

International Collaboration Conference of Law, Sharia and Society (ICCoLaSS) 2022

Proceeding

Theme:
**The Configuration On Law, Sharia And Society
In Digital Era**

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Proceeding International Confrence On Law, Sharia And Society

Published by Shariah Faculty Of IAIN Kudus, Indonesia

📍 Addres Street Conge Ngembalrejo Bae Kudus

🌐 website :<http://proceeding.iainkudus.ac.id/index.php/ICCoLaSS/index>

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Implementation of Halal Certification (Study of Implementation of Law Number 33 of 2014 concerning Halal Product Guarantees)

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Abstract

The research aims to find out the opportunities and challenges with the implementation of halal certification after the issuance of Law No. 33 of 2014. This research was carried out using field research and legal research, with an exploratory approach. The results of the study show that the participation of MSME actors related to the implementation of halal certification is still low. Then the challenges faced by MSMEs with the existence of a halal certification policy, starting from: a) The halal certification policy places demands on business actors so that their products are halal certified; b) Requirements for completeness of documents that must be completed by MSMEs; c) The minimal capital that is owned and the lack of courage to project with loan capital makes business actors, especially micro-small, dependent on the government; d) Fulfillment of halal criteria related to how business actors prepare materials, products, production facilities, written procedures for critical activities, and traceability; and f) Paradigm of business actors: halal certification for companies with large turnover.

Keywords: *implementation, halal certification, Halal Products*

Abstrak

Penelitian bertujuan untuk mengetahui peluang dan tantangan dengan adanya penerapan sertifikasi halal setelah pengeluan UU No.33 Th 2014. Penelitian ini dilakukan dengan menggunakan jenis penelitian lapangan dan penelitian hukum, dengan pendekatan pendekatan eksploratoris. Hasil penelitian menunjukkan bahwa partisipasi pelaku UMKM terkait dengan pelaksanaan sertifikasi halal masih rendah. Kemudian tantangan yang dihadapi UMKM dengan adanya kebijakan sertifikasi halal, dimulai dari: a) Kebijakan sertifikasi halal memberikan tuntutan bagi pelaku usaha agar produknya tersertifikasi halal; b) Persyaratan kelengkapan dokumen yang harus dilengkapi UMKM; c) Modal yang minim yang dimiliki dan belum beraninya berproyeksi dengan modal pinjaman menjadikan ada ketergantungan pelaku usaha khususnya mikro-kecil kepada pemerintah; d) Pemenuhan kriteria halal terkait bagaimana pelaku usaha mempersiapkan bahan, produk, fasilitas produksi, prosedur tertulis untuk aktivitas kritis, dan kemampuan telusur; dan f) Paradigma pelaku usaha: sertifikasi halal bagi perusahaan yang beromset besar.

Kata kunci: implementasi, sertifikasi halal, Produk Halal

PENDAHULUAN

Indonesia has not been able to play an optimal role in fulfilling this demand. Given the state of the global Islamic economy, several potential opportunities for the development of halal products: halal food and beverages, Muslim tourism, modest Muslim fashion, media and recreation, pharmaceuticals and comics, and the Islamic financial system. In the 2018/2019 Global Islamic Economy Index, Indonesia was recorded as only being in 10th position as a producer of halal products in the world. The high demand for halal products in the world should be an opportunity for the halal industry in Indonesia.

The issue of certification and halal marking of products in the international trade system has received good attention within the framework of providing protection for Islamic consumers throughout the world, as well as as a strategy to challenge globalization competition with the implementation of the free market system in the face of ASEAN-AFTA, NAFTA, the European Economic Community and the Trade Organization International (World Trade Organization). The international trading system has long recognized halal provisions in CODEX which are supported by international organizations agreed between WHO, FAO and WTO (May Lim Charity, 2017: 100). Choosing halal logo products means consuming food and drinks that are guaranteed to be healthy. This makes producers of halal products and services increase the value of halal benefits from guaranteeing the quality of halal products. So this is what makes people believe in the quality of halal products. Thus, Islamic branding (Muhammad Nasrullah, 2015: 82) is proven to influence the decision to buy halal products (Aflit Nuryulia Praswati, 2017: 100)

The Indonesian government has responded positively to the importance of halal certification through several regulations. Halal certification and labeling is not only to save domestic consumers who will face the AEC, but also to increase the competitiveness of Indonesian halal product producers and exporters in the international market. Namely, Law No. 33 of 2014 which requires all production products to be certified halal. Moreover, starting from 17 October 2019, the government issued derivative regulations from Law No. 33 of 2014, namely PP No. 31 of 2019 concerning implementing regulations of Law No. 33 of 2014 concerning Halal Product Guarantees which provides strengthening of previous regulations, and starts actual implementation from what was initially voluntary to mandatory. Even though in PP no. 31 of 2019 provides a period of 5 years from its enactment.

Strengthening Law No. 33 of 2014 with PP No. 31 of 2019, its implementation gave rise to many polemics among stakeholders and industry players. Where there are challenges that must be faced and opportunities that can

be taken from implementing this mandatory halal certification policy. One of the obstacles for those who wish to apply for halal certification is that the standard costs set by LPPOM MUI which vary from 2.8 million rupiah to 3.7 million rupiah are relatively too expensive for small, medium or newly formed businesses. Because Small and Medium Enterprises (UKM) are under the responsibility of the Ministry of Cooperatives and SMEs, LPPOM MUI does not have an obligation to directly support SMEs to obtain halal certificates. Not only that, after the issuance of PP no. 31 of 2019, where certification is no longer completely carried out by MUI, but through BPJPH (Halal Product Guarantee Organizing Agency) changing the certification process which is possible to be much longer. Although some parties reject the “mandatory” aspect of halal product certification brought about by the JPH Law, the emergence of the global halal trend has brought us to a world where halal certified products can provide significant comparative advantages, especially when they compete (AKIM, 2019: 117).

Halal certification is one of the instruments that the government must pay attention to so that Indonesia is able to compete in the halal industry. Based on BPS data, there are around 57 million Micro, Small and Medium Enterprises (MSMEs) in Indonesia and the number of those that have halal certificates is still very small. Based on data from the Indonesian Ulema Council (MUI) as the institution authorized to issue halal certification, in the 2014-2015 period national halal certificates were issued for 6,231 companies and MSMEs. Considering that the JPH Law has a very broad target, from micro, small and medium enterprises (MSMEs) to large companies, BPJPH has the task of thinking of solutions to strengthen and prepare MSMEs to be ready to compete in facing the global market, so that they are no longer marginalized by global markets and products. Foreign halal will not dominate the domestic market.

