kehakiman.
[10] Mukti Aro, 2004. *Praktek Perkara Perdata Pada Pengadilan Agama.* Yogyakarta: Pustaka Pelajar). Hlm. 140
[11] Responden oleh Majelis Hakim Pengadilan Negeri Pekalongan

a. The judge's consideration based on juridical aspects

That the judge in deciding a case based on the provisions of the laws and regulations as a form of formil. The judge in taking a verdict is based on at least two pieces of evidence in the form of witness statements, defendants' statements, and evidence. Witness testimony is one of the main evidence because the witness is someone who can see for himself, hear for himself, and experience it for himself. Witnesses in giving evidence must be sworn in based on the religion of the witnesses and in the pronunciation of the oath as an absolute condition in the testimony for evidence if they do not want to be sworn in then the witness will be subject to detention for a maximum of 14 days this is stipulated in Article 161 paragraph (1) of the Kuhap. Witnesses in giving evidence at the trial to strengthen their testimony as evidence and give confidence to the judge to get validity that the act was true.

b. The judgment of the judge in the sociological aspect

That the basic thing that needs to be considered by the judge in the sociological aspect is with the social background of the accused perpetrator of a crime so that the conviction of a criminal committed by the judge can provide benefits for the surrounding community. [12]

c. The judge's consideration in the philosophical aspect

That the form of the decision given by the judge is an attempt to correct the behavior of the accused by conducting proceedings in the prosecution. The philosophical aspect of the prosecution is the enforcement of the perpetrator who has violated the criminal act so that after undergoing the process of prosecution in the penitentiary the perpetrator can fix himself and not repeat the crime.

The basis of the judge's consideration in proving the elements of the criminal act is where the indictment of the Public Prosecutor states that the wrongful act in the elements is fulfilled and in accordance with the criminal act. This makes the consideration of the judge significant or appropriate in the dictum of the final verdict or amar verdict. [13]

[12] Sudarto, 1986. *Kapita Selekta Hukum Pidana*. Bandung: Alumni. Hlm. 67.
[13] Lilik Mulyadi, 2007. *Kompilasi Hukum Pidana Dalam Perspektif Teoritis dan Praktek Peradilan*. Bandung: Mandar Maju. Hlm. 193.

The principle of legality in the Indonesian Penal Code as stipulated in Article 1 paragraph (1) of the Criminal Code, which states: "a criminal cannot be punished, except on the basis of existing criminal laws and powers". The provisions in Article 1 paragraph (1) of the Criminal Code, explain among others: [14]

1) .An act can be punished if it is a criminal provision under the law. So that the prosecution according to the law is not written, it is not possible.
2) Criminal provisions are required to exist earlier than the act, this criminal provision has applied retroactive law, both regarding the provisions can be punished or the sanctions.

This judge can threaten the criminal defendant if the defendant can be proven to have committed an error based on the charges given by the Public Prosecutor. In obtaining a criminal must be based on a valid evidence that is contained in Articles 183 and 184 paragraph (1) of the Kuhap which reads: [15]

Article 183 kuhap:

"The judge shall not convict a person unless there is a lack of two valid means of evidence that he or she has confidence that a criminal offence actually took place and that the defendant is guilty of doing so."

Article 184 KUHAP paragraph (1)

"The valid evidence is: a. Witness testimony; b. Expert information; c. Letter; d. Instructions; e. The defendant's testimony**.**

The judge in taking a verdict is based on at least two pieces of evidence in the form of witness statements, defendants' statements, and evidence. Witness testimony is one of the main evidence because the witness is someone who can see for himself, hear for himself, and experience it for himself. Witnesses in giving evidence must be sworn in based on the religion of the witnesses and in the pronunciation of the oath as an absolute condition in the testimony for evidence if they do not want to be sworn in then the witness will be subject to detention for a maximum of 14 days this is stipulated in Article 161 paragraph (1) of the Kuhap. Witnesses in giving evidence at the trial to

[14] Lukman Hakim, op.cit. Hlm. 18.
[15] Chairunisa, Alfiitra, Mara Sutan Rambe, *Tindak Pidana Pencurian Dengan Pemberatan Yang Dilakukan Secara Bersama-Sama.* Journal Of Legal Reserch Vol. 03 Issue. 02 2021. Hlm.328-330

strengthen their testimony as evidence and give confidence to the judge to get validity that the act was true.

Furthermore, the Judge gave a statement to the defendant for the defendant to state his truth to the testimony given by the witnesses, that in giving his testimony the defendants did not submit witnesses to alleviate (*a de charge).* Then the accused gave a statement that turned out to be in accordance with the information given by the witnesses as there was a link between the evidence and the evidence that the Public Prosecutor submitted.

This act has been recognized by the defendant and the defendant did not file a *pledoi* or commonly called a defense related to the testimony submitted by the witness. The actions of the defendants are each indicted based on a single charge by the Public Prosecutor as threatened by Article 363 paragraph (1) of the 4th and 5th Criminal Code. In providing charges against the accused that the defendants Haryanto and Sawal were proven to have legitimately committed mistakes and were convincingly guilty of committing a Criminal Act of Simultaneous Theft in Aggravating Circumstances and threatened with criminal Article 363 paragraph (1) 4th and 5th Criminal Code in a single indictment by imposing sanctions in the form of confinement for 2 (two) years and reduced during the defendant's detention.

In Decision No. 14/Pid.B/2021/PN. The decision-making process carried out by the panel of judges is based on at least two valid evidence. That in the case that the author is thorough as the evidence used by the judge is a witness statement, the testimony of the accused. The verdict handed down by the Pekalongan District Court Judges' Assembly has been in accordance with the conditions of the birth of the verdict as stated in Article 197 paragraph (1) letter a, b, c, d, e, f, g, h, i, j, k and l KUHAP.

The realization of a quality verdict that starts from the stage of examination of a case that is carried out based on the applicable event law and the substitute clerk is an apparatus that plays a role in assisting the judge in recording all the results of the trial, the substitute panitra is required to make a case resume, analyze the case that is used as material in a news conference (BAS). News of the hearing event (BAS) is the focus of

the judge to consider and make a decision or determination. A substitute clerk is needed by the judge in the trial to make an extensive or complete and good consideration of the court's decision.

According to Hans Kelsen as a positivism adherent that the law is an order of its nature forcing on human behavior, the law is also the main rule or core rule in the application of sanctions. [16]In the application of legal and legal principles in accordance with the law so as to realize legal certainty. A person's actions can be called violating or not violating can be formulated in the rules contained in the Law.

Justice itself is concerned with conscience this is not a form of the definition of justice or something that is considered official. Because it is closely related to efficient in society. Not as implemented by the Supreme Court of Justice on the case of Akbar Tanjung. Based on the theory of legal science the verdict has been appropriate based on a scientific point of view. But it does not contain the same sense of justice as living in society. Gustav Radbruch's opinion states "*Summum ius summa inuiria*" which means conscience is the highest justice. People who are too focused on the law straightforwardly often occur happiness in harming justice. [17]

Another case carried out by the defendants is Defendant I Haryanto Alias Turah Bin Sugito Bersamaan and Defendant II Sawal Adwan Riyanto Alias Sawal Bin (Alm) Sarjuni who has been threatened criminally by the public prosecutor based on Article 363 paragraph (1) 4th and 5th Criminal Code which is a criminal act of theft with a blessing that causes losses in one of theconvenience stores, namely Indomart outlets located in Bojongminggir Kec. Bojong Kab. Pekalongan Village. That the defendants testified in the trial that the act was done for sprees and the perpetrator is an ex-convict so that the verdict that has been born by the judge has been appropriate based on juridical, philosophical, sociological aspects that the judge imposes a prison sentence of 2 (two) years each in accordance with the demands of the Public Prosecutor. That criminal convictions committed by judges have contained procedural justice and

[16] Sunarto, 2016. *Asas Legalitas Dalam Penegakan Hukum Menuju Terwujudnya Keadilan Substansif. Fakultas Ilmu Sosial Universitas Negeri Semarang.* Hlm. 255.
[17] Jeremies Lemek, 2007. *Mencari Keadilan Pandangan Kritis Terhadap Penegakan Hukum Di Indonesia.* Yogyakarta: Galang Press. Hlm. 25.

substantive justice so that the verdict has a sense of justice that can be felt by the perpetrator, victim, community. It can be seen that the judges of the pekalongan district court have fulfilled the principle of proposionality where the principle that prioritizes the balance between the rights and obligations of state organizers and the principle that prioritizes expertise based on the code of ethics and provisions of the laws and regulations of this matter is regulated in Article 3 Number 5 and Number 6 of the Law of the Republic of Indonesia Number 28 of 1999 concerning State Organizers Who Are Clean and Free From Corruption, Collusion, and Nepotism.

Therefore, the defendants can be found guilty. Because it meets the elements above. In the evidentiary system to determine the defendants found guilty the Pekalongan District Court Judge Panel decided against the defendants 2 (two) years imprisonment. This is based on the judge's belief (*Conviction In Time)* that the judge decides a case has been considered fair so that justice can be felt by the perpetrators, the victims, and the community.

D. Conclusion

The actions committed by the defendants proved to be true to have fulfilled the elements of Article 363 paragraph (1) of the 4th and 5th criminal code that the deeds were detrimental to PT. Indomarco Pratama Semarang branch materially. That based on the consideration of judges who have paid attention to juridical, philosophical, and sociological aspects have been appropriate and stated that the perpetrators were sentenced to prison for 2 (two) years. That the verdict born by the Pekalongan District Court Judge is appropriate and has a sense of dislaught in procedural justice and substantive justice. So that the actions carried out by the judge have been appropriate and fulfill the principle of proposionality where the principle that prioritizes the balance between the rights and obligations of state organizers and the principle that prioritizes expertise based on the code of ethics and the provisions of laws and regulations this matter is regulated in Article 3 Number 5 and Number 6 of the Law of the Republic of Indonesia Number 28 of 1999 concerning State Organizers Who Are Clean and Free From Corruption, Collusion, and Nepotism.

E. THANK YOU

All the praise and gratitude that the author gives to Allah SWT for his grace so that the author can complete a study entitled **" THE JUDGE'S CONSIDERATION IN SENTENCING THE PERPETRATOR OF THEFT IN INCRIMINATING CIRCUMSTANCES AGAINST CONVENIENCE STORE LOSSES BASED ON THE PERSPECTIVE OF JUSTICE".** In the writing of scientific articles the author realized that in the process of completing this legal writing many get support and assistance both directly and indirectly. Therefore, with all due respect, I thank all those who have supported the completion of this scientific article, among others:

a.Allah ALMIGHTY, who has given the gift and guidance of reason and mind, as well as strength and ease.

b.Both Parents, because it would be useless this research if without any pleasure by parents

c. Mr.Suryani, S.H., M.Hum. as Rector of Pekalongan University.

d.Mr. Dr. Taufiq, S.H., M.Hum, as dean of the Faculty of Law, Pekalongan University

e. Mr.Loso, S.H., M.H. as the author's guidance lecturer in compiling this scientific article.

f. Mrs.Anik Kunantiyorini, S.H., M.Hum. as a lecturer of Pembiming II author in compiling this scientific article

g.All Mr. and Mrs. Lecturers of the Faculty of Law, Pekalongan University who have provided useful knowledge for the author.

May Allah give a reward for the good that has been given to the author. Writing this scientific article is far from perfect mka from that the author needs ritik as well as advice for readers. Hopefully this scientific article is useful for the author in particular, as well as for readers in general.

Bibliography

Books

Bambang Sungono, 2006. *Legal Research Methods*. Jakarta: Rajawali Pers.

Jeremies Lemek, 2007. Seeking Justice a Critical View of Law Enforcement in Indonesia. Yogyakarta: Galang Press.

Lilik Mulyadi, 2007. Compilation of Criminal Law in Theoretical Perspectives and Judicial Practice. Bandung: Mandar Maju.

Lukman Hakim, 2020. Principles of Criminal Law Teaching Books for Students. Yogyakarta : Deepublish.

Mukti Aro, 2004. Practice Civil Cases in Religious Courts. Yogyakarta: Student Library.

Sudarto, 1986. Capita Selekta Criminal Law. Bandung: Alumni.

Sudarto, 2018. Criminal Law I (revised edition). Semarang: Sudarto Foundation.

Sunarto, 2016. Principle of Legality in Law Enforcement Towards the Realization of Substantive Justice. Faculty of Social Sciences, State University of Semarang.

Zainudin Ali, 2014. Legal Research Methods, Jakarta: Sinar Grafika.

Journal

Chairunisa, Alfiitra, Mara Sutan Rambe, Criminal Acts of Theft with Blessings Committed Together. Journal Of Legal Reserch Vol. 03 Issue. 02 2021.

Riyan Prayudi Saputra, 2019. The Development of Criminal Acts of Theft in Indonesia. Journal of Heroes Faculty of Law Hero Tuanku University, Number 2 Volume 2.

The law

Law No. 48 of 2009 concerning the power of justice.

ISSN 2985-5691

Abuse Of Circumstances In The Act Of Borrowing Money Into Land Buying And Selling Actions

Sukainah Naura Azzahra[1], Suryani[2], Sri Pujiningsih[3]
Faculty Of Law, Pekalongan University Jl. Sriwijaya No. 3 Pekalongan
e-mail : naura0207@gmail.com
e-mail : syn.unikal@gmail.com
e-mail : spningsih.unikal@gmail.com

Abstract

An agreement can be born when an agreement has been reached from the parties concerned. In this case, a unanimous agreement must be reached, which does not contain elements of coercion, misguidance, or deception, and is given in a free atmosphere without any pressure. In practice, it is not uncommon to find conformity between the will and the statement which contains defects in the will. As happened in the case of abuse of circumstances in the act of borrowing and borrowing into the act of buying and selling land experienced by Nurhaidah Tomeys in the Supreme Court Decision Number 617 PK/Pdt/2016. This study aims to determine the regulation of abuse of circumstances in Indonesian positive law, the elements of abuse of circumstances contained in borrowing and borrowing into buying and selling land,

The method used in this study is a normative juridical approach, with research specifications using qualitative research with descriptive analysis, data collection methods using primary data and secondary data, for data analysis methods using qualitative data analysis. The results obtained from the study are that abuse of circumstances in the Indonesian judiciary has been accepted as one of the reasons for defects in the will followed by jurisprudence. There is an element of abuse of circumstances in the form of abuse of economic and psychological conditions carried out by creditors against debtors whose economic and psychological conditions are lower in the case of the Supreme Court decision No. 617 PK/Pdt/2016. And the judge's consideration on the Supreme Court's decision no.

***Keywords**: Agreement, Defect of Will, Misuse of Circumstances.*

A. INTRODUCTION

Relationships that occur in community interactions lead to the emergence of various forms of legal relations between people, especially in the field of engagement law, where the

[1]Sukainah Naura Azzahra. 2022. Misuse of Circumstances in the Acts of Borrowing into Acts of Buying and Selling Land. Faculty of Law, University of Pekalongan.
[2]Suryani, SH, M. Hum. As the first supervisor.
[3]Sri Pujiningsih, SH, MH. As the second supervisor.

majority of engagement relationships that occur be tween people are based on agreements.There are four elements contained in the law of engagement, namely, legal relations, wealth, parties, and achievements.Each party occupies a different place, where one person becomes the creditor, namely the party who is entitled to achievements and another person becomes the debtor, namely the party who is obliged to fulfill the achievements. The agreement can be made by anyone if it fulfills the conditions contained in Article 1320 of the Civil Code, namely:

1). Agree on those who bind themselves;

2). The ability to make an engagement;

3). A certain thing;

4). A lawful reason.

Agreement is a very important moment for the formation of an agreement. However, in practice, it is not uncommon to find conformity between the will and the statement which contains defects in the will. In Article 1321 of the Civil Code, there are three factors that cause defects in the will, namely:

1). error or oversight (dwaling);

2). coercion (dwang or bedreiging);

3). fraud (bedrog).

Later in its development, contract law accepts abuse of circumstances (*misbruik van omstandigheden or undue influence*) as the fourth factor that causes defects of will. As happened in the case of abuse of circumstances in the act of borrowing and borrowing into the act of buying and selling land experienced by Nurhaidah Tomeys in the Supreme Court Decision Number 617 PK/Pdt/2016. In this case there is an element of fraud as well as an element of abuse of circumstances (*misbruik van omstandigheden*). So, the sale and purchase that was sued by the respondent at the review was null and void as referred to in Article 1321 of the Civil Code that "there is no valid agreement if the agreement was given due to an oversight, or obtained by coercion or fraud". As is the case with the study in this study relating to the principle of abuse of circumstances, Since there are currently no laws and regulations that clearly state the criteria for abuse of circumstances, the author intends to discuss and present data on how to regulate the abuse of circumstances in Indonesian positive law, how the elements of abuse the circumstances in the Supreme Court's decision

No. 617 PK/Pdt/2016, and what the judges considered in the Supreme Court's decision No. 617 PK/Pdt/2016. This research was conducted with the aim of knowing the development of a new principle in will disability, namely the principle of abuse of circumstances (*misbruik van omstandigheden*). So the author intends to discuss and present data on how to regulate the abuse of circumstances in Indonesian positive law, how the elements of abuse of circumstances are in the Supreme Court decision No. 617 PK/Pdt/2016, and what are the judges' considerations in the Supreme Court decision No. 617 PK/Pdt/2016 .