This strengthening changes the stages of the certification process which requires more educational processes for industry players as well as stakeholder readiness. Certification remains a major challenge for the industry and one that must be addressed. Halal certification is a necessary operational step to meet Muslim needs, but it remains a challenging and complex process. Where the implementation of the mandatory halal certification policy has opportunities and challenges. What are the opportunities and challenges of Law No.33 of 2014 and PP no. 31 of 2019 needs to be explored to find the best steps from both industry players and related stakeholders.

RESEARCH METHODS

This research was conducted using a legal research research approach. The object of research is the enactment or implementation of the law studied in this research, which is related to the extent of implementation of PP No.31 of 2019 and

Law No.33 of 2014 concerning the Halal Product Guarantee Law which is the basis for the implementation of the new system for implementing halal certification from voluntary to mandatory. . This research will examine the challenges and opportunities for implementing this policy, both from the perspective of industry players and policy administrators. The problem approach used by the author is an exploratory approach. The exploratory approach aims to deepen knowledge about a particular phenomenon, or to get new ideas about that phenomenon. An exploratory approach is generally carried out on knowledge that is still new, there is not much information about the problem being studied, or even none at all (Amirudin and Zainal Asikin, 2012: 25). Exploratory qualitative research is generally qualitative research that tends to be more open to using various types of evidence and discovering new problems.

Research data sources are divided into two types, namely primary data sources and secondary data sources. In carrying out this research, it is necessary to use primary data as a basis for taking secondary data as support for the research. Primary data, namely data obtained directly from respondents on the object being studied and which is related to the object being studied. This data can be obtained directly from the field. In this research, the main data source was obtained from BPJPH-Kemenag Kudus, Kudus small and micro scale business actors. Secondary data is data that the researcher has not attempted to collect himself, for example from books, company or organization documents, newspapers and magazines, or other publications. The data collection techniques used are: Interviews, documentation and observation. The data collected was processed and analyzed using qualitative analysis with the following analysis stages:

- a) Data inspection (editing)
- b) Data Tagging (coding)
- c) Data Preparation/Systematization (constructing/systematizing)

RESEARCH RESULTS AND DISCUSSION

Halal Certification Procedure for MSMEs

The implementation of Law No.33 of 2014 (Halal Product Guarantee Law) which was also translated into PP No.31 of 2019 became the focus of concentration in research. Through the JPH Law, the government has implemented a public policy that halal certification is now mandatory for every product in circulation, as stated in Article 4 of the JPH Law: "Products entering, circulating and traded in Indonesian territory must be halal certified." (Law No. 33 of 2014 Article 4). With this implementation, there are many assessments regarding the urgency of halal certification as one of the government's instruments so that Indonesia is able to compete in the global halal industry in addition to acting as a legal umbrella (umbrella act) for consumer protection. In order to achieve this policy direction, it requires effective implementation in the field.

The procedures for processing halal certification for a product can be done online or offline, with the following stages (prasetyo interview, 2022):

- a. The process is for business actors to come to the Regency Ministry of Religion to register,
- b. Registration is accompanied by supporting evidence, including NPWP, data about the product, and if the business actor has a halal supervisor certificate, it can be included. Then the Ministry of Religion at the district level checks the complete forms from business actors,
- c. After the business actor registration files are complete, the files are then sent to the Ministry of Religion Provincial Regional Office (Kanwil) as the Provincial Task Force and Task Force Coordinator,
- d. Previously, the initial process from the Regional Office had to go to the Central BPJPH, and now the process from the Regional Office does not have to go to the Central BPJPH first. After the Regional Office is given the right to make a cover letter for business actors to then use to register with LPPOM,
- e. Through a cover letter, an audit and verification process is then carried out. The new recommended audit process of LPPOM as LPH (Halal Inspection Agency),
- f. After the LPH carries out an audit or verification, the LPPOM sends it to the MUI to get a recommendation for a Halal fatwa,
- g. After MUI sends it to BPJPH to issue a Halal certificate.

From the series of procedures above, it turns out that the level of participation of business actors in registering for halal certification, including MSMEs, is still very low. The low level of participation for halal certification opens the question of whether policy implementation is appropriate or whether there are inhibiting factors found in its implementation.

Response of MSME players to the Mandatory Halal Certification Policy

Since Law no. 33 Yr. 2014 effective October 17 2019, halal certification which was initially voluntary has become mandatory. Halal certification is a necessity for society as a whole, especially Muslims, to obtain legal certainty for products circulating on the market. The mandatory nature of the certification policy places the main demand on producers as parties producing products, who must take care of certification for their products.

Starting from this, researchers explored the responses of business actors to the mandatory halal certification policy. as one of the criteria for policy success, responsiveness refers to the extent to which a policy is able to satisfy the needs, preferences or values of certain groups of society. In other words, from the community's perspective, the success of a policy can be seen through its response to the implementation of the policy, be it a positive response in the form of support or a negative response in the form of rejection. Community

involvement is important in supporting the success of policies, especially business actors who are beneficiaries also have a demand to comply with them. In this case, researchers interviewed MSME owners, who stated "Strongly agree, I have already participated in certification. Maybe just because I'm not cooperative enough. There's only one step left. Because I used to send it to Semarang. I didn't (didn't) dare to go to Semarang in the end so I didn't (didn't) do it. "So I've done it before, but failed, I've been surveyed, actually just providing a photo is enough." (Interview, 2022) Apart from expressing positive responses, statements of participation from business actors show that there is community participation in following what is regulated by law. However, the participation of business actors cannot be used as a definite benchmark for the success of policy implementation. This is because there are still requirements and procedures to be followed, which may become obstacles. Another positive thing expressed by Mr. Sudarmaji, as a business actor, was providing identification of the obstacles he experienced, such as not fulfilling photo requirements and location constraints. His agreement also showed support for participating again, even though he had previously experienced failure.