This research was conducted with the aim of knowing the development of a new principle in will disability, namely the principle of abuse of circumstances (*misbruik van omstandigheden*). So the author intends to discuss and present data on how to regulate the abuse of circumstances in Indonesian positive law, how the elements of abuse of circumstances are in the Supreme Court decision No. 617 PK/Pdt/2016, and what are the judges' considerations in the Supreme Court decision No. 617 PK/Pdt/2016 . This research was conducted with the aim of knowing the development of a new principle in will disability, namely the principle of abuse of circumstances (*misbruik van omstandigheden*).

B. Formulation of the Problem

Based on the description of the background above, there are problems that are formulated as follows:

1. How is the regulation of abuse of circumtains in the law of borrowing money into an act of buying and selling land in Indonesian positive law?
2. What are the elements of abuse of circumtains in the actof borrowing money into the act of buying and selling land?
3. What is the judge's consideration regarding the abuse of circumtains in the act of borrowing money into the act of buying and selling land in the Supreme Court's decision Number 617 PK/Pdt/2016?

C. Research Methods

This research method uses a normative juridical method, which is an approach method with laws and regulations and a case approach with research specifications using

qualitative research. According to Poerwandari, qualitative research is research that processes and produces descriptive data or provides explanations[4]. This research is descriptive analysis, namely the research method by collecting data according to the truth then the data is compiled, processed and analyzed to be able to provide an overview of the existing problems.[5]. The data collection method uses primary and secondary data, while the data analysis method uses qualitative data analysis.

D. Research Results and Discussion

a. Regulation of Misuse of Circumstances in the Law of Borrowing and Borrowing into an Act of Buying and Selling Land in Indonesian Positive Law

The case used in this research is an act of borrowing money with a guarantee of SHM Number 1030 which is carried out not formally as in general agreements are made. Looking at Article 1754 of the Civil Code which states that the lender will get back the same amount of money including interest in accordance with the agreed agreement. If the Respondent gets a land certificate in exchange for the money lent to the Petitioner in the amount of Rp. 5,000,000 while the price of vacant land around the object of the dispute with an area of 200 m2 in 1990 has reached a minimum of Rp. 26,000,000 or the equivalent of Rp. 130,000/m2. Then it appears that the land price difference is very far and irrational with the postulated purchase price of Rp. 5,000,000 for a land area of 1,020 m2 or the equivalent of approximately 4,900/m2 in 1995.

In addition, in this case there is no agreement with the sale and purchase agreement. If the transaction is a sale and purchase, it is logically impossible for the payment to be made in stages because the Respondent is an entrepreneur, let alone one of the payments is in the form of a used motorcycle. Moreover, in the sale and purchase of land that has been registered with the land office, it must be carried out in the right way through the Land Deed Making Officer (Notary or Camat) because the principle of buying and selling land must be based on "agree, cash and clear" in accordance with the Jurisprudence of the Supreme Court. Number 952 K/Sip/1974.

[4]E. Ktisti Poerwandari. 1988. Qualitative Approach in Research. Jakarta: Institute for Development and Measurement of Psychology, Faculty. UI Psychology, Pg. 34.
[5]Sugiyono, 2008. Quantitative, Qualitative and R&D Research Methods. Bandung: PT Alphabet. Pg.105.

Because there is an element of fraud and or deception or at least contains an element of abuse of the situation (*misbruik van omstandigheden*), the sale and purchase of the object of dispute as argued by the Respondent can be canceled as referred to in Article 1321 of the Civil Code that there is no valid agreement if the agreement is given because of an oversight. , or obtained by coercion or fraud or abuse of circumstances developed in the doctrine of law and jurisprudence. The presence of abuse of circumstances (*misbruik van omstandigheden*) in the development of this law is accepted in Indonesian judicial practice as a reason that can be used for contract cancellation even though it is not explicitly regulated in the Civil Code such as Article 1322 (mistake), Article 1323 (coercion).

b. The Elements of Misuse of Circumstances in the Acts of Borrowing and Borrowing into an Act of Buying and Selling Land

Based on Article 1267 of the Civil Code, the party whose engagement is not fulfilled can choose to force the other party to fulfill the agreement, or will demand the cancellation of the agreement, with reimbursement of costs, losses and interest. The Civil Code does not adhere to the principle of justum pretium, which means that for a contract to be valid it must meet the conditions for a balance between achievement and counter-achievement.[6]. Unbalanced achievements and counter-achievements are not enough to prove abuse of circumstances.

The pressure of circumstances and imbalances is also not enough, what is important in proving the existence of abuse of circumstances is that there is evidence of abuse from economic or psychological conditions[7]. This means that a party can be declared to have abused the situation (*misbruik van omstandigheden*) when that party has an advantage over the other party, both in economic advantage and psychological advantage and then uses it to get approval for the provisions in the agreement that he drafted himself to get more profit.

Misuse of circumstances (*misbruik van omstandigheden*) has 2 (two) elements,

[6]Source:https://www. Hukumonline.com/stories/article/lt60059fc198c17/doktrin-dan-jurisprudensi-pesalahahan-keadaan-dalam-percepatan
[7]Nurmantias, N. 2020. Unilateral Contract Cancellation Due to Misuse of Conditions in the Contract. Journal of Legal Ideas, 2(2), p.163.

namely:

1). The element of loss for one party;

2). The element of abuse of opportunity for the other party[8].

Like the case in the Supreme Court decision Number 617 PK/Pdt/2016 In this case there are elements of abuse of economic conditions, abuse of psychological conditions, and abuse of opportunities that are used to obtain large profits, causing losses to other parties. The description of the factors mentioned above are as follows:

1). Misuse of economic conditions

This happened because Nurhaidah (the Petitioner) who was seriously ill and was in a difficult economic situation compared to Ruddy (the Respondent) was forced to borrow money from the Respondent for treatment. This borrowing and borrowing of money was also carried out by the Petitioner by providing a guarantee in the form of a certificate of land ownership which was the only deposit belonging to the Petitioner. Then the Respondent was given a blank receipt as proof of borrowing and in the end the editor of the blank receipt was written as a land sale and purchase agreement by the Respondent without the knowledge of the Petitioner.

2). Psychological state abuse

Due to the feeling of the Respondent who felt that his position was higher than the Petitioner's because the Petitioner at that time was only a retired prosecutor while he was a successful businessman who had good and extensive social relations with certain officials, by providing a house next to the object of the dispute to be loaned to each person. The Head of the State Prosecutor's Office who gets a job in Palu for free. This case was also reported to the Palu Police with a lawsuit against Article 242 (false oath) at the suggestion of the Palu District Prosecutor's Office because the person who served as the Head of the Palu District Prosecutor's Office had an interest in owning the land belonging to the Petitioner which was next to the house belonging to the Respondent who was used to being loaned out. In addition, the Respondent's brother once said to the Petitioner's mediator while clarifying.

[8]Henry Panggabean. 1992. Misuse of Circumstances (Misbruik van Omstandigheden) as a new reason for the cancellation of the Agreement. Yogyakarta: Liberty. page. 39.

3). Misuse of opportunity

The Respondent succeeded in exploiting the negligence of the Petitioner who signed a blank receipt brought by Amiruddin as a representative from the Respondent who did not know that there was no agreement or payment for the object of the dispute as the object of the land sale and purchase transaction because the original legal event was borrowing and borrowing money. The second opportunity used by the Respondent was the opportunity to collude with the former head of the public prosecutor's office who wished to own the object of the dispute.

c. Judge's Considerations Regarding Misuse of Circumstances in the Acts of Borrowing into Acts of Selling and Buying Land in Decision Number 617 PK/Pdt/2016

In the provisions of the Civil Procedure Code Article 183, Article 184, and Article 187 HIR / Article 195 and Article 19B, Article 4 paragraph (1) and Article 23 of Law No. 14 of 1970 which specifically regulates decisions, can It is known that basically a judge's decision must always consist of 4 (four) parts, namely: Head of the decision, Identity of the parties, Considerations, and Amar or Dictum[9]. Based on the Civil Procedure Code, judges are only limited to accepting and examining lawsuits that are submitted. Therefore, the role and function of judges in civil case proceedings is limited to:

1). Seek and find formal truth;

2). The truth is realized in accordance with the basic reasons and facts presented by the parties during the trial process[10].

In examining a case, evidence is needed because proof is important to get certainty that an event or fact submitted is true and is useful for obtaining a true and fair decision from the judge.[11]. Based on the reasons given by the Petitioner in the trial, the fact that the sale and purchase in the case was brought was revealed without the agreement of the parties' will because the Petitioner as a party to the a quo was in a state of not being careful in giving signatures. Therefore, the land sale and purchase

[9] Opan Satria, M, & Suarjana, S. 2021. Critical Constructive Study of Judges' Considerations in Supreme Court Decisions on Land Sale and Purchase Disputes. Jatiswara, 36(3). page. 284.
[10]Yahya, Harahap. 2005. Civil Procedure Law. Jakarta: Sinar Graphic. Pg.499.
[11]Ibid. page. 141.

agreement was not based on the good faith of the Respondent. Therefore, the land sale and purchase agreement with certificate 1030/Kamonji was implemented because of the abuse of the economic and psychological pressure experienced by the Petitioner and carried out by the Respondent. .

E. Conclusion

a. The regulation of abuse of circumstances (*misbruik van omstandigheden*) in the act of borrowing and borrowing becomes an act of buying and selling land in Indonesian positive law using the Civil Code and Jurisprudence. Because in general the judiciary in Indonesia has accepted the abuse of circumstances as one of the reasons for the cancellation of the agreement as well as other reasons for the defect of will in Article 1321 of the Civil Code. The development of abuse of circumstances in Indonesia was followed by Jurisprudence No. 3641 K/Pdt/2001 and several judges' decisions in the Indonesian judiciary.

b. The element of abuse of circumstances in the Supreme Court's decision Number 617 PK/Pdt/2016 is the abuse of economic conditions and abuse of psychological conditions. Misuse of circumstances occurs when a party whose economic and psychological situation is in a superior position forces a party whose condition is weak to agree to an unwanted agreement or takes advantage of the condition of another party who is forced to move due to a special situation and takes a big advantage.

c. The judge's consideration regarding the abuse of circumstances in the act of borrowing and borrowing into the act of buying and selling land in the Supreme Court's decision Number 617 PK/Pdt/2016 there are several benchmarks used by judges in determining the application of the principle of abuse of circumstances, namely, first, moral benchmarks which include propriety and Justice. Second, the benchmark of good faith.

Bibliography

E. Ktisti Poerwandari. 1988. *Pendekatan Kualitatif dalam Penelitian*. Jakarta: Lembaga Pengembangan dan Pengukuran Psikologi, Fak. Psikologi UI.

Henry Panggabean. 1992. *Peryalahgunaan Keadaan (Misbruik van Omstandigheden) sebagai alasan baru Pembatalan Perjanjian*. Yogyakarta: Liberty.

Sugiyono, 2008. *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. Bandung: PT Alfabet.

Yahya, Harahap. 2005. *Hukum Acara Perdata*. Jakarta: Sinar Grafika.

Azzahra, SN 2022. "*Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Dalam Perbuatan Pinjam Meminjam Menjadi Perbuatan Jual Beli Tanah Studi Putusan Mahkamah Agung No.617 PK/Pdt/2016*". Fakultas Hukum Universitas Pekalongan.

Nurmantias, N. 2020. *Pembatalan Kontrak Secara Sepihak Akibat Penyalahgunaan Keadaan Dalam Kontrak*. Jurnal Gagasan Hukum, 2(2).

Opan Satria,M, & Suarjana, S. 2021. *Studi Konstruktif Kritis Terhadap Pertimbangan Hakim Dalam Putusan Mahkamah Agung Tentang Sengketa Jual Beli Tanah*. Jatiswara, 36(3). Hlm. 284.

Kitab Undang-Undang Hukum Perdata.

Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung dengan Perubahannya Undang-Undang Nomor 5 Tahun 2004 dan Undang-Undang Nomor 3 Tahun 2009.

Yurisprudensi Nomor 3641 K/Pdt/2001.

Yurisprudensi Mahkamah Agung Nomor 952 K/Sip/1974.

https://www.hukumonline.com/stories/article/lt60059fc198c17/doktrin-dan-yurisprudensi-penyalahgunaan-keadaan-dalam-perjanjian

ISSN 2985-5691

Implementation readiness blended learning The pekalongan university

Siti As adah Hijriwati,[1, a)] Zahro,[2, b)] Pradnya Permanasari[3, c)] Teguh Irawan4,d)

[1)] *Faculty Of Law Pekalongan University,* [2)]*Faculty Of Economics, Pekalongan University,* [3)] *Fkip Pekalongan University,* [4)] *FIK Pekalongan University*

.

[a)] sitiasadahhijriwati@gmail.com, [b)] zahro@unikal.ac.id, [c)] pradnyaronita@gmail.com & [d)] trikuris@yahoo.co.id

Abstract.

This research is titled readiness implementation *of Blended Learning* at Pekalongan University. Thisresearch was conducted with the aim to (1) Describe the readiness of students and lecturers Unikal in the implementation *of blended learning*, and (2) describe the factors that affect the implementation *of blended learning* on campus Unikal. This type of research is a case study with qualitative research methods. The results showed (1) lecturers at the University have been prepared in implementing *blended leaning* (2) Need to increase the quantity and quality of facilities and infrastructure for *blended learning learning* (3) the main inhibiting factor in online learning is the signal.

A. Introduction

Until now, the Covid-19 pandemic has not ended. The minister of Education and Culture, Minister of Health, Minister of religion, and Minister of Home Affairs have issued a joint decree (SKB) of 4 ministers as a reference for the implementation of face-to-face learning during the pandemic of the 2020/2021 academic year. One of the main points of the 4 Ministerial Decree is the granting of full authority to local governments regarding the policy of implementing face-to-face learning (Kristiena et al., 2021).

In accordance with the mandate of the central government, as quoted on the Central Java provincial government news Portal dated August 26, 2021, Ganjar Pronowo as the governor of Central Java has made a circularstating that if a Regency/City area is included in level 4, Learning remains online. For level 3 in agglomeration level 4, the learning in the area tersebut is still online. While the district / city level 2 and level 3, can implement face-to-face learning (PTM) is limited.

Based on this, Pekalongan University (Unikal) as one of the universities in Pekalongan should need to immediately prepare for policy making in the implementation *of blended learning*. *Blended learning* mempunyai tiga ciri utama, yaitu *online learning*, PTM, dan belajar mandiri (Hendarita, 2019). During the Covid-19 pandemic, learning on the Unikal campus still uses *an online learning* and self-learning system. *Learning management system*

yang digunakan umumnya adalah Spada Unikal, Siakad Unikal, dan *google classroom*. However, video conferencing is also generally done using the zoom application, google meet, and so forth. For independent learning activities are carried out through structured tasks and unstructured independent activities.

The purpose of this study is as follows.

(1) Describe the preparationof lecturers in the Unikal campus environment in the implementation *of blended learning*.
(2) Describe the infrastructure supporting *blended learning*
(3) Describe the factors that influence the implementation *of blended learning* on campus Unikal.

B. Research Methods

Focus research is the readiness of the implementation *of blended learning* at Pekalongan University. Data analysis using ELR integration model adopted from Aydin and Tasci as seen in Riyanto and Mumtahana (2018) with variables of Technology, Innovation, personal, self-development. Rata-rata data yang diperoleh kemudian dikategorikan berdasaran empat pilihan kategori, yaitu *Not ready: needs a lot of work*, *Not ready: needs some work*, *Ready but needs a few improvement*, dan *Ready: go ahead*.

This research design uses case study research design with qualitative methods by triangulation of sources through *indepth interviews* pada with main informants, and companion informants to find apperception of various sources. The study was supplemented by statistical data obtained through questionnaires.

The subjects of this study include themain informant, companion and triangulation. Main informant: Pekalongan University lecturer number 146. Sampel planned according to Suharsimi, (Suharsimi, 2010) is calculated with the provision that the population of less than 100, should use Population Research, if the number of subjects is large can be taken between 10-15% or 20-25% or more of the total population.

Dnature of this study samples were taken by first trawling the population through the questioner. Of the 146 lecturers at the University of Pekalongan, netted into this study population of 56 people. Furthermore, researchers took a sample of 30 people (53.8%) lecturers who meet the criteria for further research.

C. Results and Discussion

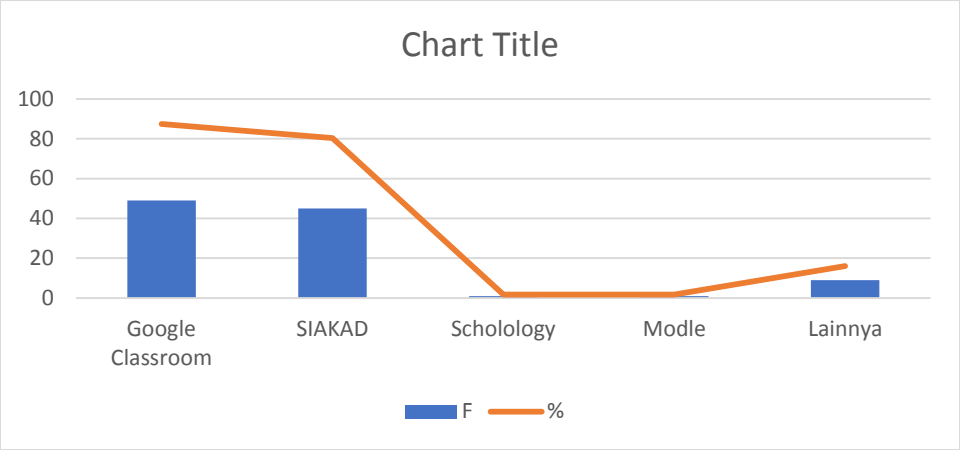
a. Kesiapan Dosen Universitas Pekalongan Dalam Pelaksanaan *Blended Learning*.