The halal certification policy is a good step. Because basically the jenang business he is developing is a business that produces halal products using halal ingredients, including raw materials such as sugar, sticky rice, white sugar, palm sugar and coconut milk; also other additional ingredients such as aromas and flavors. Quoting research conducted by Khabib S. who stated (Khabib Solihin, 2020: 4) several consequences of sharia law that must be adhered to in realizing the sustainability of world life and religious life. As consumers, humans are obliged to prepare and search for or make other efforts to obtain halal and good food that will later be consumed. Meanwhile, producers must produce food that is halal and good so that it does not cause negative impacts and harm consumers. Through halal certification, business actors are encouraged to produce halal food as well as consumer protection. As we see the urgency of halal certification itself, it provides legal certainty regarding the availability of halal products as well as providing comfort, safety and protection for food products, beverages, medicines, cosmetics and consumer goods and services.

One of the positive things from business actors' responses is understanding the use of materials. Mrs. Ngalami added that the use of halal ingredients as a requirement is not an obstacle for her business. Furthermore, although the certification process does not only involve the use of halal materials, there are also other criteria such as products, production facilities, written procedures for critical activities, and traceability. Quoting research conducted by Sodiman, (Sodiman, 2018: 91) the above criteria are mandatory to meet halal standards.

This cannot be separated from halal standards, requirements and procedures that must be passed to obtain a halal certificate. In most countries with large

Muslim populations, it is often assumed that every food product produced in that country is halal, so halal certification is not really necessary. This could be one of the reasons why MSME entrepreneurs are not too enthusiastic about halal certification. However, business actors do not show any rejection of the policy of requiring halal certification. Considering that the time to realize the certification process is 5 years from 17 October 2019 to 17 October 2024 (for food and beverage products), and until 17 October 2026 (for other products), it is possible for MSMEs to postpone the process. Thus, adequate time does not necessarily guarantee that halal certification can be realized without massive efforts such as outreach, education on the urgency of halal certification, or facilities that help make it easier for MSMEs to go through all procedures and complete the required requirements.

Another response regarding this policy, Mr. Fathkah Sudarmaji added (interview, March 2022) that local agencies have widely promoted it as a halal product. MSMEs also find it easy to participate in various training. However, business actors revealed that there are still many obstacles experienced by MSMEs in general, such as: they have not met the requirements, there is still the word laziness from MSMEs themselves apart from the lack of facilities from the department. This is because without facilities, MSMEs still consider the following things, including costs during the certification process which are burdensome for business actors considering that most industries are only home industries with small capital and turnover. There are no basics for implementing the use of loan capital through bank financing, even though they have previously attended training. Because for business actors, not all MSMEs are able to grow big and emphasize that MSMEs need to be facilitated in various ways.

Business actors also convey their assessment of the halal certification policy, as follows; "I think that if there is any facilitation, I think the term MSMEs is actually a home industry that doesn't dare to have a lot of capital, in other words it doesn't dare to speculate. If there is someone who facilitates something like that, yes, I would like to follow. All that remains is for the government to be proactive in visiting or collecting data on who will be included in the training and then following up on the requirements. It's different if it's a big company, it's full of absolutes. If I measure the government's success, the requirements for halal certification are also listed, then the requirements for production that comply with national and international standards are successful depending on the government.

If these people just follow. Sometimes there is training and assistance is given, sometimes the assistance is not right, the specifications are different, for example, in the form of a machine but the specifications are different from what was expected, it doesn't match. Sometimes it's like that. If the government wants it, for example, to give machines to those who have machines, that might be very

important. It's been given before. But it's not standard. For example, the engine was given a diesel engine above, even though the diesel uses fuel, not yet later, in the end it wasn't used. In the end, I don't know if it was put there and then cannibalized or processed. If it's standard, now there are many standard ones. If I make it myself, it's not standard, it's only for mixers. If the standard can be raised, it can be lowered, there are individual cylinders. Returning to the problem of MSMEs in the Jenang sector, especially in Kaliputu residents, which are the center, so in essence these residents also want to compete, but usually they are constrained by space, if you are like me, you can't develop, ora iso tuku Tanah sing Luwih Jembar (can't buy more land)." (Interview, n.d, March 15, 2022)

Based on the results of the interview above, there are points conveyed regarding halal certification policies, namely;

1. MSMEs hope to be facilitated in every way
2. MSMEs do not dare to invest a lot of capital/speculate
3. The government is expected to be proactive and follow up on what is determined
4. Halal certification for large companies is an absolute requirement
5. Success depends on the government, business actors only carry out
6. The provision of assistance is different from what was expected
7. Limited space limits the fulfillment of halal criteria
8. MSMEs also want to compete

Apart from giving approval as explained previously, the existence of obstacles makes MSMEs have high hopes for being given halal certification facilities. Business actors also provide an assessment of the policy, that the halal certification policy with all the requirements/procedures that have been listed to become a production that complies with national standards and international standards can be successful depending on the government. Business actors just carry out things and the government is expected to be proactive and follow up on what has been determined. Through community participation and proactiveness from the government, it will provide more results and push towards policy direction.

Community involvement is important in supporting policy success. Moreover, when the community has a better understanding of the program's objectives and provides input. Primarily understanding the urgency of halal certification through established standards to encourage increased added value and competitiveness of Indonesian halal products at home & abroad; provide reciprocal benefits in international trade in halal products, as well as foster international cooperation in trade in halal products.

The statement that limited space limits the fulfillment of halal criteria, and that sometimes the provision of assistance is different from what was expected, shows that the community can identify the obstacles they face. Quoting Hayat's

explanation (<https://www.researchgate.net/publication/335788910>) that policies cannot be separated from community participation in their implementation. Society is not only the object of policy but a subject who has an important role in policy. Especially when the halal certification paradigm which is only for large companies, and is an absolute requirement for companies with large turnover, turns into a necessity for all business actors without exception. As stated in Article 4 of the JPH Law: "Products entering, circulating and being traded in Indonesian territory must be halal certified." (UU No. 33 of 2014 Article 4) whose substance is understood as well as the urgency and benefits of implementing the policy. And the spirit of MSMEs in competing is an important point as a driver for MSMEs to participate in order to realize increased added value and competitiveness as is the direction of policy.