1. Selection Of Learning Media.

Online learning at Pekalongan University began since the COVID-19 pandemic until now. Of course, the policy of working from home, teaching from home and learning from home was very surprising for lecturers and students, but eventually it became commonplace. However, it needs to be studied the implementation of online learning at Pekalongan University for 4 semesters.

The poll conducted by researchers, from 56 respondents, showed that *the Learning Management System* (LMS) used by the majority of lecturers is Google Classroom (87.5%), then SIAKAD (80.4), as shown in the following table:

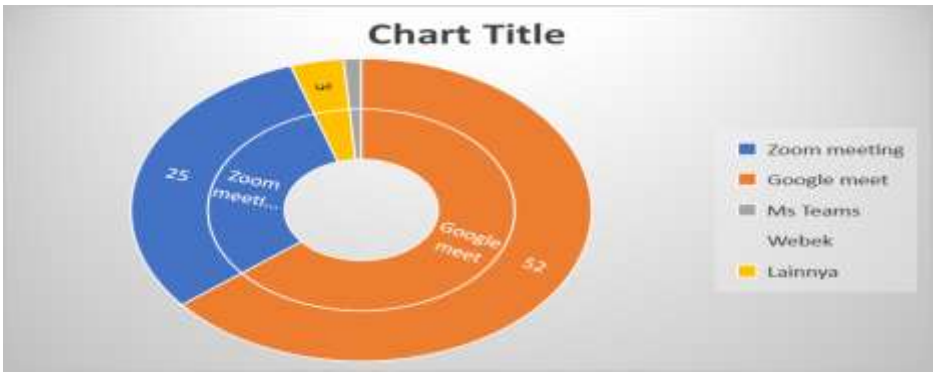
Table 1: LMS used in online learning



Google Classroom is a favorite platform for lecturers, because it is easily accessible and free, while SIAKAD is provided by the University. In this case, it seems that lecturers are very effective and efficient in utilizing existing technology.

Online learning activities are also carried out by combining unidirectional platforms and two-way platforms, namely through video conferencing facilities. Google meet is the most widely used video conference lecturers in this regard, reaching 92.9 %. Zoom ranks next in terms of video conferencing, at 44.6%. Only 1 lecturer using Ms Teams (1.8%), as illustrated in the following table:

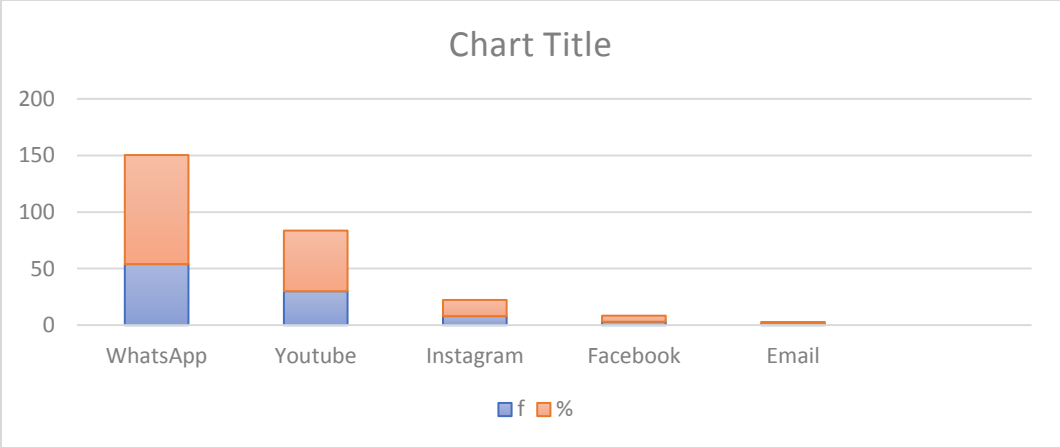
Table 2: video conferencing used in face-to-face virtual



The use of google meet is highly preferred by lecturers, because it is provided free of charge by google.

To support online learning activities, some lecturers also use social media such as Whatshapp, youtube or Instagram. The use of Whatsapp ranks top, namely as many as 54 reseponden (96.4 %) use it. This is because Whatsapp is very familiar and easy to use by both young and old. The composition of the use of social media can be seen in the following table:

Table 3: Use of social Media to support learning



2. Online learning planning.

As with offline learning, lecturers also prepare a Semester learning plan (RPS) for online learning which is a reference in the implementation of online learning, although for certain reasons there are some things that are not implemented in accordance with RPS. For example, learning media is replaced because there are obstacles and barriers, and there is a change in the middle of the learning process that is felt to be less effective.

Online learning requires careful media planning in accordance with the study materials and course learning achievements, so it should be prepared well before preparing the RPS. At Pekalongan University, the majority of lecturers plan online learning media when compiling RPS. Only 23% of students plan their learning media before preparing the RPS, and only 2% do it when the lecture is about to begin. This condition shows that lecturers at Pekalongan University have realized the meaning of planning before starting the learning process.

RPS has been delivered by lecturers to students before the lecture begins as a means of socialization so that students have readiness and prepare for the lecture well. However, there are 8% of lecturers who do not convey RPS to students. As a substitute, RPS is delivered during the college contract.

The delivery of RPS is done by all lecturers who become respondents through SIAKAD. This is very positive because SIAKAD is an academic system that is used by lecturers and students, thus ensuring effectiveness as a means to socialize learning tools, especially RPS. Lecturers also use google classroom as an additional medium (46%) and use WAG (19%) to convey RPS to students.

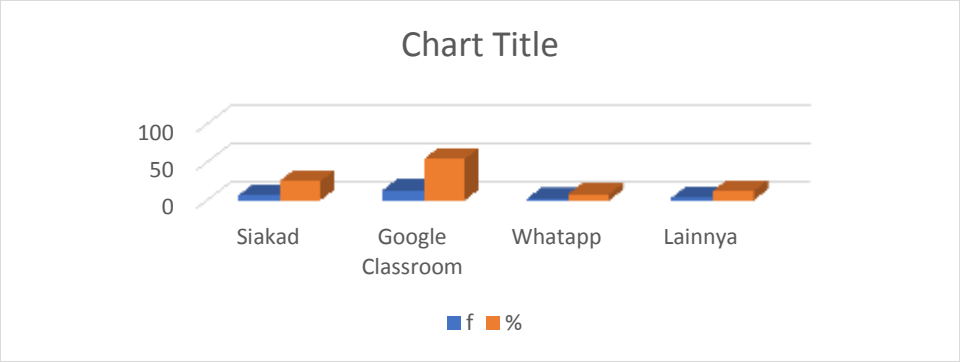
At the stage of preparing teaching materials,19% of lecturers prepare teaching materials systematically and comprehensivelya, from preparing materials according to CPL and course learning achievements, continued to prepare media in accordance with CPL , and teaching materialssuin the form of various media, including PPT and video. All lecturers of practicum courses have used video media to make it easier for students to understand thematerial. All lecturers have prepared teaching materials according to the development, by always updating teaching materials in accordance with CPL and CPMK and adjusting the development of Science and technology and current issues. Integration of teaching materials with research has been done by 23% of lecturers.

The form of teaching materials prepared in the form of videos, textbooks and Power points. All lecturers use PPT in delivering teaching materials, only 61% of lecturers have made videos to deliver teaching materials, and lecturers who make new textbooks 23%.

3. Assignments and exams

Assignments and exams are components in learning. Lecturers at Pekalongan University have given assignments through planning in RPS and / or task design (RT) as many as 77% of respondents and 23% of lecturers do assignments outside of planning. Media that is widely used to provide assignments is google classroom and siakad, as shown in the following table:

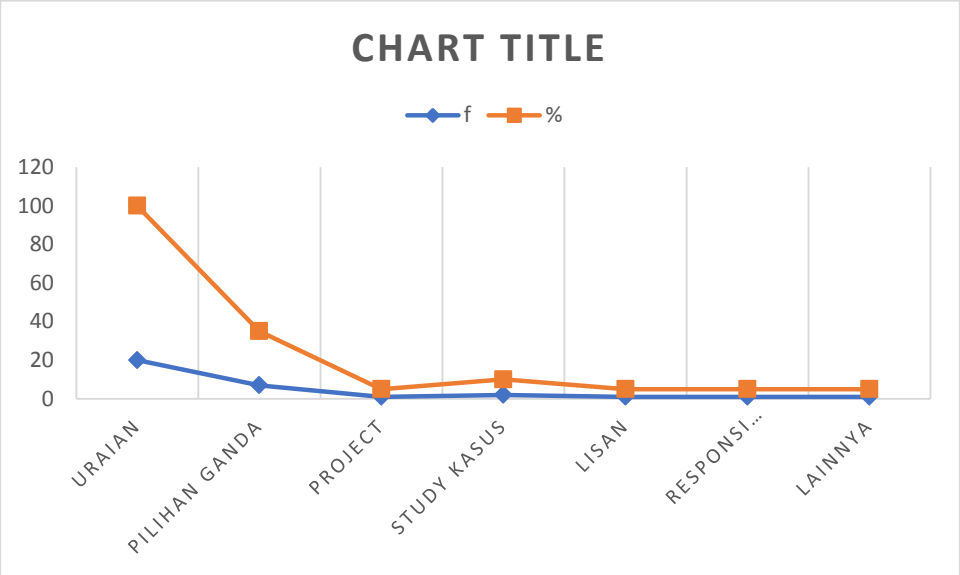
Table 4: Assignment Media



Based on the results of the analysis, it is known that the assignment Media that is widely used by Pekalongan university lecturers is Google Classroom 54% and Siakad 25%.

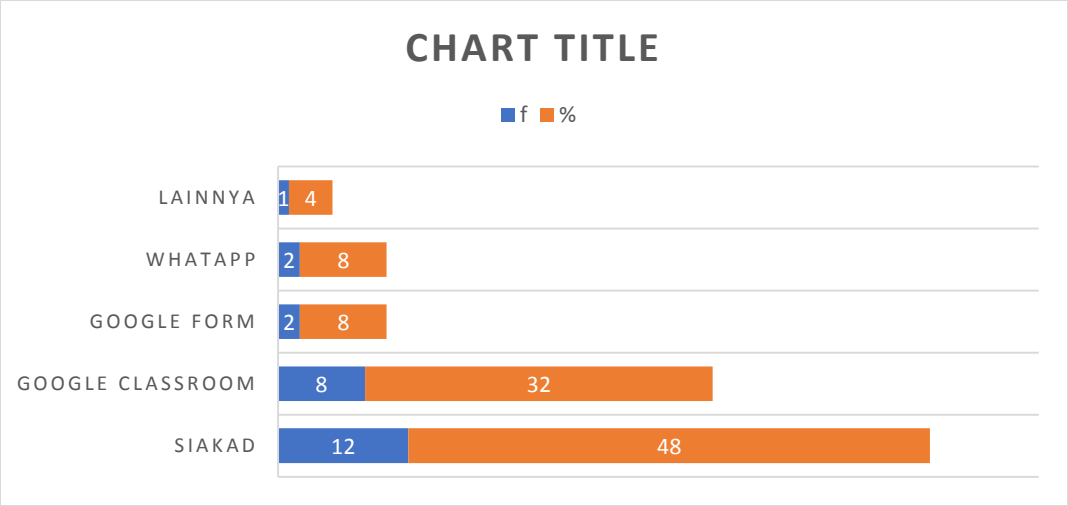
For the implementation of the exam, the exam model that is often used is the description. The number of lecturers who implement this reaches 80 %, as shown in the following diagram:

Table 5: model exams



Exam Media that are widely used by lecturers are SIAKAD and Google classroom. Lecturers who use SIAKAD are 48% and those who use Google classroom are 32 %

Table 6: Exam Media



4. Assessment Process

All lecturers have carried out learning assessments in accordance with the planning, in accordance with the depth and breadth of learning materials, the assessment process that has been carried out, among others:

a. Lecturers prepare assessment components and have been submitted to the lecture contract
b. Lecturers have socialized the assessment process through upload in SIAKAD
c. Lecturers menialai sesaui with CPMK by paying attention to the depth and kleuasan e.g. by menysuusn prososal research, prototype, or video submissions
d. The appraisal component reflects the conformityaof the appraisal character, which contains the beberepa component.

b. Sarana prasarana Pendukung Pembelajaran *Blended Learning*

Implementation of Blended Learning requires adequate facilities and infrastructure, such as sufficient internet access and hardware. Youtube is a widely used platform, reaching 90% of respondents using it. Hanya sedikit yang menggunakan platform menti, zoho, quizziz, canva dan lain-lain.

Pekalongan University has provided various supporting facilities for online learning, such as internet networks and comfortable workspaces, although the design of workspaces (especially lecturers ' workspaces) is not adequate for online learning.

For the platform that can be used, Pekalongan University does not have a special platform, especially for face-to-face learning. Siakad Pekalongan University can only be done for one-way learning that is administrative. In this case, lecturers become very creative to use the platform provided by DIKTI (spada) and google which can be accessed for free.

c. Faktor-faktor yang Mempengaruhi Pelaksanaan *Blended Learning* di Universitas Pekalongan.

The main obstacle is the signal that is not staBil, the next obstacle is expensive costs for the provision of quotas if learning is done from home as well as the concentration of students and lecturers who have limitations , at long duration is not very effective.

Knot

Based on respondents ' answers and analysis, it can be concluded that the University of Pekalongan has had the readiness to implement Blended Learning with theefollowing considerationsan:

1. Lecturers have had the readiness of mastery of online learning media, this can be seen from the mastery of lecturers on technology that supports the implementation of online learning
2. Lecturers have the willingness and awareness to carry out learning according to applicable standards and procedures and complete with proof of activity documents

3. Pekalongan University has a competent supporting infrastructure to implement Blended learning
4. Blended learning is done need to arrange supporting policies, and improvement of facilities and infrastructure.

BIBLIOGRAPHY

A.D. Ramadani, Sulthoni, dan A. Wedi, 2019. Factors that influence the implementation of Blended Learning in the Department of Educational Technology, State University of Malang, Journal of Educational Technology Studies 2 (1), 62-67.

Carman, J.A. 2005. Blended learning Design: Five Key Ingredients. (Online). (http://www.agilantlearning.com/pdf/Blended-Learning-Design.pdf/, diakses tanggal 1 Juni 2018).

D.C. Kristiena, D. Widiaswati, D.C. Sukmajati, February 25, 2021, PSPK policy flashbacks. Plended Learning Policy process during a pandemic. PSPK. Jakarta. Retrieved September 19, 2021. https://pspk.id/kilas-kebijakan-pspk-blended-learning/

Idris, H. (2018). The Blended Learning Model. Scientific Journal Iqra', 5(1), Vol. 5, No. December 2, 2020

Imtikhani, L., et al. The Role Of Blended Learning Assistance During The Covid-19 Pandemic For Elementary School Students. Journal Of Lampuyang 11 (2) 2021.

M. Taufik Hidayat, T. Junaedi, dan M. James, 2020. Development of Blended Learning Learning Model in improving students ' understanding of Aceh oral tradition, Jurnal Ilmu Mimbar 25 (3), 401-410.

Central Java provincial government news Portal, Central Java provincial government allows limited face-to-face learning, this is a condition that must be complied with, August 26, 2021. Retrieved September 19, 2021. https://jatengprov.go.id/beritaopd/pemprov-jateng-izinkan-pembelajaran-tatap-muka-terbatas-ini-syarat-yang-wajib-dipatuhi/

Sari, Beautiful Kartika. Blended Learning as an alternative to Innovative Learning Models in the Post-pandemic period in elementary schools. Basicedu Journal. Volume 5 Number 4 of 2021 pages 2156-2163.

Sugiyono, 2014. Educational Research Methods, Alfabeta, Bandung.

Suhairi and J. Santi, 2021. Model Manajemen Blended Learning pada Masa Pandemi Covid-19, Syntax Literate: Jurnal Ilmiah Indonesia 6(4), 1977-1996.

S. Yona, 2006. Preparation of Case Studies, Indonesian Journal of Nursing 10(2), 76-80.

Sjukur, S. B. (2013). The effect of Blended Learning on student motivation and learning outcomes at the vocational school level. Journal Of Vocational Education, 2(3), 368–Vol. 5, No. December 2, 2020

S. Mudiarti, 2018. Application of E-learning in Higher Education, Educational Science perspectives 32(1), 53-68.

S. Riyanto and H.A. Mumtahana, 2018. Readiness analysis of Blended Learning in Informatics Engineering Program Universitas PGRI Madiun, Journal of Computer Science & Informatics 2 (2), 191-199.

Y. Hendarita, 2019, Model Pembelajaran Blended Learning dengan Media Blog, Kemdikbud, Jakarta. Retrieved September 19, 2021. https://sibatik.kemdikbud.go.id/inovatif/assets/file_upload/pengantar/pdf/pengantar_3.pdf

Sumber: foto: https://tft.unctad.org/about/strategy/blended-learning/

ISSN 2985-5691

Society 5.0 legal culture in the era of disruption

a sociological study

Anik Kunantiyorini

Lecturer, Faculty of Law Pekalongan University
(1)akunantiyorini@g.mail.com

Abstract

The legal culture of society in an era of disruption characterized by the rapid pace of information technology is a new order and civilization in the history of mankind. The Era of the Industrial Revolution 5.0 is a glorious period of world civilization marked by the rapid pace of Information Technology characterized by artificial intelligence and Big Data. All spheres of life are affected by it, and the legal one is no exception. The real fundamental problem is how humans should be fully involved as the main component that is expected to elaborate with technology. Culture of society 5.0 expected in all aspects of attitude and behavior must be in accordance with what the law requires. So in this information technology vortex, Society 5.0 must prioritize a sense of humanism and sensitivity to mutual respect among citizens. The legal culture of modern society with modern law and the rapid development of technology is a very positive combination in the current era of disruption. The development of human civilization elaborated with this technology as the peak of creativity and Innovation Society 5.0. For this reason, it is necessary to act and behave in accordance with the provisions of applicable law. This is the need for legal awareness in society. People whose behavior and attitude are good, reflect good laws. With a good legal culture of society, the patterns of behavior expected by law have been achieved. Thus, the life of the people who aspire to be based on tolerance, mutual respect, and mutual respect can be realized in the era of disruption.

Kata Keywords: Budaya legal Culture, Society 5.0, and disruption era

A. Introductionn

The legal culture of society largely determines the success or effectiveness of law and its enforcement. In society, of course, various behaviors, both those that have been patterned as desired by law or behavior that is not in accordance with what is expected by law. In the sociological context, law is actually a real manifestation of values and social order in society. As in various social theories, that a society with high legal awareness must be diminishing the repressive role of law. Because in a society where legal awareness is high, both in attitude and behavior will certainly reflect the order of good social values as well. In today's 5.0 society, which is characterized by various kinds of technological

sophistication such as artificial intelleget (artificial intelligence), bid data, internet of thing, of course in the rapid social change through this technology, will have an impact on human life. The positive effects are all easy. Whatever information on the internet is easy to get, the barriers between countries seem to no longer exist. The wave of social change through information technology today really must be managed properly, so that the role of manusia as policy makers and decision makers can be maximized in the current vortex of the Industrial Revolution 5.0.

The struggle of thought in the transition period from society 4.0 to the society 5.0 period, is a long discourse, which can then be taken the common thread, that this information technology era, does not make humans slaves of technology, nor the role of humans is completely ruled out. The development and dynamics of the 5.0 society did not appear suddenly, although Japan initiated the existence of the 5.0 society. But a long journey ranging from people who hunt, grow crops, industrialiasasi to people who are familiar with information technology. And in this 5.0 society can not be released with the era of disruption that is centered on the strength of Information Technology.

B. Social Changes In Modern Society

Society or social life is actually a set of various relationships between its members. It is these relationships that ultimately shape that social life. Thus, it can be said that social life is an interweaving of various relationships carried out between members of society with each other. These relationships revolve around interests.[1] for a society that is building law is always associated with efforts to improve people's lives towards a better direction..The expected function of law today is to make efforts to move the people to behave in accordance with new ways to achieve a goal aspired. To act and behave in accordance with the provisions of this law, there needs to be legal awareness in the community, because the factor is a bridge that connects between legal regulations and the behavior of community members.[2]

In various theories in the sociology of law, of course, cannot be separated from social change. Social change can actually go through various entrances, including through

[1] Satjipto Rahardjo, Ilmu Hukum, Banding, PT. Citra Aditya Bakti, 2000, Hlm. 37
[2] Esmi Warassih, Pranata Hukum, Semarang, Universitas Diponegoro, 2014, Hlm. 71

education, culture, customs, information technology. Special social change through information technology, in the context of the world and Indonesia social change is very rapidly penetrated all the joints of human life. The industrialization Era also received very significant progress in meeting human needs. However, rapid social change through this information technology, can have positive and negative impacts. As modern society as it is today by using social media and smart phones, all information is very easy to get, but the information entered in social media, also should not be trusted just like that. Therefore, you must be wise in using social media. Many cases of hoaxes, hate speccht exist in the use of social media.

Social change in the era of disruption, we cannot avoid, even in remote or simple tribal communities social change will run, albeit slowly. Especially in a pluralistic society with diverse social layers. In modern society, of course, the law also follows modern law. Modern law relies more on legal norms, which are written or commonly known as law in books. With this written form of law, it will lead Society 5.0 into a positivistic dimension. Where there is actually a paradox when society 5.0 who put forward the humanism side, it turns out to clash with the possitivistic character of the law. The law is rigid and Frozen, which became the legal system that dominates in the modern state as it is today.

When considering the characteristics of Indonesian society, namely the level of formal education is less equitable, less strong belief in technology as a means for the welfare of the community, the number of professions in the community, as well as readiness to accept changes, especially the use of new technology, in improving their welfare, shows that Indonesian society is very slow to be called modern, especially people in disadvantaged areas and limited areas. understanding the community in disadvantaged and limited areas is the community in regions / provinces that do not utilize appropriate technology to advance the region, so it is always experiencing a food crisis and difficult and expensive land, sea and air transportation services, making it less affordable information technology.[a]social changes in the community will certainly occur, whether it is intentional or not. With over time, today the development of technology, especially communication technology is inevitable and brings social changes to society. Social change due to communication

technology is happening so fast. Today, the development of technology occurs from time to time.[3]

C. The Era Of Disruption

The era of disruption is a time of massive innovation and change. These changes occur fundamentally, to the point of changing various systems and orders to a new way. What is the impact of this era of disruption? Those who cannot keep up with developments and maintain the old ways will be unable to compete.[4] The era of disruption 4.0 began in the Industrial Revolution 4.0. Industry 4.0 is an automation trend in factory technology. One of the changes taking place in Industry 4.0 is the computerization of factories. Cyber-physical systems are capable of making decisions and performing tasks independently. When there is a disruption, a new task is delegated to the boss. After Industry 4.0, came the term Society era 5.0 or super smart society. This is a solution to Industry 4.0 which is considered to cause human degradation. In this era of super smart society, humans become the main component. Meanwhile in industry 4.0, man simply becomes a passive component. In the 5.0 era, humans are elaborating with information systems and technology. The main goal is to improve the quality of human resources.[5] Indeed, the conscious use of law to achieve the state of society as aspired to it is a modern conception. According to Marc Galanter, the modern legal system has certain characteristics. Some of them are territorial, impersonal, universal, rational ; law is seen from the point of view of its usefulness as a means of working on society.[6] order is the only possible state of affairs in society. That's our belief.[7]

By looking at the differences between industry 4.0 and industry 5.0, it is clear that in industry 4.0 technology and digitalization play an important/main role, and dwarf the role of humans that should be precisely as controllers of various technologies, including artificial intelligence. In industry 5.0, humans are the active component. Thus, industry 5.0 as the era of Information Technology controlled by humans to meet their needs.

[3] https://www.kompasiana.com/indrarachmawati8917/61ac111962a7045e9f0047f2/pengaruh-teknologi-komunikasi-terhadap-perubahan-sosial-masyarakat
[4] https://lister.co.id/blog/era-disrupsi-adalah-pengertian-dan-cara-menghadapinya/
[5] Ibid.
[6] Esmi Warassih, Ibid.,, Hlm. 73
[7] Satjipto Rahrdjo, Membedah Hukum Progresif, Jakarta, Kompas, Hlm. 83

D. **Society 5.0 Legal Culture In The Vortex Of Disruption**

To realize a society that has a high legal awareness and culture in order to realize the rule of law and the creation of a just and democratic community life, it is necessary to make a grand design (strategy) for the development of legal culture as a guide/reference for legal counseling cadres in order to increase the legal awareness of the community able to behave in accordance with the rules of law and respect human rights.[8] so we must understand the legal culture to be able to understand how the legal system works in society.[9]

The era of disruption, of course, was not suddenly present, but experienced a very long journey. In fact, starting from the renaissance era starting around the XIV century, where in this period humans were free to think rationally, as autonomous and independent beings, humans found their freedom to think and were no longer bound by religious thought which was very strong at that time. Renaissance represents the rebirth of ancient Roman and Greek culture. Then after the renaissance, then in Europe the XVIII century also appeared aufklarung period, which was followed by the era the first industrial revolution, where the invention of the steam engine, as an increase in productivity, continued with the Second Industrial Revolution the invention of electricity, the third man using digitization technology and the 4th industry with information. It was in this era that rational thoughts emerged and the discovery of many sciences, not least the birth of positivism. Positivism arose from the ideas of Auguste Comte, in the essence of which everything should be able to be bootstrapped empirically. All science is affected by this positivism, not least the field of law, which later gave birth to legal positivism, which is rule and logic. Legal positivism is based on Written Law (law in books). Legal certainty is the main purpose of this legal flow. With legal postivism, it has a great influence on the legal culture of the people. All spheres of life are governed by law,

[8] Jawardi, Strategi Pengembangan budaya Hukum, Jurnal Penelitian De Jure, Akreditasi LIPI: No:511/Akred/P2MI-LIPI/04/2013Volume 16, Nomor 1, Maret 2016, Hlm. 78 Retrieved From https://ejournal.balitbangham.go.id/index.php/dejure/article/view/77/23, diakses tanggal 7 Pebruari 2022 jam 06.00 WIB

[9] M Muhtarom, Pengaruh Budaya hukum Terhadap Kepatuhan Hukum dalam Masyarakat, Jurnal ZUHUF Universitas Muhammadiyah Surakarta, Vol 27 No. 2 November 2015, Hlm. 124 retrieved From https://journals.ums.ac.id/index.php/suhuf/article/view/1428/981

hoping to bring about justice and order. However, this legal positivism is still difficult to realize a fair law.

Empiricism, which became the main method of thinking at the beginning of modern growth in the Renaissance, began in England and then developed into France.[10] century was the era of positivism. This Era is also based on the presence of modern laws that are also part of the rational arrangement of society. Since then the law has become a distict institution both in substance,methodology, and administration..[11]... the goal of positivism is the establishment of rational structures of the prevailing juridical systems.[12]

Rapid social changes in Society 5.0 in the era of disruption have an impact on all joints of human life, not least the legal culture of Society 5.0. With the unstoppable variety of foreign cultures that enter, as a result of information disclosure through the internet. This is a social change through information technology that is quickly able to influence and change the values adopted by the community. Culture is the crystallization of social values in a society that reflects the social order. However, in the era of disruption of the legal culture of modern society with its modern law, it must be able to realize the values and behavior of society in legal life.

It can be said that the world today is in an era of drastic change. As the economy grows, life becomes prosperous and comfortable, energy and food consumption increases, human life becomes longer, and the elderly population increases. In addition, economic globalization is progressing, global competition is intensifying, and problems such as economic inequality and inequality in different regions are emerging.[13] social problems that must be solved by *trade off* for economic development are becoming increasingly complex. Here, various measures become necessary, such as reducing greenhouse gas emissions, increasing production and reducing crop failure rates (increasing food production), reducing costs associated with seniors (health facilities), supporting sustainable industrialization, equalizing welfare, and correcting inequalities in each region. Achieving economic development and providing solutions to such social problems at the same time has proved difficult if we do not change the existing social

[10] Sabian Ustman, Dasar-Dasar Sosiologi Hukum, Yogyakarta : Pustaka Pelajar, Hlm.17
[11] Suteki, *Desain Hukum Di Ruang Sosial*, Yogyakarta , Thafa Media, 2013, Hlm.25
[12] HR Otje Salman dan Anton F Susanto, *Teori Hukum*, Bandung : Refika Aditama, Hlm.80
[13] https://cybertrend-intra.com/news/mengenal-society-5-0/

system..[14] science becomes a new and special icon through its products has been able to change our world mrnjadi what is referred to as modern.But actually modernity can not be known only through the products of Science and technology, but also or more or more of theripada it, through a new value system.[15]

The Era of the Industrial Revolution 5.0 is a glorious period of world civilization marked by the rapid pace of Information Technology characterized by artificial intelligence (artificial intelligence), big data, internet of thing. In all areas affected, not least in the field of law. The real fundamental problem is how humans should be fully involved as the main component that is expected to elaborate with technology. Moreover, the legal culture of Society 5.0 must adapt to various regulations/ modern laws. Specifically, artificial intelligence is an extraordinary technological invention, where many human jobs in the field of law (judges, prosecutors, lawyers) can be replaced with artificial intelligence in carrying out legal activities. This of course has a positive and negative impact at the same time, depending on how the application of artificial intelligence can be used wisely. The legal culture of modern society with modern law and the rapid development of technology is a very positive combination in the current era of disruption.

E. Conclusion

The legal culture of society reflects the social values that exist within society. People are expected to comply with the patterns outlined by law. However, in the era of Society 5.0 humans as an important component to run and control the information technology base. Not otherwise humans are degraded by inforamation technology. Thus the legal culture of society must always be maintained when the legal culture reflects the laws that live in society. Then the community must behave well, as a good legal basis. The era of disruption makes social changes through information technology, and makes choices, whether to keep up with the development of the era of digitization and advances in Information Technology or even vice versa to lag behind the era of disruption. Legal culture of Society 5.0 is a legal culture, where people with awareness to change attitudes and mindset, especially to comply with applicable legal rules.

[14] Ibid
[15] Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban*, Jakarta : UKI Press, 2006, Hlm. 58

BIBLIOGRAPHY

Books

Esmi Warassih. 2014. *Pranata Legal Institutions, Semarang*. Universitas Diponegoro University

HR Otje Salman dan Anton F Susanto. 2005.*Teori Legal Theory*, Bandung: Refika Aditama

Satjipto Rahardjo. 2000. Ilmu Hukum, Bandung, PT. Citra Aditya Bakti

_____. 2007. Satjipto Rahardjo. *Dissecting Hukum Progressive Laws*. Cet. II.Jakarta: Buku Compass Book

_____2006. *Law in the world of order*, Jakarta: UKI Press

Sabian Ustman2009. Fundamentals Of The Sociology Of Law. Yogyakarta: Pustaka Student Library

Suteki.2013. Desain Legal Design In Ruang Social Space, Yogyakarta, Thafa Media

Journal

Jawardi, Strategi Pengembangan budaya Hukum, Jurnal Penelitian De Jure, Akreditasi LIPI: No:511/Akred/P2MI-LIPI/04/2013Volume 16, Nomor 1, Maret 2016 Retrieved From https://ejournal.balitbangham.go.id/index.php/dejure/article/view/77/23, diakses tanggal 7 Pebruari 2022

M Muhtarom, *the influence of legal culture hukum Terhadap on legal compliance Hukum in society*, Zuhuf Journal Universitasof Muhammadiyah University of Surakarta, Vol 27 No. 2 November 2015 retrieved From https://journals.ums.ac.id/index.php/suhuf/article/view/1428/981

Internet :

https://lutfianto22.wordpress.com/pengaruh-teknologi-terhadap-perubahan-sosial/

https://www.kompasiana.com/indrarachmawati8917/61ac111962a7045e9f0047f2/pengaruh-teknologi-komunikasi-terhadap-perubahan-sosial-masyarakat

https://lister.co.id/blog/era-disrupsi-adalah-pengertian-dan-cara-menghadapinya/

https://cybertrend-intra.com/news/mengenal-society-5-0/

ISSN 2985-5691

Debureaucratization and Deregulation of Trade-Related Laws in Indonesia to Increase Exports

Kumara Jati,[1,a])

[1)] *Trade Policy Analysis and Development Agency, the Ministry of Trade of Republic of Indonesia*
(Main Building, 15th Floor, Jl. M.I. Ridwan Rais No. 5, Jakarta 10110).
[a)] *kumara_jati@yahoo.com*

Abstract

The COVID-19 pandemic caused the majority of countries in 2020 to experience an economic crisis and economic growth in 2021 to slow down. Trade is one of the sectors affected by the pandemic in 2020 due to the policy of limiting activities to reduce the negative impact of COVID-19 and slowing down of economic activities. This condition also becomes more difficult if the number of laws and regulations is considered too many and overlapping. In the midst of pandemic and uncertainty, a breakthrough is needed. Therefor this research will discuss Debureaucratization and Deregulation of Trade-Related Laws in Indonesia to Increase Exports. Based on the Juridical Legal Analysis, it can be seen that since Omnibus Law/the Act Number 11 of 2020 concerning Job Creation and its derivative regulations related to trade has been enacted, there is potential to create Legal Simplification. In 2021, there are 4 new technical regulations derived from Omnibus Law (Regulation of the Minister of Trade No.16 concerning Verification or Technical Investigation in the Foreign Trade Sector, Regulation of the Minister of Trade No. 17 concerning Exporters and Importers of Good Reputation, Regulation of the Minister of Trade No. 18 concerning Export Prohibited Goods and Goods Prohibited from Imports, and Regulation of the Minister of Trade No. 19 concerning Export Policies and Regulations) which are expected to improve the ease of doing business and export in Indonesia. After the enactment of these 4 Regulations of the Minister of Trade in 2021, there are 24 old regulations that have been withdraw and declared inapplicable. Apart from that, there is also ease of doing business for exporters, such as for coffee commodities, where coffee export licensing is simplified because this commodity is excluded as goods that are regulated by the export trade system so that coffee becomes a product that is free to be exported. The regulation of an online licensing system can minimize the cost and the possibility of direct meetings between business people and the government so as to reduce the opportunities for corruption, collusion and nepotism. The online system of the Indonesia National Single Window (SINSW) and INATRADE systems can facilitate the process of disclosure of information and permits needed by stakeholders to increase ease of doing business, including Indonesian exports.

Keywords: *Legal Debureaucratization and Deregulation, Indonesian Trade, Juridical Legal Analysis, Indonesian Exports.*

A. Introduction

Central Bank estimates that Indonesian economic growth projection in 2021 will be around 3.2%-4%, or lower than the Central Bank's initial forecast, which was 3.5%-4.3% [1].In the midst of pandemic COVID-19 year 2020, the Indonesian economic growth is minus 2.07% and it is the first time of economic crisis since 1998-1999 period [2][3].So during this situation, the government need to do something that change the situation to be a better environment. Therefore, the Central Government of Indonesia together with House of Representative of Republic of Indonesia (DPR RI) in November 2021 promulgated the Act Number 11 of year 2020 concerning Job Creation through the Omnibus Law Scheme. The concept of Omnibus Law is framework that has characteristics change or withdraw several laws/regulations or part of regulations into 1 (one) new regulation/act that can accommodate all the laws/regulations contained therein [4]. Although, there is also literature research related to Omnibus Law by Aedi et al. [5] and Unpad [6] that critics this new regulation. The point of view of research paper can be varied and can become an auto critique for policy makers so that the law and business environment can be better by accommodating the policy recommendation from all stakeholders.