Challenges and opportunities faced by MSMEs with the implementation of the mandatory halal certification policy after the issuance of Law No. 33 of 2014 and PP no. 31 Yr. 2019

In reality on the ground, even though the parties encourage effective implementation, the implementation of the mandatory halal certification policy for MSMEs in Kudus Regency still causes problems as discussed at the beginning of the chapter. However, it will be more meaningful and provide solutions to existing problems, if these problems are interpreted as a challenge that must be faced or even as an opportunity that can be exploited by business actors, in this case MSMEs, regarding the mandatory halal certification policy.

For this reason, we will analyze what challenges MSMEs must face and what opportunities MSMEs can take advantage of with the mandatory halal certification policy. The challenges that MSMEs must face are; First: The halal certification policy places demands on business actors to have their products certified as halal. The JPH Law has been legally implemented, meaning that all business actors, or all products in circulation must be halal certified, as stated in Article 4 of Law No.33 of 2014 and Article 2 paragraph (1) of PP No.31 of 2019. The policy also provides administrative sanctions for those who violate it as stated in Article 27 of Law No.33 of 2014. Meanwhile, PP UU No.31 of 2019 as an explanatory regulation or implementing regulation does not have a translation of sanctions. However, it is only explained in article 2 paragraphs 1-4 PP No.31 Th.2019, as follows; Products entering, circulating and traded in Indonesian territory must be halal certified. Products originating from prohibited materials are excluded from the obligation to be halal certified. Products as intended in paragraph (2) must be given a statement that they are not halal. Business actors are obliged to include a statement that they are not halal. on the Products as intended in paragraph (3).

In these four articles, the consequence is that every product must be

certified halal, and whether it has not been certified, whether it is not halal has not been explained in detail regarding this matter. Apart from that, this provision certainly puts pressure on business actors to register for halal certification. Where until the end of the phasing process there are provisions for the imposition of administrative sanctions for products that have not been certified halal, namely that business actors are subject to administrative sanctions, which can be in the form of verbal warnings, written warnings, administrative fines, or subject to publication through official BPJPH media. In the event that these administrative sanctions are not heeded, business actors are required to include information about whether they are halal. As stated by the Ministry of Religion, all products in circulation must be certified, whether halal or not, as required by law (Interview, n.d. 18 March 2022).

The second challenge is the problems that MSMEs must face in the halal certification process. Starting from the problem of not meeting the complete document requirements, which include business actor data (Business Permit or legality of the business being run and certified halal supervisor); names and types of products that do not violate or use names that are related to something that is haram; the list and materials used must be halal, whether raw materials, additional materials or auxiliary materials; halal product processing does not involve substances or processes that are haram; as well as halal guarantee system documents. The next challenge is due to the minimal capital they have and the lack of courage to project with loan capital, which results in the dependence of business actors, especially micro and small businesses, on the government. Costs during the certification process and its extension are quite burdensome for SMEs. Earning margins are thin and sometimes only meet daily needs and subsequent production capital. Even if the economic scale is too small, it is difficult to expect to be able to reduce costs to reach the point of long-term efficiency (Muh.Musawantoro, 2019).

Processes that are still manual and do not use online applications are also challenges for business actors. Perpetrators have to go back and forth to the office to arrange certification, especially if there are still deficiencies and lack of understanding regarding the requirements and flow of halal certification. The Ministry of Religion even revealed that there have been business actors who felt they were being diverted or the term was 'passed around' when processing halal certification. Initially, business actors register in the local district (Interview, n.d., 18 March 2022). Thus, perpetrators must be prepared and prepared for all possibilities that could occur due to a system that is still manual. Furthermore, the problem of fulfilling halal criteria is still an obstacle. Regarding how business actors prepare materials, products, production facilities, written procedures for critical activities, and traceability. In terms of the materials used, for example, companies must not only use goods that are halal according to the law, but must

also be proven by labels on the material packaging, unless they are original products from the initial supplier, such as chilies, onions, rice, etc. And the company explains the material matrix in each product.

The use of halal materials must also be accompanied by maintaining the cleanliness of production facilities. Such as the availability of a place to wash hands, the floor must be clean or at least 'plastered' (coated with cement) so that it does not touch the ground directly, there is a place to separate and not be mixed with anything haram or unclean. As stated by Mr. Fatkhah Sudarmaji, that "wanting to be labeled halal, even though it is halal but dirty, does not guarantee that it will pass" (Interview, n.d., 18 March 2022). However, the limitations of the Central BPJPH, but from the Central BPJPH it is directed to the Regional Office, when at the Regional Office, business actors are directed to the place owned by the business actor to run their business, which often hinders business actors from preparing (Interview, n.d., 18 March 2022). Spacious and adequate space makes it easier for business actors to organize and arrange production facilities to maintain cleanliness and to protect them from anything that is haram or unclean. On the other hand, narrow space makes production more difficult to keep clean, and also allows the use of containers/facilities at the same time for something that is haram or unclean, for example the use of random places for placing materials to be processed or the use of road alleys for placing processed products (Interview, n.d., 18 March 2022). So, the challenge for business actors is to use halal materials and be proven with a halal label, and production facilities must also maintain hygiene and cleanliness despite their limitations.

The next challenge is internal problems in MSMEs, which make them feel lazy and unenthusiastic about the policies being implemented. Closely related to how MSMEs are still waiting for facilities or encouragement from the government which makes MSMEs less motivated to be independent. Apart from that, there is also a lack of human resources (HR) owned by business actors, especially in capital, marketing or in product innovation and managerial matters. Such as the condition when the perpetrator can only wait for consumers to come to order, there is no outbound marketing or even selling to wholesalers to sell with their packaging and brand (Interview, n.d., 18 March 2022). In line with research from Bambang Suhardi, et al, it is not uncommon for business units that are still on a micro scale to only carry out production processes based on requests from customers (make-to-order) and also provide finished products which will be distributed every day to several outlets they own (make-to -stock) (Bambang Suhardi, 2019).

Apart from marketing, capital, innovation, internal problems in managerial matters also become challenges for business actors, especially on the micro and small scale. For example, in production management, business actors have challenges

how to design quality products, increase production capacity, streamline production processes and layout, optimize inventory, as well as people and work systems which often only rely on employees around their environment and cannot maintain employees as permanent employees. Furthermore, in financial management, business actors must be able to separate working capital from personal finances and carry out financial bookkeeping.