After Omnibus Law was enacted, there are 4 new technical regulations in the year 2021 released by Ministry of Trade. This new technical regulations is expected to improve the ease of doing business in Indonesia especially can help all stakeholder increasing export. So, to the best of author knowledge, not much research has been done related to the latest changing of trade-related laws in Indonesia in order to increase export. From the description above, this study goals to understand the debureaucratization and deregulation of trade-related laws and the new laws to increase exports.

B. Research Method

Figure 1 shows there is a thought process in conducting research related to Trade-Related Laws to Increase Exports. Starting from the big theme Debureaucratization and Deregulation of Indonesian Laws and Regulations especially related to trade and exports. The next two objectives of this research are to understand the concept of debureaucratization and deregulation of new trade-related laws and the implementation for this laws can help and support to increase exports. Then the research methodology of this research uses literature study from scientific writings, books and other secondary data, and uses legal juridical analysis method from existing laws and regulations in Indonesia. Finally, it is hoped that results of this study can describe the simplification of trade-related laws to increase of doing business in Indonesia including exports and provide policy recommendation to relevant stakeholders.

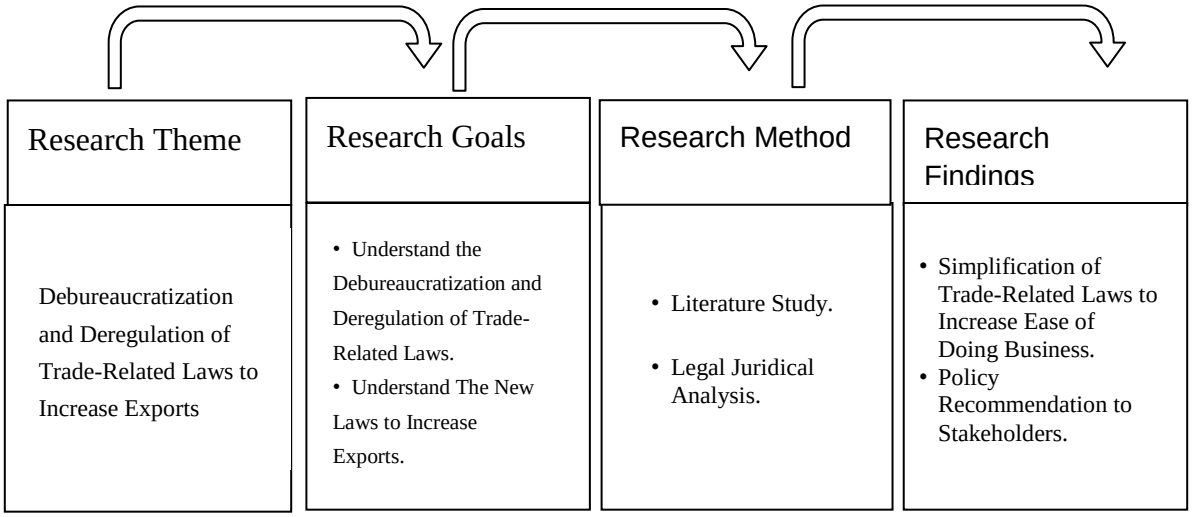


FIGURE1.Research Conceptual Framework

Source: Author, 2022 (Modified fromJati, et al., 2019) [7]

Research Method is the science of how to conduct research systematically and correctly to achieve the research goals. The Literature Study Analysis is used before carrying out the Legal Juridical Analysis. The definition of Literature Study is a review of a written research literature about applicable laws/regulations originating from various sources and widely published, the results of which are required in the normative legal method [8].

Figure 1 shows there is a thought process in conducting research related to Trade-Related Laws to Increase Exports. Starting from the big theme Debureaucratization and Deregulation of Indonesian Laws and Regulations especially related to trade and exports. The next two objectives of this research are to understand the concept of debureaucratization and deregulation of new trade-related laws and the implementation for this laws can help and support to increase exports. Then the research methodology of this research uses literature study from scientific writings, books and other secondary data, and uses legal juridical analysis method from existing laws and regulations in Indonesia. Finally, it is hoped that results of this study can describe the simplification of trade-related laws to increase of doing business in Indonesia including exports and provide policy recommendation to relevant stakeholders.

C. Findings and Discussion

1. *Analysis of Literature Study*

TABLEI.Top 20 Exports of Indonesian Commodities to the World Year 2019-2021

NO	HS	Description	Year / Period			Change %	Trend (%)
			2019	2020	Jan- Nov 2021	19/20	19 - 21
1	27	Mineral fuels, mineral oils (Coal)	34,105	25,506	40,769	-25	9
2	15	Animal or vegetable fats and oils (Palm Oil)	17,635	20,716	29,857	17	30
3	72	Iron and steel	7,387	10,862	18,623	47	59
4	85	Electrical machinery and equipments	9,012	9,233	10,566	2	8
5	87	Vehicles other than railway/tramway rolling-stock	8,188	6,603	7,873	-19	-2
6	40	Rubber and articles thereof	6,026	5,619	6,498	-7	4
7	38	Miscellaneous chemical products	4,110	3,796	6,184	-8	23
8	26	Ores, slag, and ash	3,127	3,235	5,778	3	36
9	84	Nuclear reactors, boilers, machinery and mechanical	5,543	5,204	5,670	-6	1
10	64	Footwear, gaiters and the like; parts of such articles	4,409	4,804	5,534	9	12
11	71	Natural and cultured pearls, precious/semi precious stones	6,620	8,223	5,155	24	-12
12	44	Wood and articles of wood; wood charcoal	3,838	3,790	4,391	-1	7
13	61	Articles of apparel and clothing accessories, knitted	3,764	3,350	3,886	-11	2
14	48	Paper and paperboard; articles of paper pulp or of paper	4,370	4,193	3,882	-4	-6

15	62	Articles of apparel and clothing accessories, not knitted	4,473	3,634	3,663	-19	-10
16	03	Fish and crustaceans, Molluscs and other aquatic inverterbrates	3,269	3,513	3,343	7	1
17	29	Organic chemicals	2,730	2,367	3,297	-13	10
18	47	Pulp of wood or of other fibrous cellulosic material	2,783	2,536	2,951	-9	3
19	74	Cooper and articles thereof	1,844	1,895	2,763	3	22
20	94	Furnitures, bedding, mattresses, mattress supports, cushions	2,064	2,287	2,723	11	15
Other Products			32,386	31,826	35,757	-2	5
Total Products			167,683	163,192	209,163	-3	12

Source: Indonesian Statistics (2022), in Million USD

Coal (Hs Code 27), Palm Oil Products (Hs Code 15), Iron and Steel (HS Code 72), and Electrical Machinery and Equipments (HS Code 85) are the 4 largest Indonesian export commodities to the world. Besides that, there are 2 (two) other main commodities whose exports increase significantly in 2021 which are: Miscellaneous Chemical Products (HS Code 38) and Ores, Slag and Ash (HS Code 26). In 2020, the total Indonesian export to the world is decrease 3%. One of the reasons is that there is Pandemic of COVID-19. Then there is increase of export from USD 163 billion in 2020 to USD 209 billion in period January-November 2021. This number will be increased more because the data in December not yet calculated. So there is indication that in 2021, the situation of business climate is getting better from the economic crisis in 2020.

According to Ministry of Trade press conference in January 2022[9], the Indonesian export data achievement in the year 2021 is the highest record in the history with total USD 231 billion for total export and USD 219 billion for non-oil and gas export. So in 2021 the total export is increase 41% compare to 2020 for total trade. One of the reasons is that there is commodity super cycle, where some export commodity price is increasing in 2021. Although the government also makes many efforts to increase the ease of doing business including related to the economic policy and deregulate unnecessary regulations.

TABLEII.Top 20 Destination Country/Economy of Indonesian Export Year 2019-2021

NO	COUNTRY/ ECONOMY	YEAR/PERIOD			CHANGE %	Trend (%)
		2019	2020	JAN-NOV 2021	19/20	19 - 21
1	CHINA	27,962	31,782	48,435	13.7	32
2	USA	17,845	18,623	23,133	4.4	14
3	JAPAN	16,003	13,665	16,006	-14.6	0
4	INDIA	11,823	10,394	12,083	-12.1	1
5	MALAYSIA	8,802	8,099	10,997	-8.0	12
6	SINGAPORE	12,917	10,662	10,519	-17.5	-10
7	SOUTH KOREA	7,234	6,508	8,098	-10.0	6
8	PHILIPPINES	6,770	5,901	7,802	-12.8	7
9	THAILAND	6,218	5,110	6,416	-17.8	2
10	TAIWAN	4,035	4,097	6,332	1.6	25
11	VIETNAM	5,153	4,941	6,213	-4.1	10
12	NETHERLAND	3,205	3,114	4,152	-2.8	14
13	PAKISTAN	1,944	2,386	3,397	22.7	32
14	AUSTRALIA	2,329	2,506	2,978	7.6	13
15	BANGLADESH	1,914	1,685	2,631	-12.0	17
16	GERMANY				2.1	

		2,406	2,456	2,624		4
17	ITALY	1,749	1,746	2,544	-0.2	21
18	SPAIN	1,599	1,516	2,193	-5.2	17
19	HONG KONG	2,502	2,035	1,864	-18.7	-14
20	UAE	1,471	1,244	1,708	-15.4	8
REST OF THE WORLD		23,802	24,723	29,037	3.9	10
TOTAL		167,683	163,192	209,163	-2.7	12

Source: Indonesian Statistics (2022), in Million USD

The 5 biggest destination country/economy of Indonesian export are China, USA, Japan, India and Malaysia that dominate 53% of total Indonesia export to total 229 countries/economies in the world. Of the top 20 export destination countries/economies, 14 of them is in Asia and most of them is developing countries that dominate 68% of total Indonesia export destination. According to McKinsey [10] and ADB [11], global cross-border flows are shifting towards Asia on 7 dimensions: trade, people, knowledge, culture, resources, environment and capital. So, Indonesia as a part of country in Asia also need to be ready because of this shifting. Need a breakthrough to compete with other countries globally. A better law environment and not overlapping is a must to be a part of global trade activities.

2. Analysis of Juridical Legal

Based on the juridical legal analysis, it can seen thatOmnibus Law/the Act Number 11 of 2020 concerning Job Creation has 4 (four)objectives of restoring the national economy during and after the pandemic as stated in Article 3, namely:

(i) Creating and increasing job opportunities by providing convince, protection, and empowerment for cooperatives and Micro Small Medium Enterprises (MSMEs) as well as national industry and trade as an effort to be able to absorb Indonesian workers as widely as possible while taking into account the balance and progress between regions in the national economic unit.
(ii) Ensuring that every citizen gets a job, and gets fair and proper remuneration and treatment in an employment relationship.
(iii) Adjusting various regulatory aspects related to partiality, strengthening, and protection for cooperatives and MSMEs as well as national industry.

(iv) Adjusting various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented to national interests based on national science and technology guided by the ideology of Pancasila.

This 4 (four) objectives of the Act Number 11 of 2020 can be used as the basis of guiding goals of national economic recovery in the trade and export sectors related to employment. This can happen if licensing services and ease of doing business are also carried out properly in accordance with the mandate of the applicable regulations. In addition, it is also necessary to improve public service to all stakeholders at the central and local government.

Furthermore, the national economic recovery can be done in the context of legal reformation with trimming business licenses and simplifying licensing procedures [12]. So,business permits are not under different Ministries/Institutions, but it is regulated directly by the Central Government. This applies because there is a revision in the Amendment of the Act Number 7 of 2014 concerning Trade as contained in the Omnibus Law, especially in Article 46 that abolishes Article 49-Paragraph (3): the Minister may delegate or bestow the granting of permits as referred in Paragraph (1) to Local Government or Certain Technical Agencies. So, based on this explanation, it means that the licensing of business permit will only be regulated directly by the Central Government so easier for the business people to come to "one door" submission online.

Moreover, this online system can reduce the intensity of direct meetings between business people and the government so that the process of submission will be easier and efficient. Later on, the system also can help the stakeholder to overcome economic slow down because of the pandemic and reduce the change of corruption, collusion and nepotism. Also the change in authority is also carried out in order to increase the enthusiasm of private sector to expand the business and absorb more workers without having to be trapped in the licensing bureaucracy system in several agencies/institutions. There is only one license registration and it can be completed immediately because there is already the Act No.11 of 2020 concerning Job Creation which can improve the coordination relationship between agencies which is also regulated in an integrated public policy.

As the implementation of the Act No.11 of 2020 above especially article 46, 47, and 185, the Central Government of Republic of Indonesia has also established regulations in the derivative regulation related to trade, includingthe Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector. Total there are 14 Chapters and 179 Article with total around 124 pages. Later on after the Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector, the Ministry of Trade of Republic of Indonesia release 4regulation in the field of foreign trade and exports, including as follows:

(i.) Regulation of the Minister of Trade Number 16 of 2021 concerning Verification or Technical Investigation in the Foreign Trade Sector,
(ii.) Regulation of the Minister of Trade Number 17 of 2021 concerning Exporters and Importers of Good Reputation,
(iii.) Regulation of the Minister of Trade Number 18 of 2021 concerning Export,
(iv.) Regulation of the Minister of Trade Number 19 concerning Export Policies and Regulations.

First Regulation is the Minister of Trade Number 16 of 2021 concerning Verification or Technical Investigation in the Foreign Trade Sector. It is released on April 1, 2021 and implemented 60 days after released. In this regulation, there are 25 articles with total 19 pages. In article number 8, mention that the verification or technical investigation of the export of certain goods as referred inarticle 2, shall at least include:

a) examination and assurance of the suitability of data and conformity of administrative documents,
b) identification of specifications/criteria of goods through qualitative and/or quantitative analysis,
c) amount and/or volume,
d) port of loading or country of origin of the goods,
e) country of destination
f) data and/or other necessary information.

Also in chapter 10mentions that the issuance of surveyor reports for verification or technical investigation of export of certain goods as referred in article 8 is carried out no later than 1 (one) day after completion of inspection. Then the surveyor's report is sent by the surveyor electronically in the form of data elements to the INATRADE system to be forwarded to SINSW. So, the electronic system in this regulation hopefully canmake the implementation of export is more efficient and effective because the certainty of business will increase. Also during pandemic, this system can make the flow paperless and less offline activity.

SecondRegulation is the Minister of Trade Number 17 of 2021 concerning Exporters and Importers of Good Reputation. there are 13 articles with total 17 pages including appendixes. Definition of good reputation exporter in article 1- paragraph 5 is an exporter who has a good track record of compliance in the implementation of laws and regulations in the export sector.Furthermore, article 3 shows that in order to be designated as an exporter with good reputation, the exporter must meet the following criteria:

a) has fulfilled the obligation to report on the realization of all export approvals that have been made for each commodity in the last 1 (one) year in accordance with the provisions of laws and regulations,
b) obtain valid status in confirmation of taxpayer status from the ministry that carries out government affairs in the financial sector for the last 2 (two) years,

c) implementation of export of goods in the last 2 (two) years in accordance with the line of business or nature of business,
d) has never been subject to administrative sanctions in the form of revocation of licensing for violations of regulations in the field of export in accordance with the provisions laws and regulations in the last 2 (two) years,
e) not being subject to administrative sanctions in the form of written warnings, suspension of permits or suspension of permits for violations of regulations in the export sector in accordance with the provisions of laws and regulations,
f) has never been subject to criminal sanctions in the trade sector.

Third Regulation is Minister of Trade Number 18 of 2021 concerning Export that regulates 10 articles with total 48 pages including appendices. In Article 2 shows that export prohibited goods including: a) export prohibited goods in the forestry sector, b) export prohibited goods in agriculture, c) export prohibited goods subsidized fertilizer, d) export prohibited goods in the mining sector, e) export prohibited goods in the cultural heritage goods, f) export prohibited goods in waste and scrap metal. In the appendix, there is 275 products in 6 digit hs code that are prohibited to export from Indonesia to other country in the world.

Fourth regulation is Regulation of the Minister of Trade Number 19 concerning Export Policies and Regulations. There are 51 articles with total 408 pages including appendixes. This regulation is very detail with the technical implementation of export policies. In article 5 mentions that:

1) to obtain a business license in the export sector as referred to in article 3-paragraph (4), the exporter must submit an application electronically to the Minister through SINSW,
2) to be able to submit the application electronically referred in paragraph (1), the exporter must have access rights,
3) access rights as referred to in paragraph (2) can be obtained by registering through SINSW and uploading scanned original documents in the form of at least: (a) taxpayer identification number (NPWP) or Population Identification Number (KTP), for exporters who are individuals; (b) taxpayer identification number (NPWP), for exporters who are State-Owned Enterprises and Foundations; (c) Business Identification Number (NomorIndukBerusaha/NIB) for exporters who are cooperatives and business entities.

In this regulation, there are 20 old regulations have been withdraw and declared inapplicable including Regulation of Minister of Trade Number 109 of 2018 concerning Coffee Export as amended by Regulation of the Minister of Trade Number 80 of 2019. One of the implication is that coffee export licensing is simplified because this commodity is excluded as goods that are regulated by the export trade system so that coffee becomes a product that is free to be exported.