Meanwhile, business actors with large turnover, in this case large and medium scale companies, usually have good HR, marketing, finance and production managerial systems that are more focused and planned. Medium-scale companies have the motivation to see future business prospects, and the existence of opportunities and a secure and large market share and are generally more business-oriented (Tulus T.H., 2017: 6). Meanwhile, micro business actors tend to be more motivated to obtain increased income to meet their family's daily living needs, and small scale business actors are sometimes more realistic in looking at future business prospects with limited capital constraints. It cannot be denied that there is a paradigm for micro-small business actors, especially that halal certification is an absolute requirement for companies with large turnover. As stated by Mr. Sudarmaji; "If the turnover is large, then we might really need it" (Interview, n.d., 18 March 2022). Because of the limitations that business actors have, they feel lazy and not too enthusiastic about the policies being implemented.

Thus, the following are the challenges faced by MSMEs with the mandatory halal certification policy, starting from:

1. The halal certification policy places demands on business actors to have their products certified as halal,
2. Requirements for complete documents that MSMEs must complete,
3. Having minimal capital and not having the courage to project with loan capital means that business actors, especially micro and small businesses, are dependent on the government.
4. The process is still manual and does not use an online application,
5. Fulfillment of halal criteria related to how business actors prepare materials, products, production facilities, written procedures for critical activities, and traceability,
6. Internal problems in MSMEs include the lack of human resources which makes them feel lazy and unenthusiastic about the policies implemented (MSMEs are less self-motivated)
7. Business actor paradigm:
8. halal certification for companies with large turnover

Meanwhile, opportunities that business actors, especially MSMEs, can take advantage of with the mandatory halal certification policy are as follows; First: halal certification gives business actors comfort in running a business. Products that are halal certified will be preferred and enjoyed by consumers so that they can increase sales. This is because halal products are proven to be of high quality and very good for the health of the human body. As stated by the Ministry of Religion: "Logically, if we Muslims pay attention to the halalness of products, make sure we choose products that are halal certified" (Interview, n.d., 18 March 2022). Apart from business licensing in obtaining certification, business actors must also strive to fulfill halal criteria which include materials, facilities, traceability that proves halal and toyyiban. So, for business actors who have obtained a halal certificate, it means that the business they are running is legal, so they are safe and secure in carrying out their business (Interview, n.d., 18 March 2022).

Apart from these benefits, the second opportunity for a mandatory halal policy is that through certified products, MSMEs are able to compete with products produced by large companies. Makes it easier to market to supermarkets or to distributors/wholesalers and retail outlets. As well as encouraging business actors to export to international markets. As reported by Suaramerdeka.com, business actors who have obtained halal certification can easily enter malls and supermarkets (Saiful Annas, "Halal facilities boost the competitiveness of MSMEs", accessed via <http://puasmerdeka.com> on 27 April 2020). The halal certification policy provides encouragement for business actors to take advantage of the existing atmosphere to compete and develop their businesses.

Furthermore, through products that have been certified, there is a large market potential for business actors if they can be utilized by business actors. The halal food market is (Riaz., 2019: 67) one of the largest industrial parts in the world of the entire global food and agricultural industry. Moreover, currently the development of the real sector, in this case the halal product industry, has become a special concern for the government, this can be seen from the government's efforts to issue a legal framework for the development of the domestic halal product industry. MSMEs as the largest economic sector in Indonesia in quantity have great power to rise in strengthening the halal value chain. So that strengthening the MSME sector will directly strengthen the halal industry and encourage the achievement of key indicators or achievements, including equality, welfare (welfare effect), and also the nation's economic independence (Bappenas, Indonesian Sharia Economic Master Plan 2019-2024)

The next opportunity, training and halal certification facilities which are carried out as a form of strengthening the MSME sector, is an incentive for business actors to take care of halal certification. Through public education with various training and outreach

to become a halal product, the public, especially business actors, understand the urgency of halal certification. Providing facilities also motivates business actors to be motivated to take care of certification for their products. For this reason, the participation of business actors in every training or facility from other related agencies/parties provides openness for business actors in terms of business development, both capital and marketing, as well as maintaining product quality through halal certification. Apart from the lack of facilities provided and the lack of massive education regarding halal certification for MSMEs as explained previously, MSME participation whenever there is training or facilities is an opportunity for MSMEs to take advantage of in developing their business.

Business actors who have used halal materials from halal sources such as agricultural products, slaughtering according to Islamic law, processing to produce halal products also have the opportunity to participate in processing halal certification. This is because business actors have fulfilled important points as halal producers providing halal products for consumers. Furthermore, business actors prepare other equipment to meet the requirements and criteria set and if the business actor feels that there are no obstacles for the business actor to take part in certification, this also encourages business actors to take care of halal certification for their products. Thus, the following is an opportunity for a mandatory halal certification policy for MSMEs;

- a. Halal certification provides business actors with comfort in running a business,
- b. Through certified products, MSMEs are able to compete with products produced by large companies,
- c. There is a large market potential for business actors if business actors can exploit it,
- d. Halal certification training and facilities are carried out as a form of strengthening the MSME sector, to encourage business actors to process halal certification,
- e. Business actors who have used halal materials must then prepare other equipment

CONCLUSION

Based on the results of research and analysis, it can be concluded that the challenges faced by MSMEs with the mandatory halal certification policy, start from: 1) The halal certification policy places demands on business actors to have their products certified as halal; 2) Requirements for complete documents that MSMEs must complete; 3) Having minimal capital and not having the courage to project with loan capital means that business actors, especially micro and small businesses, are dependent on the government; 4) The process is still manual and does not use an online application; 5) Fulfillment of halal criteria related to how business actors prepare materials, products, production facilities, written

procedures for critical activities, and traceability; 6) Paradigm for business actors: halal certification for companies with large turnover. Opportunities that can be exploited by business actors, especially MSMEs, with the mandatory policy of halal certification, are as follows: halal certification provides business actors with comfort in running a business; the existence of a mandatory halal policy means that through certified products, MSMEs are able to compete with products produced by large companies; Through products that have been certified, there is a large market potential for business actors if they can be utilized by business actors; Halal certification provides business actors with comfort in running a business; Through certified products, MSMEs are able to compete with products produced by large companies; 5) There is a large market potential for business actors if business actors can exploit it; Halal certification training and facilities are carried out as a form of strengthening the MSME sector, to encourage business actors to take care of halal certification,