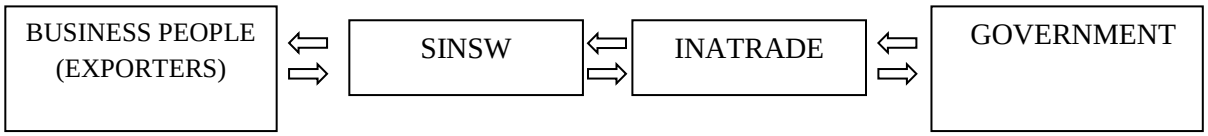


Figure 2. Process of Application for Business License in the Trade/Export Sector
Source: Ministry of Trade [14], modified by the author (2022)

Figure 2 shows the process of applying for a business license in the export sector. There is a process that needs to be carried out by exporters if they want to export products regulated by the Indonesian Government. Exporters submit applications to the System of Indonesia National Single Window (SINSW) which integrated with the INATRADE system. Based on Presidential Regulation Number 44 of 2018 concerning the System of Indonesia National Single Window, this SINSW is an electronic system that integrates information relating to the process of handling documents at customs, licensing documents, quarantine documents, airport/seaport documents, or other documents related to import/export that ensures data and information security and combines processes and information flows between systems automatically [13].

INATRADE is an application provided by the Central Government, namely the Ministry of Trade of Republic of Indonesia, to business people/community in the context of export facilitation that is used in the purpose of applying for export and import permits. The process carried out is that companies need to be registered so they can get "Access Rights", Business People/community can register online at http://inatrade.kemendag.go.id/ to get export permits from the Central Government. The objectives of implementing the INATRADE system are:

i. to speed up and simplify the export licensing process because it is integrated with SINSW and can be accessed anytime and anywhere;
ii. Automatically verify documents so as to speed up Customs and Excise settlement, and reduce paper usage [15].

Hopefully the system of SINSW and INATRADE can help and support increasing international trade and business. According to Jankulovski and Bojkovska (2017) [16] international business is realized the globalization process of business that increase international integration and market for goods and services that can reduce the trade restrictions and strengthening the international companies role. Therefore, it is essential for business people and exporters to increase their connection in international business with the support of the government to make a good governance that is based on accountability, innovation, integration, collaboration, transparency and openness principles [17].

D. Conclusion

The economic crisis in 2020 and the slowing down of economy in 2021 because of the pandemic COVID-19 hit Indonesia and most of the countries in the world. Trade is one of the sectors that affected by the pandemic in 2020. One of the reasons is more than 80 countries and customs territories had introduced export restrictions/prohibitionsto response the pandemic situation [18][19]). Based on the literature review, Indonesian export data to the world in the year 2020 is decrease 2.7 percent to USD 163 billion from USD 167 billion in 2019. In period of January-November 2021, the export data from Indonesia to the world is increase 28 percent become USD 209 billion. Ministry of Trade press conference in January 2022, the Indonesian export data achievement in the year 2021 is the highest record in the history of Indonesia with total USD 231 billion for total export. One of the reasons is that there is commodity super cycle, where some export commodity price is increasing in 2021.

The government need to make breakthrough to minimize the negative impact of the pandemic and increasing the ease of doing business especially export. Based on the juridical legal analysis, Omnibus Law/the Act Number 11 of 2020 concerning Job Creation has 4 (four) objectives of restoring the national economy including: (i) creating and increasing job opportunity, (ii)ensuring that every citizen gets a job, (iii) adjusting various regulatory aspects to strengthening and protecting MSMEs and industry, (iv) improving the investment ecosystem, facilitating and accelerating national strategic projects.

As the implementation of the Act No.11 of 2020 above especially article 46, 47, and 185, the Central Government of Republic of Indonesia has also established regulations in the derivative regulation related to trade, includingthe Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector. Then based on this regulation, the Ministry of Trade of Republic of Indonesia release 4 regulation in the field of foreign trade and exports, including as follows: (i)Regulation of the Minister of Trade Number 16 of 2021 concerning Verification or Technical Investigation in the Foreign Trade Sector, (ii) Regulation of the Minister of Trade Number 17 of 2021 concerning Exporters and Importers of Good Reputation, (ii) Regulation of the Minister of Trade Number 18 of 2021 concerning Export, and (iv)Regulation of the Minister of Trade Number 19 concerning Export Policies and Regulations. After the enactment of these 4 Regulations of the Minister of Trade in

2021, there are 24 old regulations that have been withdraw and declared inapplicable. Apart from that, there is also ease of doing business for exporters, such as for coffee commodities, where coffee export licensing is simplified because this commodity is excluded as goods that are regulated by the export trade system so that coffee becomes a product that is free to be exported.

All stakeholders especially business people need to understand and study the new regulations that has been implemented as the consequence of debureaucratization and deregulation of trade-law. There is a process that needs to be carried out by exporters if they want to export products regulated by the Indonesian Government. Exporters need to submit applications to the System of Indonesia National Single Window (SINSW) which integrated with the INATRADE system. The objectives of implementing this online system are: (i) to speed up and simplify the export licensing process because it is integrated and can be accessed anytime and anywhere; (ii) automatically verify documents so as to speed up Customs and Excise settlement, and reduce paper usage. In the end, hopefully the regulation of an online licensing system can minimize the cost and the possibility of direct meetings between business people and the government during pandemic, so as to reduce the spreading of COVID-19 virus and to avoid corruption, collusion and nepotism (KKN). The online system of the Indonesia National Single Window (SINSW) and INATRADE systems can facilitate the process of disclosure of information and permits needed by stakeholders to increase ease of doing business, including Indonesian exports. In the future, further study can be made, by adding analysis of the costs and benefits to the new regulations especially related to trade with other countries.

Acknowledgments

On this occasion, the authorwishtoacknowledgethesupportofAll Leaders of the Ministry of Trade, Head of theTrade Policy Analysis and Development Agency, the Secretary of the Trade Policy Analysis and Development Agency, and the Head of International Trade Cooperation Policy Center, the research team in Ministry of Trade of Republic of Indonesia, all official of Indonesian Government Representatives in India, and International Conference Committee from Faculty of Law, Universitas Pekalongan.

References

1. National.Kontan. "BI PangkasProyeksiPertumbuhanEkonomiTahun 2021 Jadi 3,2%-4%". https://nasional.kontan.co.id/news/bi-pangkas-proyeksi-pertumbuhan-ekonomi-tahun-2021-jadi-34-4, (accessed 17 January 2022). (2021).
2. BPS. "Ekonomi Indonesia 2020 Turunsebesar 2,07 Persen (c-to-c). https://www.bps.go.id/pressrelease/2021/02/05/1811/ekonomi-indonesia-2020-turun-sebesar-2-07-persen--c-to-c-.html, (accessed 17 January 2022). (2021).
3. Kompas, "PertumbuhanEkonomi Indonesia Tahun 2020 TerburukSejak 1998? IniPenjelasanEkonom", https://www.kompas.tv/article/144597/pertumbuhan-ekonomi-indonesia-tahun-2020-terburuk-sejak-1998-ini-penjelasan-ekonom, (accessed 17 January 2022). (2021).
4. Kurniawan, f, and Dewanto, W.A. "ProblematikaPembentukan RUU CiptaKerjadenganKonsep Omnibus Law pada KlasterKetenagakerjaanPasal 89 Angka 45 tentangPemberianPesangonKepadaPekerja yang di PHK", Jurnal Panorama Hukum, Vol. 5, No.1, Juni 2020.
5. Aedi, A.U., Lazuardi, S., dan Putri, D.C., 2020, "ArsitekturPenerapan Omnibus Law MelaluiTransplantasi Hukum Nasional PembentukanUndang-undang",JurnalIlmiahKebijakan Hukum, Volume 14, Nomor 1, Maret 2020: 1-18. (2020).
6. Unpad. 2020. "CatatanKritis Omnibus Law: Membedah RUU CiptaKerja". Department Strategis BEM KemaUnpad 2020- KabinetEksplorasiMakna. (2020)
7. Jati, Kumara., Mardiansyah, A., Fawaiq, M., Ingot, S.R., "The Importance of Education to Understand Trade Facilitation Agreement (TFA)", JurnalCendikiaNiaga, Vol. 3, No.2, November 2019, (2019).
8. Muhammad, A. K., Hukum dan Penelitian Hukum, Raja GrafindoPersada, Jakarta (2004).
9. Kompas, (2021), "KemendagSebutPerizinanEksporImporSemakinMudah dan Cepat", https://money.kompas.com/read/2021/12/13/104011526/kemendag-sebut-perizinan-ekspor-impor-semakin-mudah-dan-cepat (accessed 19 January 2022).
10. McKinsey (2019), "The Future of Asia: Asian Flows and Networks are Defining the Next Phase of Globalization", Discussion Paper of McKinsey Global Institute, https://www.mckinsey.com/~/media/mckinsey/featured%20insights/asia%20pacific/the%20future%20of%20asia%20asian%20flows%20and%20networks%20are%20defining%20the%20next%20phase%20of%20globalization/mgi-future-of-asia-flows-and-trade-discussion-paper-sep-2019.pdf (accessed 20 January 2021).
11. ADB, (2019), "Beyond Factory Asia: Fuelling Growth in a Changing World". Asian Development Bank (ADB), https://www.adb.org/sites/default/files/publication/30223/beyond-factory-asia-fuelling-growth.pdf, (accessed 20 January 2022).
12. Ministry of Trade, (2020). UU Perdagangan dan Metrologi Legal DirevisiSeiring Omnibus Law, Ministry of Trade, https://www.kemendag.go.id/id/newsroom/media-corner/uu-perdagangan-dan-metrologi-legal-direvisi-seiring-omnibus-law, (accessed 30 April 2021).
13. Kemenkeupedia, (2021), "PengertianSistem Indonesia National Single Window (SINSW), Kementerian Keuangan", (accessed 17 December 2021).

14. Ministry of Trade, (2021), "SosialisasiPermendagNomor 19 Tahun 2021 tentangKebijakan dan PengaturanEkspor", Biro Hukum-SekretariatJenderal-Kementerian Perdagangan. https://www.youtube.com/watch?v=qss-FVEhLwA (accessed 16 December 2021).
15. Verimasri, (2019), "Aplikasi INATRADE", https://eksporindonesia.com/aplikasi-inatrade/, (accessed 17 December 2021). (2019).
16. Jankulovski, N., and Bojkovska, K, (2017). International Business and Trade, International Journal of Sciences: Basic and Applied Research (IJSBAR), January 2017.
17. Jati, Kumara., and Salam, A. R., (2021), Governance and Accountability of Macroeconomic Variables in Indonesia, Malaysia, Thailand and India using Three Models, CendikiaNiaga-Journal of Trade Development and Studies, Ministry of Trade of Republic of Indonesia.
18. BDI. (2020). Export Controls and Export Bans Over the Course of the Covid-19 Pandemic. April 29, 2020. Report from The Federation of German Industries (BDI).
19. Barlow, P., et al. (2021). COVID-19 and the Collapse of Global Trade: Building an Effective Public Health Response. Lancet Planet Health 2021: 5: e102-07.

ISSN 2985-5691

The Role Of Correctional Institutions In The Development Of Prisoners Of Narcotics Abuse In Indonesia

Sitta Saraya.[(1),] Nabila Ulya.[(2)]
[(1)] Students Of The Doctoral Program In Legal Sciences UNISSULA Semarang
[(2)] Students Of Law Faculty Of Selamat Sri University,
[(1)]sittalaw@gmail.com , [(2)]nabilaulya68@gmail.com

Abstract

The development of Science and Technology which has a negative impact, especially in the development of crime, is mainly supported by the opportunity to commit crimes, one of which is narcotics abuse which is certainly influenced by promiscuity and moral education that is not well received by the community. The rise of narcotics abuse in Indonesia Regency, with the circulation of news in print and online media, makes writers interested in seeing the role of prisons in fostering narcotics prisoners. This type of research is empirical juridical which is descriptive analysis, namely describing, describing, analyzing and explaining analysis of the problems raised. The data needed in this study is primary data whose sources come from sources or respondents, in this case the Head and Officers of the Indonesia Correctional Institution, and secondary data is used whose sources come from legislation, the work of the general public and various literatures. support this research. The results showed that the Penitentiary in Indonesia in coaching carried out activities for prisoners: physical and mental health checks, carrying out a series of worship activities and training skills. This method currently has a positive impact on inmates so that it is hoped that later inmates after serving their sentences can return to normal lives and not commit the same crimes.

Key words: ***Correctional Institutions, Prisoners, Narcotics Abuse***

A. Introduction

Narcotics abuse does not only occur in big cities, but has reached regency cities throughout the territory of the Republic of Indonesia, starting from the middle, lower socio-economic level, to the upper socio-economic level. Narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases. However, if it is misused and drug abuse is the use of drugs for non-medical purposes, without the supervision of a

doctor, it occurs repeatedly on a regular basis, in excessive amounts, causing disturbances in work, education, or in social life.[1]

Narcotics abuse is a very worrying danger, because narcotics can damage the users' personalities, both physically and mentally. [2]The dangers of drugs have become a threat to most nations and countries in the world.Drug trafficking tends to be one of the easy ways to find material gains in large numbers and has now grown rapidly. Drug trafficking has become a subversive tool that is directed at the destruction of a nation's generation or the destruction of a government system.[3] Drug dealers and dealers are sneaky and cunning generational destroyers, they take advantage of the ignorance of the people of this nation. They do not offer drugs as drugs, but as food supplements, smart pills, healthy pills and others. As a result, people who claim to be anti-drugs are deceived, then unknowingly used drugs.[4]

In making decisions in court, defendants of narcotics abuse crimes should be aware that what has been decided by the panel of judges for their mistakes is a way or means for them to leave the act after serving their sentence.The coaching system for narcotics prisoners is carried out in the Correctional Institution, where the Correctional Institution is a form of criminal law (imprisonment). Imprisonment is a form of criminal deprivation of liberty.[5]

Imprisonment is carried out in a correctional institution where the person who commits the crime must comply with all the regulations contained in the correctional institution. Provisions regarding correctional institutions are contained in Law Number 12 of 1995 concerning Corrections. The target of coaching convicts in narcotics cases is actually more aimed at groups of users/addicts who are victims of crime from these narcotics suppliers/distributors. Therefore, after knowing everything about the judicial process, the convicts are handed over to the correctional institution where they are serving their sentence.

[1]Serikat Putra Jaya, Nyoman, 2015, *KapitaSelektaHukumPidana*, UniversitasDiponegoro, Semarang, hal. 112
[2]Sami'an. Jurnal. *Legal Understanding Regarding The Hazards of Drugs inTheFrameworkofCommunityDevelopment. Jurnal Pena Justicia*,FakultasHukumUniversitasPekalongan, Volume 20 No 2 Desember 2021. https://jurnal.unikal.ac.id/index.php/hk/article/view/1728/1104

[3] M. Amir dan Imran Duse, *NarkobaAncamanGenerasiMuda*, (KaltimGerpana, 2012,halaman. 9
[4]BadanNarkotika Nasional (BNN), *PetunjukTeknisAdvokasi Bidang Pencegahan Penyalahgunaan Narkoba Bagi Masyarakat*, 2012, halaman 2
[5]E.Y. Kanterdan S.R. Sianturi, 1982, Asas-*AsasHukumPidana di Indonesia danPenerapannya*, Alumni AHM-PTHM, Jakarta, halaman. 467

So in this case, handling the problem of fostering the victims of narcotics abuse is also the government's obligation. However, in accordance with the principle of togetherness, the obligation to restore the condition of the victims is not only the responsibility of the government, but also the responsibility of the community in general.

1) Formulation of the problem

The problems that will be investigated in this research are:

a. What is the coaching procedure provided by the Indonesia Penitentiary for prisoners who commit acts of narcotics abuse?

b. What are the obstacles that occur in the process of fostering narcotics abuse inmates at Indonesia Penitentiary?

2) Research Methods

Research is a means for the development of knowledge and technology. To discuss the problems in this paper, some of the methods used are described as follows:

a. Types of Research.

The type of research used is a qualitative method. Where only describes information as it is and explains information or events with qualitative explanatory sentences. This type of qualitative research, the information collected and processed must remain objective and not influenced by the opinion of the researcher himself.

b. Research Approach.

To obtain the required data and information, the authors use a sociological juridical approach. Sociological juridical research is a research that is based on a legal provision and phenomena or events that occur in the field.

B. Discussion

1. Implementation of Guidance for Prisoners in Indonesia

In the provisions of Law No. 12 of 1995 concerning Corrections, especially Article 14 concerning the rights of prisoners, that prisoners must be treated properly and humanely in an integrated system of development. The purpose of imprisonment is focused on fostering inmates. Guidance is a part of the rehabilitation process for the character and behavior of inmates while serving sentences for loss of independence, so that when they leave the Penitentiary they are ready to re-mingle with the community. Because the prison sentence already has a purpose, it is no longer without direction or as

if it were torturing. In fostering prisoners cannot be equated with most people and must use the principles of coaching prisoners.

There are four important components in fostering prisoners, namely:

1. Self, namely the prisoner himself;
2. Family, is a member of the nuclear family, or close family;
3. Community, are people who are around prisoners while they are still outside the Correctional Institution/Rutan, can be ordinary people, community leaders, or local officials';
4. Officers, can be in the form of police officers, lawyers, religious officers, social workers, officers from Correctional Institutions, Rutan, Correctional Centers (BAPAS), judges and so on.