BIBLIOGRAPHY

- Aal Lukmanul Hakim, "Dissecting The Contents Of Law Of Indonesia On Halal Product Assurance", *Indonesia Law Review*, Vol. 5 No.1:88-103, 2015
- Afiq Dwi Cahyono, "Urgensi Penerapan Sertifikasi Halal Majelis Ulama Indonesia (MUI) terhadap produk UMKM (Studi di Kota Mataram)", *Jurnal Ilmiah, Mahasiswa Fakultas Hukum Universitas Mataram*, 2016.
- Aflit Nuryulia Praswati, dan Tulus Prijanto, "Measurement Moslem religion in consumer behavior", *Jurnal Ekonomi & Keuangan Islam*, Vol. 3 No. 2: 99-108. 2017
- AKIM, et.al, "The Shifting of Halal Certification System in Indonesia: From Society-Centric to State- Centric", *MIMBAR*, Vol. 35 No. 1st :115-126.2019,
- Amirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada, 2012)
- Anggit Listyoningrum, "Analisis Minat Beli Konsumen Muslim Terhadap Produk Yang Tidak Diperpanjang Sertifikat Halalnya", *Jurnal Studi Ekonomi dan Bisnis Islam*, Vol.3. Nomor 1. 2018.
- Anisa Cahaya Pratiwi, *Pencantuman Sertifikasi Halal Dalam Kemasan Produk Oleh Perusahaan Sebagai Bentuk Perlindungan Hukum Terhadap Konsumen Muslim (Studi Pada Pt Japfa Comfeed Indonesia Tbk. Cabang Lampung)*, Skripsi Mahasiswa Fakultas Hukum Universitas Lampung Bandar Lampung, 2016
- Bambang Sunggono, *Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada.1997)
- Burhan Ashshofa, *Metode Penelitian Hukum*, (Jakarta: Rineka Cipta, 2004)
- Global Islamic Economy Report 2018- 2019
- Imam Salehudin dan Bagus Adi Luthfi , "Marketing Impact of Halal Labeling toward Indonesian Muslim Consumer's Behavioral Intention" *ASEAN Marketing Journal* . Vol.III - No. 1, June 2011
- Lexi J. Meleong, *Metodologi Penelitian Kualitatif*, (Bandung: PT.Remaja Rosdakarya 2008)

- Ma'ruf Amin, *Fatwa Produk Halal Melindungi dan Menentramkan*, (Jakarta: Pustaka Jurnal Halal, 2010)
- Marzuki, *Metodologi Riset (Panduan Penelitian Bidang Bisnis dan Sosial)*, (Yogyakarta: Ekonisia, 2005)
- May Lim Charity, "Jaminan Produk Halal Di Indonesia (Halal Products Guarantee In Indonesia)", *Jurnal Legilasi Indonesia*, Vol. 14 NO. 01: 99 -108, 2017 PP No.31. Th.2019
- Suharsimi Arikunto, *procedure Penelitian Suatu pendekatan Praktik, Edisi Revisi*, (Jakarta: RinekaCipta, 2010)
- Syafrida, "Sertifikat Halal Pada Produk Makanan Dan Minuman Memberi Perlindungan Dan Kepastian Hukum Hak-Hak Konsumen Muslim", *ADIL: Jurnal Hukum*. Vol. 7 No.2, 159;174, 2015
- Tika, dan Moh.Pabundu, *Metodologi Riset Bisnis*, (Jakarta: Bumiaksara, 2006)
- Tulus T.H. *Tambunan. Usaha Mikro, kecil dan menengah*, (Ghalia Indonesia: Bogor. Cet.1. 2017)
- UU No.33 Th.2014
- W.Lawrence Neuman. *Metodologi Penelitian Sosial: Pendekatan Kualitatif dan Kuantitatif*. (PT Indeks: Jakarta, 2019)
- Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2011)
- Zumroh Najiyah, *Implementasi Kewajiban Pendaftaran Sertifikasi Halal dalam Pasal 4 UU No.33 Th 2014 tentang Jaminan Produk Halal (Studi Pada LPPOM Jatim dan Industri Makanan dan Minuman Kota Pasuruan)*, Skripsi Mahasiswa Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2016

Online Buying and Selling Agreements from an Islamic Law Perspective

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Abstract

Online business is a business activity carried out by business people, both business organizations and individuals, by utilizing electronic media. This research aims to find out about online shops (online business shops) from an Islamic perspective (Islamic law). This research is descriptive qualitative. This research includes literature to examine written sources such as scientific journals, reference books, literature, encyclopedias, scientific articles, scientific works and other sources that are relevant and related to the object being studied. The research object of this research is in the form of text or writing that describes and explains online businesses/shops (online shopping) which are becoming popular in Indonesia. Islam conducting business through online is permitted according to Islamic Sharia. Meanwhile there are elements of usury, injustice, monopoly and fraud. The Prophet indicated that buying and selling is legal according to the law when you like it (Antaradhin), for sale or through online business it has a positive impact because it is practical, fast and easy for the buyer. If online business does not comply with the terms and conditions described above, online business is not permitted.

Keywords: Online buying and selling, Business, Islamic Perspective

INTRODUCTION

Online shops or online businesses are now no longer something foreign to Indonesian people, whether they use the internet in their daily lives or not. The definition of an online shop is a process of purchasing goods or services from those who sell goods or services via the internet where the seller and buyer never meet or make physical contact, where the goods being traded are offered through displays with images on a website or virtual shop. After that, the buyer can choose the desired item and then make payment to the seller via the relevant bank account. After the payment process is received, the seller's obligation is to send the goods ordered by the buyer to the destination address.

Nowadays, many of the trade doors used are technology-based. Sophisticated technology allows both parties to penetrate the boundaries of distance, space and time. This breakthrough allows us to do business through cyberspace using the internet. According to Chrismastianto (2017), the increasingly rapid development of science and technology in the current digital era has influenced human behavior patterns in accessing various information and various electronic service features. One example is selling products online via the internet which is usually called E-Commerce. According to Aisyah and Achiria (2019) E-commerce is the distribution,

purchase, sale, marketing of goods and services via electronic systems such as the internet, television, www or network. other computers. Meanwhile, according to Darmawan and Aguspriyani (2019) the development of information technology not only covers social, political and cultural life but also has an impact on the economy, one of which is fintech, Fintech is an abbreviation of Financial and Technology where this is a technological innovation in financial services that can produce business models, applications, processes or products with material effects related to financial services.