In terms of language, coaching is defined as a process, method, act of fostering, activities carried out efficiently and effectively to obtain better results.[6]According to Poernomo, prisoner coaching has the meaning of treating someone who has the status of a prisoner to be built so that he becomes a good person.[7] Guidance at LAPAS (Penitentiary) is in the form of guidance. According to the provisions of the Decree of the Minister of Justice Number: M.02-PK.04.10 of 1990 concerning the Pattern of Guidance for Convicts / Detainees, coaching is; "Coaching includes prisoners, prisoner services, prisoner development systems, and client development".[8]

The convict's guidance is intended so that he has the ability to be an active and creative participant in the unity of life as a citizen of Indonesian society who respects the law, is aware of responsibility and is useful.[9]

In social life, of course, we cannot be separated from the rule of law that governs society. The rule of law applies to the whole community. If in their lives they violate the rules of the law, both in the form of crimes and violations, they will be subject to sanctions called criminals. Society consists of a collection of individuals and groups who have

[6]http://kbbi.web.id/bina.com
[7]Poernomodalam, Taufik Hidayat, *Peranan Lembaga Pemasyarakatan Dalam Pembinaan Ketrampilan Bagi Narapidana*, 2011, http://lib.unnes.ac.id/5873/1/7582.pdf
[8]Keputusan Menteri Kehakiman Nomor : M.02-PK.04.10 Tahun 1990 Tentang Pola Pembinaan Narapidana / Tahanan, https://bimkemasditjenpas.files.wordpress.com/2015/04/surat edaran.pdf
[9]Sudarto.1986.*Kapita Selekta Hukum Pidana*, Bandung: Alumni. hal. 50

different backgrounds and interests, so that in the process of interaction there are often conflicts of interest that can lead to conflicts between the conflicting parties.

Every problem that is created during the interaction process sometimes only benefits one party, while the other party is harmed. This is where the law acts as an enforcer of justice. It can be said that actions that harm others and only benefit individuals or groups are evil actions. So it is natural that every act that violates the law must be faced with the law, because we are a state of law, and the perpetrators must be held accountable for their actions before the law fairly, one of which is by serving punishment. Development in the field of law can be carried out substantially in the form of the development of legal products which are the result of an agency that makes a law in the form of legal legislation, especially criminal law that is in accordance with legal feelings and a sense of justice that lives in the community. In the development and renewal of law, especially criminal law, it will inevitably include issues related to the community, law enforcement officers, both the police, prosecutors and judges as decision makers in criminal cases.

In carrying out legal products carried out by law enforcement officers, the community cannot be separated from the community as supporters of the rules issued by the government, including in carrying out decisions by convicts. Decisions that already have legal force remain the convict will carry out his decision in a correctional institution that previously used the prison system.

Investigations carried out by the police as the beginning of the stage of the process of examining the occurrence of criminal acts, for that if the police in conducting the investigation the police consider it necessary to have detention, the suspect suspected of committing the crime is detained, this is to facilitate the investigation carried out by the police and to keep the suspect from escaping or destroying evidence. In addition to repressive action taken by the police against suspects suspected of committing criminal acts, law enforcement officers in this case the police can take preventive measures, namely by preventing the occurrence of criminal acts.

Preventive countermeasures carried out by the police also cannot be separated from the community and the person, this is without the support of the community and people around the community. Preventive countermeasures are meaningless. What is done by the

police in carrying out preventive handling of the occurrence of criminal acts is by conducting legal counseling in the community which is also development in the field of law.

Development in the field of law, in this case criminal, does not only include the development of legal institutions that are engaged in a mechanism in implementing the law and making legal products carried out by people's representatives in the DPR. The legal product by the DPR will greatly affect the system that will be run by the legal apparatus in the field.

The correctional system for suspects who have been sentenced by the panel of judges and have legal force must still serve sentences within the prison environment. Correctional institutions located in cities have a very important meaning in fostering convicts so that later on their return or completion of sentencing they will be able to socialize and be accepted by the community.The correctional system is an order regarding the direction and boundaries as well as the method of fostering correctional residents which is carried out in an integrated manner between the coaches, those who are fostered and the community to improve the quality of correctional development residents, so that they are aware of mistakes to improve themselves not to repeat criminal acts so that they can be accepted again by the community. Meanwhile, the correctional system as regulated in Law Number 12 of 1995 concerning Corrections in Article 1 letter 2 has been stated as follows:

> "An order regarding the direction and method of fostering correctional inmates based on Pancasila which is carried out in an integrated manner between the coaches, those who are fostered, and the community to improve the quality of correctional inmates so that they are aware of their mistakes, improve themselves, and do not repeat criminal acts so that they can be accepted again by the community. can play an active role in development, and can live naturally as good and responsible citizens.

Before the penitentiary system carried out by the government, there had been training of inmates with a prison system in which with this system prisoners were treated inhumanly but carried out in retaliation for the crimes they had committed, so there was an assumption that a convict after being released from prison would be ostracized by the community. . It is different with the penitentiary system in which the prisoner is educated by officers so that when he leaves the penitentiary, he will be accepted by the community and be independent. Hanzah and SitiRahayu, namely:

"In the transition period between the release of prisoners from prison and adjustment to community life, a turning point occurred. They easily carry the tide back to the distorted life they used to be."[10]

While the opinion expressed by RomliAtmasasmita who argues that "even though the community has an equal role in the process of resocializing prisoners, the community itself tends to reject the presence of prisoners in their midst".[11]

The correctional system for inmates is an arrangement regarding the directions and boundaries as well as the method of fostering inmates based on Pancasila which is carried out in an integrated manner between the coaches, those who are fostered, and the community. To improve the quality of WBP so that they are aware of their mistakes, improve themselves and do not repeat criminal acts so that they can be accepted again by the community, can play an active role in development, and can live naturally as good and responsible citizens.

Based on the results of the author's interview with the head of the prison regarding the coaching system carried out on inmates regarding the most important guidance that needs to be treated and given to prisoners, namely the mental development provided which includes basic education, religious education and character education. One of the basic education provided is religious education, namely in the form of the Koran, congregational prayers and Islamic studies or religious lectures. After the mental and religious development goes well and is well received by the inmates, they are given the skills that are considered necessary with the development of the environment later after serving the legal period.

From the results of the author's research, in addition to these activities, prisoners are also given recreational activities, such as sports or gymnastics on Fridays, and are also given the opportunity to contact family or video calls with family.

Guidance of abuse convicts is generally prioritized in the health sector of drug abusers, especially those who are still dependent. The health care for narcotics Prisoners (WBP) includes:

[10]Andi Hamzah, Suatu Ringkasan Sistem Pemidanaan Di Indonesia, AkademiPresindo , Jakarta, 1998 hal 12.
[11]Romli Atmasasmita, Kepenjaraan Dalam SuatuBungaRampai, CV. Armico Bandung, 2002 hal53.

1) General health care activities, namely health care for drug convicts who are a high risk group of contracting various infectious diseases, especially through the use of shared unsterilized needles.
2) Drug dependence treatment activities, which include:
   a. Screening of prisoners' involvement in drugs and alcohol;
   b. Detoxification service;
   c. Identification of drug dependence. When narcotics convicts enter prisons, it is necessary to identify drug dependence in order to anticipate the occurrence of drug abuse in the Rutan/Lapas;
   d. Oral substituted opiate treatment, ie treatment with oral opiate substitutes or Methadone substitution therapy;
   e. Emergency/emergency treatment is immediate action for prisoners or convicts of drug abuse who have overdosed;
   f. Rehabilitation therapy, including Community Therapeutic, Criminon, Narcotuc Anonymous, Cognitive Behavior Therapy (CBT), Religious Therapy and others that aim to change behavior, build self-confidence, overcome addictions and increase faith and piety.
3) Physical health care activities, among others, are in the form of food treatment for narcotic prisoners, personal hygiene, sports activities, health education and efforts to prevent disease transmission.
4) Mental and spiritual health care activities which include two approaches, namely mental health care through a psychological or psychological approach and through a spiritual or religious approach. Both approaches aim to improve deviant thought patterns and behavior, seen from religious norms and unwritten legal norms. These norms certainly have sanctions, both physical sanctions (confinement sanctions) in correctional institutions through court processes and judges' verdicts, as well as moral sanctions by the community which have no time limit.[12]

Meanwhile, other coaching programs such as coaching in the field of independence in order to prepare inmates to integrate with the community are still carried out based on the

[12]PedomanPerawatanKesehatanWargaBinaanPemasyarakatan di LembagaPemasyarakatandanRumahTahananNegara,2004,DepartemenHukumdanHAMRI,DirektoratJendralPemasyarakatan, Jakarta,hal. 21

general guidance regulations, although most of the guidance cannot be carried out considering the problems in the health sector (dependence) faced by drug abuse convicts.

2. Obstacles That Occur in Conducting the Process of Coaching Convicts of Narcotics Abuse at Indonesia Penitentiary.

The role of the Correctional Institution in the process of enforcing the criminal law associated with the criminal objective is that of fostering the Correctional inmates with the aim of returning the Prisoners to the community so that they can live independently and be useful in society. However, the challenge is the extent to which the role of correctional institutions functions effectively in providing guidance to inmates. This issue depends on the available carrying capacity and capacity so that it is guaranteed for prisoners to undergo training in an orderly manner.[13]

Guidance for inmates and victims of narcotics cases is a very complex issue considering that those involved in narcotics cases are not limited to those who are dealers but also users or both, users and dealers. This causes the problem of fostering convicts in drug cases to be more complicated than the problems of fostering other convicts[14]

Based on the results of the research, there are no obstacles that affect the efforts of the Indonesia Penitentiary in providing guidance for prisoners of narcotics abuse, but geographically the facilities and facilities for coaching are inadequate. Lack of equipment or facilities both in quantity and quality is one of the inhibiting factors for the smooth process of coaching prisoners. InIndonesia has complied with the provisions regarding facilities and facilities such as mosques, while for entertainment facilities, namely sports fields such as table tennis, volleyball courts and others, however there are facilities that are not suitable for use so that the quality and coaching facilities themselves are reduced.

The role of the Correctional Institution in the process of enforcing the criminal law associated with the criminal objective is that of fostering the Correctional inmates with the aim of returning the Prisoners to the community so that they can live independently and be useful in society. However, the challenge is the extent to which the role of correctional

[13]Ferdy Syaputra. Jurnal Ilmu Hukum Reusam ISSN 2338-4735/E-ISSN 27225100 Volume VIII Nomor 1 (Mei 2020) Fakultas Hukum Universitas Malikussaleh. https://ojs.unimal.ac.id/reusam/article/view/2604
[14]Filka Desi Wahyu Oktaviani, Patterns For Drug Narcotics In Demak Resistant Houses, Prosiding Konferensi Ilmiah Mahasiswa Unissula (Kimu) 3 Universitas Islam Sultan Agung Semarang, 28 Oktober 2020 ISSN. 2720-913x

institutions functions effectively in providing guidance to inmates. This issue depends on the available carrying capacity and capacity so that it is guaranteed for prisoners to undergo training in an orderly manner.

C. Conclusion

In Indonesia Penitentiary as a place of exile for inmates from the general public has carried out guidance in accordance with applicable regulations, namely Law no. 12 of 1995 concerning Corrections, as well as a place to foster and guide inmates during their criminal period by paying attention to their rights as a prisoner so that when they are free they will no longer commit acts that violate the law.

The role of the Class II-A Indonesia Penitentiary in fostering narcotics abuse prisoners is to provide therapy and training programs in the form of:

- Therapeutic Program for Drug Addiction consisting of:
- Medical Rehabilitation Phase, namely in the form of a Methadone Maintenance Program, Complementary Therapy.
- Non-Medical Rehabilitation Stage consisting of Therapeutic Community (TC) and Criminon.
- Stages of After Care Rehabilitation (Education) which includes Koran activities for followers of the Islamic religion, congregational prayer, and da'wah / tausiyah providing Islamic studies.

The obstacles or obstacles experienced by the Indonesia penitentiary in carrying out coaching for prisoners are inadequate facilities and facilities.

Suggestion

1. So that correctional officers are aware of themselves as state servants who have a great responsibility in determining the success or failure of the implementation of coaching for prisoners and carrying out their duties more attention to the rights of inmates.
2. In order to improve the quality and quantity of the warden officers to maximize the performance of coaching in order to create a coaching process that is as expected so that inmates can quickly adapt to the community when they are released from prison, and Indonesia Penitentiary should always cooperate with various agencies such as universities, hospitals, social institutions and so on in providing guidance to narcotics prisoners.

References

Amir, M dan Imran Duse, 2012. *NarkobaAncamanGenerasiMuda*, (Kaltim Gerpana.

Atmasasmita, Romli.2002. KepenjaraanDalamSuatuBungaRampai, CV. Armico Bandung.

BadanNarkotika Nasional (BNN), *Petunjuk Teknis Advokasi Bidang Pencegahan Penyalahgunaan Narkoba Bagi Masyarakat*, 2012.

Hamzah, Andi.1998. Suatu Ringkasan Sistem Pemidanaan Di Indonesia, Akademi Presindo , Jakarta.

Kanter E.Y. dan S.R. Sianturi, 1982, Asas-*Asas Hukum Pidana di Indonesia dan Penerapannya*, Alumni AHM-PTHM, Jakarta.

Poernomo, TaufikHidayat, *Peranan Lembaga Pemasyarakatan Dalam Pembinaan Ketrampilan Bagi Narapidana*, 2011, http://lib.unnes.ac.id/5873/1/7582.pdf

Serikat Putra Jaya, Nyoman, 2015, *KapitaSelektaHukumPidana*, Universitas Diponegoro, Semarang.

Sudarto.1986.*Kapita Selekta Hukum Pidana*, Bandung:Alumni

Sukadan, I Made, *Mediasi Peradilan, Mediasi Dalam Sistem Peradilan Perdata Di Indonesia Dalam Rangka Mewujudkan Proses Peradilan Yang Sederhana, Cepat Dan Biaya Murah* (Jakarta: PT. PrestasiPustaka, 2012).

Pedoman Perawatan Kesehatan Warga Binaan Pemasyarakatan di Lembaga Pemasyarakatan dan RumahTahanan Negara,2004, Departemen Hukum dan HAM RI, Direktorat Jendral Pemasyarakatan, Jakarta.

Keputusan Menteri Kehakiman Nomor : M.02-PK.04.10 Tahun 1990 Tentang Pola Pembinaan Narapidana / Tahanan, https://bimkemasditjenpas.files.wordpress.com/2015/04/surat edaran.pdf http://kbbi.web.id/bina

Jurnal. Oktaviani, Filka Desi Wahyu, Patterns For Drug Narcotics In Demak Resistant Houses, ProsidingKonferensiIlmiahMahasiswaUnissula (Kimu) 3 Universitas Islam Sultan Agung Semarang, 28 Oktober 2020 ISSN. 2720-913x

Jurnal. Ferdy Syaputra. Jurnal Ilmu Hukum Reusam ISSN 2338-4735/E-ISSN 27225100 Volume VIII Nomor 1 (Mei 2020) Fakultas Hukum Universitas Malikussaleh. https://ojs.unimal.ac.id/reusam/article/view/2604

Jurnal. Sami'an. Jurnal. *Legal Understanding Regarding The Hazards of Drugs inTheFrameworkof CommunityDevelopment. Jurnal Pena Justicia*,Fakultas Hukum Universitas Pekalongan, Volume 20 No 2 Desember 2021. https://jurnal.unikal.ac.id/index.php/hk/article/view/1728/1104

ISSN 2985-5691

Multiculturalism society 5.0 In the perspective of pancasila

Achmad Soeharto

Lecturer, Faculty of Law Pekalongan University
(1) achmadsoeharto012@g.mail.com

Abstract

Multiculturalism in a modern society that haterogentity becomes important in building civilization in a Democratic state. With the mulcultural character of Indonesian Society, of course tolerance and acceptance of diversity, both ethnic, religious, racial and inter-group, is a must in Society 5.0. In an era of disruption that is full of information technology, such as artificial intelligence, internet of things, big data, then in Society 5.0, a concept of human-centered society and information technology-based. Society 5.0 is a society of information users, so access to technology and any information is used to facilitate human life. The development of social change can be through various channels, including through the means of information technology is very rapid, it is necessary for awareness to give more role to humans. With the heterogeneity and structure of different societies in this era of disruption, multiculturalism must be used as a means to build national unity. Pancasila as the legal ideal, in Society 5.0 must always be the glue and unifier of a multicultural society. The attitude and behavior of mutual respect, respect for differences and tolerance is a necessity that must be grown in the state of Pancasila law.

Kata Keywords* : *multiculturalism, Society 5.0, and Pancasila

A. Introduction

Multiculturalism is basically a view that places differences in everything, including ethnicity, religion, race, cultural customs, and ethnicity.it must be understood in the context of diversity must be covered with tolerance as an attitude of mutual respect and respect for all differences, so that peace in the life of society, nation and state can be realized. Conflict must be managed as well as possible so that all differences can be a force in the fabric of national unity. If we reflect on the role and function of Pancasila as the ideology of the Indonesian

nation, which has been proven by its adaptive ability and tolerance in shading all differences and diversity. We can see how dashatnya SARA issue (tribe, religion, race and inter-group) that has plagued and disturbed the religious life, but the SARA issue is not able to shake the strong unity and unity between religious communities. Unable to shake the unity of the Indonesian nation, thus bringing the admiration of many countries, where approximately 17.491 Islands and diverse ethnic, customs, culture and religion but still firmly in the frame of Pancasila and the Unitary State of the Republic of Indonesia. Pancasila as the ideology of the Indonesian nation and state, its values became the outlook of the Indonesian nation, even before the Indonesian nation gained independence. The depth of its philosophical value menmake Pancasila as *Philosophische Gronslag* (basic philosophy of the state). The Five Precepts of Pancasila are one whole yang bulatand whole, meaning that one precept with another cannot be separated. In addition, Pancasila is also a philosophical system, where the precepts of one another although different, but interconnected and have the same ultimate goal.