Until 2020, there are many sites that provide online buying and selling services, such as bukalapak.com, shopee.com, zalora.com, berniaga.com, olx.co.id, utubuku.com, gojek, grab, maxim and etc. In business in the technology sector, apart from sites that provide services with various choices, it needs to be supported by advances in communication between sellers and buyers, support and service for consumers who use websites, e-mail, Blackberry, Messenger, Facebook, WhatsApp, Line, Telegram, Instagram and so on. Collaboration between service provider media and service communication media is an effort that cannot be rejected in the development era of globalization. The issues raised regarding online buying and selling, according to Jogiyanto (2008, 19), the issues chosen must be relevant, meaning issues that are currently occurring in the phenomenon, issues that are currently being discussed, issues that are in accordance with the field being researched and in accordance with what is desired by the use of research results. The aim is to facilitate communication between sellers and buyers. Based on the background outlined, researchers want to know the Islamic perspective on online buying and selling. Based on this description, this article is important to provide a solution to the problem of online buying and selling. This article at least examines how the Islamic legal perspective examines the contracts used in online buying and selling.

A search for previous research which is related to this research was carried out by Alif Ilham Akbar Fatriansyah with the title "Online Buying and Selling Business in an Islamic Perspective". The focus of this research study lies in Islam conducting business through online is permitted according to Islamic Sharia. Meanwhile there are elements of usury, injustice, monopoly and fraud. The Prophet indicated that buying and selling is legal according to the law when you like it (Antaradhin), for sale or through online business it has a positive impact because it is practical, fast and easy for the buyer. If online business does not comply with the terms and conditions described above, online business is not permitted (Fatriansyah, 2020).

Furthermore, research conducted by **Fajarwati Kusuma Adi** entitled "Perspective of Online Buying and Selling in the Perspective of Islamic Law and the Civil Code". This research outlines the legal conditions for buying and selling online. These conditions include the consent of qabul in the form of the action of clicking OK, mahallul aqd which is the object of the agreement which can take

the form of anything except haram goods, aqidain is the parties involved and maudu'ul aqd which means the purpose of the agreement. These four things are basically in line with the articles contained in the Civil Code which have been guided by the Indonesian people (Johari, 2018) .

The next research is Fajarwati Kusuma Adi's research entitled Perspective of Online Buying and Selling in the Perspective of Islamic Law and the Civil Code. Research shows that online buying and selling as a form of modern development should be adapted to Islamic law, namely the Al-Quran and Hadith and must be adapted to state law. especially in accordance with applicable laws and regulations, namely in accordance with Civil Code Article 1457 and Article 1458. Because of this basis, it is hoped that the seller and buyers carry out their buying and selling transactions well and in accordance with the applicable rules. Fraud and fraud can also be minimized. Sales can be done without distance and purchase constraints too become safer (Adi, 2021) .

Based on this research, it shows that this research provides a different definition of online buying and selling . In addition, previous research only provides descriptions of events. Meanwhile, this research examines muamalah contracts related to buying and selling based on sharia. It is hoped that the results of this research can contribute to all levels of society as well as local government authorities in responding to facts occurring in society.

RESEARCH METHODS

This research is included in the type of qualitative research, namely research that aims to understand the phenomena experienced by research subjects holistically, and by means of descriptions in the form of words and language, in a special natural context using various natural methods. Researchers also use a normative approach, namely using Islamic legal theory which is based on the values in the Al-Qur'an and as-Sunna h.

DISCUSSION

Buying and Selling in Islam

Trading or buying and selling linguistically means al-mujilah (mutual exchange). Buying and selling is the exchange of objects for other objects by means of mutual blessing or transferring ownership rights along with a replacement in a permitted manner. According to Fitria (2017) buying and selling is an activity of exchanging goods for other goods using certain procedures, whereas according to Shabiran and Herwanti (2017) every Muslim can earn a living by buying and selling, but this method must be a lie, it must not cause harm. public interest, free to choose and real. In Syaifullah's (2014) explanation, property and ownership rights are emphasized, because there is an exchange of assets that do not have to be owned, such as renting (MAGHFUROH, 2020) .

Buying and selling transactions are activities that are permitted in Islam, whether mentioned in the Al-Qur'an, Al-Hadith or the consensus of the ulama. According to the drafting team, Al-Qur'an Surah Al-Baqarah: 275 "

Even though Allah has permitted buying and selling and prohibited usury ". Furthermore, QS An-Nisa: 29 " O you who believe, do not devour each other's wealth in a false way, except by means of commerce which is carried out with both of you ."

And it has been explained in the Hadith of Rasulullah SAW "it was mentioned from 'Adda' bin Khalid, he said: Prophet Muhammad SAW wrote to, "This is what Muhammad Rasulullah SAW bought from 'Adda bin Khalid, buying and selling between fellow Muslims, without any defects. and damage." Qatadah bless, lafadz gai'lah means adultery, theft, and a slave who runs away from his master." It was said to Ibrahim, "In fact, some animal and slave traders call Arriya Khurasan and Sijitan, they say yesterday they came from Khurasan, or today they come from Sijitan. "So he really didn't like that action." 'Uqbah bin 'Amir said "it is not halal for someone to sell goods that are known to have defects unless he informs them". According to Huda (2012:54) the ulama have agreed regarding the permissibility of buying and selling contracts. This ijma' provides wisdom that human needs are related to something that is in the possession of another person, and ownership of something will not be given just like that, but there must be compensation in return. So that the law of buying and selling is one way to realize human desires and needs, because basically, humans will not be able to live alone without contact and help from other people (Qanita An Nabila A'yun, Nafisah Maulidia Chusma, Cindy Nurul Aulia Putri , 2021) .

Online Buying and Selling Agreement via e-commerce according to Islamic Law

Online buying and selling is an activity where the seller and buyer do not have to meet each other to carry out negotiations and transactions directly, then what is used by the seller and buyer to communicate online, the seller and buyer need a third party to carry out the delivery of goods which is carried out by the seller and the delivery person. money is made by the buyer (Runto Hendiana, 2015) .