Multiculturalism in an era of disruption yangcharacterized by artificial intelligence, big data, the internet of things, and other components. Borders and barriers between countries no longer seem to exist, with the sophistication of communication via the internet and other information. This becomesour common concern, that not all information has a positive value, in other words there is a negative impact as well. With regard to multiculturalism in the era of disruption, we must continue torun the values of multicultralism within the framework filsafatof the basic philosophy of the Pancasila state.

B. Discussion

1. Multiculturalism

Multiculturalism comes from the words multi (plural) and cultural (about culture), multiculturalism is**an ideology that recognizes and glorifies differences.**Perbedaan yDifferences are people-by-people or cultural differences, such as differences in values, systems, cultures, customs, and politics."[1] Multiculturalism became official policy inberbahasa-InggrisEnglish-speaking countries*English-speaking countries*, beginning in Africain1999. This policy was later adopted by most membersof the European Union, as

[1] https://id.wikipedia.org/wiki/Multikulturalisme, accessed on February 1, 2022, at 10.00 WIB

an official policy, and as a social consensus amongelites. But in recent years, a number of European countries, especiallyBritainandFrance, began to change their policies towards multiculturalism.[2] A multicultural society is, of course, different tribal customs of its culture, a portrait of a heterogeneous society. This has the logical consequence that a heterogeneous society with all its differences, must uphold the nature and attitude of tolerance among members of society. The attitude of mutual respect and respect is what makes a multicultural society can last a long time (United) and not easily divided. Similarly, the Indonesian nation in the frame of Pancasila is engraved in sesanti "Bhinneka Tunggal Ika" as a binder and adhesive unity and unity of the nation. For that multiculturalism must be grounded, so that democracy, politics, Human Rights, and culture can run naturally. Multiculturalism is not in the clouds, but in society (social), so it needs awareness and understanding together in a multicultural society towards a peaceful, safe and harmonious life in the bond of "Bhinneka Tunggal Ika".

2. 5.0 society and pluralism

In social life, we cannot live in homogeneity, differences in both culture and religion cannot be avoided. Especially in the XXI century, the type of society is plural, with kemajuan teknologi very rapid advances in information technology, known as the era of disruption. With social changes[3] that are very dynamic and fast, both through education, technology, and culture, it is a necessity that the Indonesian people must have tolerance in dealing with all these differences. In the field of Education it is appropriate in the courses of Pancasila education, citizenship and Religious Education, emphasized the importance of pluralism, multiculturalism and tolerance, in higher education. With the awareness of diversity, harmonization and acceptance of differences become a priority in Society 5.0.

[2] http://www.makalah.co.id/2016/10/makalah-multikultural-lengkap.html, accessed on February 1, 2022 at. 13.00 WIB

[3] Social changes are changes in social institutions, including the behavior and mindset of the community, even affect the values that exist in the community. Social change in even the simplest of societies will occur. Although social peruabhan running slowly. Social change that runs very rapidly is through information technology, such as today where the Industrial Revolution 4.0 is very rapid in technological progress. As for the Industrial Revolution 5.0 known as society 5.0, this is actually not a continuation of the Industrial Revolution 4.0 in liner. But only as a counterweight to the role of humans in the management of technology. Technological progress must be intended for the benefit and welfare of humans. Not just for business. So it needs to be balanced so that humans have a role more related to technology. Social change through technology and information is what changed human civilization.

Society 5.0 is a concept of human-centered and*technology-based*society developed by Japan. This concept was born as a development of the Industrial Revolution 4.0 which is considered to have the potential to degrade the role of humans. Through Society 5.0, *artificial intelligence*will transform big data collected over the internet in all areas of life (*the Internet of Things*) into a new wisdom, which will be dedicated to improving human capabilities opening up opportunities for humanity. This transformation will help humans to live a more meaningful life.[4] Innovation in Society 5.0 will achieve a forward-looking society that breaks the existing sense of stagnation. A society whose members respect each other, and a society in which everyone can lead an active and fun life.[5]

In short, pluralism can be interpreted as recognition and appreciation of the diversity of society. This principle confirms that citizens have the right to express their opinions. Therefore, the principle of pluralism must also be accompanied by the availability of free public space to express different opinions and aspirations. This principle is very important because it avoids and prevents the majority from acting arbitrarily against the minority. Thus the presence of pluralism is very important because its existence ensures the existence of values, ideologies, interests and political aspirations of citizens.'[6]The processes of the realization of a multicultural society is only possible to be implemented through multicultural education coupled with the willingness of the government and the whole nation to implement it...multicultural education is unlikely to succeed in changing the pattern of a pluralistic Indonesian society without coupled with Democratic Education conducted through National Education.[7]

Pancasila as an ideology that is morally and imperatively for citizens in the life of society, nation and state, has become a consensus since the *Founding Fathers* of this nation agreed on anational way. With the high spirit of kenegaranan, the founders of this Republic put aside the interests of groups and groups, even *primordial sentiments*, to work together with other elements of the nation to build the Indonesian nation with all its

[4]https://www.timesindonesia.co.id/read/news/197889/mengenal-society-50-transformasi-kehidupan-yang-dikembangkan-jepang, accessed on February 5, 2022 at 14.00 WIB
[5] Ibid
[6] J Kristiadi, *Kearifan Lokal Pancasila Butir-Butir Filsfat Keindonesiaan*, Yogyakarta, PT. Kanisius, 2011,P. 612
[7] Parsudi Suparlan, *Journal Ketahanan Nasional*, Vol. 7 No 1 2002, p. 9

ideological differences to achieve common goals. In the Preamble of the Constitution of the Republic of Indonesia in 1945, the fourth paragraph stated that the national goal is " to protect the entire Indonesian nation and all the blood of Indonesia, and to promote public welfare, educate the life of the nation, and participate in implementing world order based on lasting peace and social justice. With the four national goals of the Indonesian nation with Pancasila as *the Philosophische* Gronslag of the Indonesian nation, it overshadows all elements of society, cultural tribal customs and also with the components of society to try as much as possible to educate the life of the nation. The national goals and ideals cannot be separated from the brilliant thoughts of the founders of this Republic, that the Indonesian nation is part of other nations in this world, for it must uphold human values, world peace and as much as possible to realize social justice, which is basically the realization of a just and prosperous society based on Pancasila and the- Constitution Of The Republic Of Indonesia In 1945.

3. Correlation of multiculturalism and democracy

Democracy has an important meaning for mathe society that uses it, because with democracy the right of people to determine for themselves the course of State organization is guaranteed. Therefore, almost all of the understanding given to the term democracy always provides an important position for the people although the operational implications in different countries are not always the same.[8] while some public responsibilities are thrust upon the state others grouwt out of the momentum of positive government.[9]

Multiculturalism always values and respects all differences, both ethnic, religious, cultural, and ethnic differences. This is in line with the concept of democracy that gives freedom of thought, opinion and action. In a democratic country, multiculturalism is one of the priorities that must be considered, with regard to the unity and integrity of the nation. Multiculturalism is a characteristic of a Democratic state. Multiculturalism and democracy cannot be separated from each other. Socio-cultural society in all its social

[8]Kaelan MS dan Achmad Zubaidi, Pendidikan Kewarganegaraan Untuk Perguruan Tinggi, Yogayakarta : Paradigma, 2010, P. 55
[99] Philippe Nonet, Philip Selznick, Law and Society in Transition : Toward Responsive Law, New York, p.37

layers is the trajectory of democracy in Indonesia, where cultural diversity in society has been established for a long time, even long before this nation existed.

It can be said that between the process of democratization and multiculturalism there is a reciprocal relationship. Democratization gives birth to the recognition and recognition of a diverse culture and vice versa the recognition of a diverse culture means also the recognition of human rights in cultural life. Multiculturalism opposes all aristocratic and dictatorial life because it negates differences. Multiculturalism advocates pluralism, which is the existence of cultures that are equally high and equally valuable in a pluralistic society. [10] There are various elements to multiculturalism, especially in Indonesia. As we know if Indonesia has a variety of ethnicities, cultures, languages and so forth, the following are the elements of multiculturalism in Indonesia:[11]

1) Race. Race, which exists in Indonesia arose because of the large grouping of humans with biological characteristics such as skin color, hair color, body size, and so forth.
2) Tribes. Indonesia has a very diverse ethnic groups and spread from Sabang to Merauke.
3) Religion and belief. In addition to ethnicity and race, Indonesia also has diverse religions and beliefs and has been recognized by the state including Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism.
4) Politics. Politics is needed to establish social order.
5) Ideology. Ideology has a very strong influence on behavior.
6) Manners. Manners are all kinds of actions, behaviors, attitudes,customs, speech, manners, admonitions in accordance withcertain normsor rules.
7) Social Inequality. Social inequality there is a classification of humans based on their castes.
8) Economic Disparity. Economic disparity that is the existence of different income between individuals or personal

[10] https://www.kompasiana.com/faqihmuhammad/552fbc786ea83463278b463e/multikulturalisme-dan-demokrasi accessed on February 1, 2022 at 16.00 WIB
[11] Multikulturalisme: Pengertian, Jenis dan Ciri-Cirinya - HaloEdukasi.com, accessed on February 3, 2022 at 10.00 WIB

4. Multiculturalism in the perspective of Pancasila

The legal ideal of Indonesia is Pancasila. Because Pancasila is a code of conduct or life guidelines that are rooted in ideas, taste, karsa, copyright, and the minds of the people and the nation of Indonesia.[12]Indonesia is a heterogeneous nation, all-pluralistic, consisting of various ethnic groups. Indonesian society is multi ethnic, multi religious, and multi ideological. The prominent roleof Pancasila since the beginning of the state administration of the Republic of Indonesia is its function in uniting all Indonesian people into a nation of personality and self-confidence.[13] Pancasila is the ideal of the Indonesian nation about a good society, because it expresses the values that want to be realized in life together by the Indonesian nation...the weight of Pancasila as the nation's Ethics also becomes clear. Pancasila is a contract bwith thenation that all citizens of the nation, with no distinction between religion, tribe, ethnicity, culture and others. Both nations and citizens of Indonesia.[14]

When we reflect on the reformperiod, there are social problems that come from the issue of SARA issues (ethnic, religious, racial and inter-group). The SARA issue is very sensitive and SARA's turmoil arises because of identity politics, which is actually used by a group of elites in influencing the public vote. Actually SARA conflict that comes from religion, is a setback for this nation, for example Sara disputes in Poso, Kupang, Sampit, Ambon and others that have occurred, this shows the lack of tolerance, mutual respect and respect. Humanity and civility in the second precept, should be a guide in people's lives. It is the duty of the Indonesian nation to constantly develop multiculturalism. Looking at the elements of multiculturalism that exist in our country, then we can conclude that so much diversity and differences, both ethnic, religious, racial , customs, social and economic factors. The elements of multiculturalism if it is not based on the values of Pancasila and also not encouraged tolerance, it will be prone to national divisions. For it to be our duty all Indonesian citizens to always control themselves by

[12] Teguh Prasetyo dan Arie Purnomosidi, *Membangun Hukum Berdasarkan* Pancasila, Bandung : Nuda Media, 2014, P. 34
[13] Tukiran, Muhammad Afandi, Efi Miftah Faridli, *Paradigma Baru Pendidikan Pancasila Untuk Mahasiswa*, Bandung : Alfabeta, 2014, P. 84
[14] Franz Magnis Suseno, esai, Mewujudkan masyarakat Pancasila Menuntut Mensukseskan Demokrasi, dalam Kearifan Lokal Pancasila Butir-Butir Filsafat Keindonesiaan, Yogyakarta : PT. Kanisius, 2015, P. 587

placing awareness that in life in society, nation and state, we should not be trapped in the interests of the group or groups and (identity politics). The public interest (nation and state) should be a priority in every decision making.

Seeking the unity of a plural society like Indonesia is not an easy matter. Since the beginning of the Republic, the founders of the nation are fully aware that *the nation building process* is an important agenda that must continue to be fostered and grown. Bung Karno, for example, build a sense of nationality by arousing nationalism sentiment that moves "an intention, a conviction of the people, that the people are one group, One Nation.[15] Indonesia is a multi-religious country, therefore Indonesia is said to be a country prone to disintegration of the nation to reduce inter-religious conflicts need to be created a tradition of mutual respect between existing religious communities. Respect means recognizing positively in the religion and beliefs of others also being able to learn from each other.[16]

Multiculturalism is a necessity that must be implemented by the Indonesian people. Acceptance of diversity and differences is the embodiment of the values of Pancasila. If we reflect on what happened during the session of the Preparatory Committee for Indonesian Independence (PPKI) on August 18, 1945, which on the agreement and the nature of the nation's founding fathers changed the first principle, by deleting seven words, the original redaction "carrying out the obligations of the Islamic company for its adherents", became " the Supreme God". This is the foundation that this nation is built on diversity / pluralism of tribes, religions, races, cultures, ethnicities and between groups. All that diversity should be a capital that can be used as a force in establishing the unity of the nation. So it is very relevant when multiculturalism develops in the state of Pancasila law.

As the basis of morality and national-state direction, Pancasila has a strong ontological, epistemological, and axiological Foundation. Setia sila has historical

[15] Ibid., P. 371
[16] Magnis Suseno dalam srijanti, Rahman, Purwanto, *Pendidikan Kewarganegaraan di Perguruan Tinggi, Mengembangkan Etika Berwarga Negara*, Jakarta : Salemba Empat, 2009, P. 45

justification, rationality and actuality, which if understood, lived, believed, and practiced consistently can sustain the great achievements of national civilization.[17]

C. Closing

Pancasila as the basic philosophy of the state and unifying the nation is a cornerstone in the diversity of tribes, religions, races and between groups. Pancasila as a moral and imperative ideology for citizens in the life of society, nation and state.It has become the consensusof theFounding Fatherss of the nation, to put aside the sentiments of primordialism and the interests of groups and groups, in order to realize an independent Indonesia based on Pancasila and the Constitution of the Republic of Indonesia in 1945. Bangsa Indonesia as a great nation with the motto 'Bhinneka tunggal Ika" must make multiculturalism as one of the sources of national strength. Therefore, multicultural principles in Society 5.0 as a modern society in the era of disruption with all advances in Information Technology must prioritize democracy, tolerance, mutual respect, mutual respect, and acceptance of all diversity.

BIBLIOGRAPHY

Books

J Kristiadi. 2011.*Local Wisdom Pancasila Philosophy Of Indonesian Grains*. Yogyakarta : PT. Canisius

Kaelan. 2002. *The Philosophy Of Pancasila Views The Life Of The Indonesian Nation*. Yogyakarta : Paradigm

_____.2010. *Citizenship Education For Higher Education*, Yogyakarta : Paradigm

Philippe Nonet, Philip Selznick.1978. *Law and Society in Transition : Toward Responsive Law*, New York

Srijanti, Rahman, Purwanto.2009. *Citizenship Education in college, Develop Etika BerwargaCivic Ethics*. Jakarta: Salemba Four

Teguh Prasetyo and Arie Purnomosidi. 2014. *Building Laws Based* On Pancasila. Bandung: Nuda Media

Tukiran, Muhammad Afandi, Efi Miftah Faridli. 2014. *New Paradigm Of Pancasila Education For Students*. London: Alfabeta

[17] Yudi Latif, *Negara Paripurna Historisitas, Rasionalitas, dan Aktualitas Pancasila*, Jakarta, PT. gramedia Pustaka utama, 2011, P. 42

Yudi Latif. 2011. *State plenary historicity, rationality, and actuality of Pancasila*, Jakarta: PT. Gramedia Pustaka utama,

Journal

Anissa Wika Alzanaa, Yuni Harmawati.*Pancasila Education As Education*

Multicultural.Journal of Pancasila and Citizenship. Vol 9, No 1 (2021) > Alzanaa accessed from http://e-journal.unipma.ac.id/index.php/citizenship/article/view/2370

Parsudi Suparlan.Multiculturalism. Journal. National Security. Vol 7 No. 1 (2002) accessed from https://jurnal.ugm.ac.id/jkn/article/view/22069/14727

Zaenal Abidin, 2016. Embed the concept of multiculturalism in Indonesia, the dynamics

Global Vol; 1 No.2 Retrieved from http://fisip.unjani.ac.id/e-jurnal/jurnal-hubungan-internasional/dinamika-global-vol-01-no-2/menanamkan-konsep-multikulturalisme-di-indonesia/

Franz Magnis Suseno.2015. *Creating a Pancasila society demands success Democracy*. Essay: Local Wisdom Pancasila Grains Philosophy Of Indonesia, Yogyakarta : PT. Canisius.

Internet

https://id.wikipedia.org/wiki/Multikulturalisme (diakses 1 Pebruari 2022)

https://www.makalah.co.id/2016/10/makalah-multikultural-lengkap.html, accessed on February 1, 2022 at 16.00 WIB

https://www.kompasiana.com/faqihmuhammad/552fbc786ea83463278b463e/multikulturalis me-and-democracy (accessed on February 1, 2022)

https: / / haloeducationcom/multiculturalism: definition, types and characteristics-HaloEdukasi.com (accessed 3 February 2022)

https://www.timesindonesia.co.id/read/news/197889/mengenal-society-50-transformasi-kehidupan-yang-dikembangkan-jepang (on Access, February 5, 2022)

ISSN 2985-5691