Like buying and selling above, we can also buy and sell online through a form or online buying and selling system which provides many items for buying and selling. Not only that, to make transactions smooth and secure, it's a good idea to use a third service to store our money safely. Online buying and selling also has a positive impact because it is considered practical, fast, easy and cheap. Online buying and selling activities are starting to develop in internet forums, especially online buying and selling forums such as LAZADA Indonesia, Shopee, Tokopedia, Bukalapak, etc. (Salim, 2017) .

The contract in online buying and selling in transactional language (akad) is used as a meaning, which only goes back to the form of a bond or relationship between two things, namely *As-Salam* or also called *as-salaf*,

which is a term in Arabic which means "surrender". The meaning of *salaf* in general is something that comes first. In this context, buying and selling *salam/salaf* where the price/money comes first, while the goods are delivered later can also be stated as financing where the buyer is required to pay a certain amount of money for delivery of the goods (Retno Dyah Pekerti, 2018) . Or in other words, payment in *greeting transactions* is made up front. According to maxmanroe.com, in online buying and selling, there are 3 types of transactions that are generally carried out by Indonesian people, namely (Tho'in, 2016) :

- 1) Interbank transactions are the most common and popular type of transaction used by online sellers. Apart from being quite easy, this type of transaction also makes the confirmation process easier because the funds can be quickly checked by the recipient of the funds/seller.
- 2) Cash On Delivery or (COD), actually still adheres to the old method, namely by meeting between the seller and the buyer. Usually this transaction system is carried out in person-to-person buying and selling and in general COD is used for merchandise, because the buyer must carefully check the condition of the goods.
- 3) Transactions using a joint account or what is called escrow. This payment method is slightly different from the process via bank transfer, because it uses a third party as the trusted recipient of the money or what is called a gutter system.

Social Media Based Online Sales in Islamic Economics

Online sales are a type of buying and selling transaction that uses internet media for sales, which is currently mostly done based on social media such as Facebook, Twitter and various other social media to market the products they sell (Estijayandono, 2019) . Currently online sales are one type of transaction that is widely used in buying and selling. Then what is the Islamic economic perspective in looking at online sales which has now become a very common thing to do in buying and selling transactions, especially for online sales based on social media? As is known, there are four pillars of a contract, namely: There are parties to the contract, *Sihgah* or *ijab qobul*, *Al-ma'qud* or the object of the contract, the main objective is carried out.

The parties involved in online sales are clear, namely there are those who act as sellers and buyers. *Sihgah* in online sales usually takes the form of terms and conditions that must be agreed to by consumers. The terms and conditions that must be agreed to are terms and conditions that must be understood by both producers and consumers. In online sales, the form of *sighah* that is done is by writing. For example, if we buy a program via a smartphone (gadget), there will be a choice that the consumer has read and agreed to the rules and agreement made. These agreed terms and conditions are a *sighah* that must be understood by both producers and consumers in

online sales. Likewise, if we make a transaction using social media, the seller must write down what terms and conditions are included in the transaction, so that there is openness between the seller and the buyer.

Then the third pillar of the contract is the object of the contract in the transaction. In online sales, the object of the contract must be clear and the goods must be perfect, not owned by the seller, not imperfect goods. This aims to prevent fraud by the seller. Online sales must clearly write various specifications of the goods being sold, including any shortcomings of the goods, if any. The last pillar of the contract is that the purpose of the contract must be in accordance with the Shari'a. So online sales cannot sell goods that are not in accordance with sharia. For example, selling babies online, as happened on a buying and selling site some time ago, or a weapons and drug sales site. This form of example transaction is not permitted because it conflicts with sharia rules (Sriayu Aritha Pangabebean, 2022) .

Regarding the pillars of the contract, online sales, whether based on social media or other media, are prohibited if they meet the following criteria: The system is haram, for example the sale of online gambling, The goods or services offered by the buyer are goods or services that are prohibited by Islamic law , There are violations agreement or the occurrence of elements of fraud. This often happens in social media-based online sales, where the goods offered on social media are often different from the goods received by consumers. If there are indications of an element of fraud, then this form of buying and selling is haram (Astuti, 2018) .

The forms of sale and purchase transaction contracts that can be adopted in online transactions are bai' al-murabahah (murabahah) and bai' al-salam (greetings). First, Bai' al-murabahah is the sale and purchase of goods at the original price with additional agreed profits. In bai' murabahah, the seller must notify the price of the product purchased and determine a level of profit in addition, at this time this is the sale and purchase contract product that is most widely used, because this is the easiest practice to implement compared to other financing products (Rohman, 2020) .

Murabahah is a sale and purchase agreement for goods stating the acquisition price and profit (margin) agreed upon by the seller and buyer. This contract is a form of natural certainty contract, because in murabahah it is determined what the required rate of profit is (the profit you want to obtain). Because in the definition there is an "agreed profit", the characteristic of murabahah is that the seller must inform the buyer of the purchase price of the goods and state the amount of profit added to the cost. The amount of the selling price must be mutually agreed upon by both parties, so that a transaction occurs between the seller and the buyer (Muhammad Yunus, Fahmi Fatwa Rosyadi Satria Hamdani, 2018) .

For example, Ahsan bought a cell phone for 500 thousand rupiah, the costs incurred were 50 thousand rupiah, so when offering his cell phone, he said: "I sold this cell phone for 750 thousand rupiah, I made a profit of 200

thousand rupiah." The pillars of the murabahah contract that must be fulfilled in the transaction are:

- a) The contract actor, namely the bai' (seller) is the party who has the goods to be sold, and the musytari (buyer) is the party who needs and will buy the goods
- b) The object of the contract, namely mabi' (merchandise) and thaman (price)
- c) Sighah, namely consent and qabul.

The conditions for Bai' al-murabahah are: The seller must notify the customer of the capital costs, The first contract must be valid in accordance with the established pillars, The contract must be free from usury, The seller must explain to the buyer if defects occur in the goods after purchase, The seller must convey all matters relating to purchasing. In principle, if conditions (1), (4), or (5) are not met, the buyer has a choice: to continue the purchase as is; return to the seller and express disagreement with the goods sold and cancel the contract (Samawi, 2020) .

Bai' al-murabahah provides many benefits to sellers. One of them is the profit that arises from the difference between the purchase price from the seller and the selling price to the customer. Apart from that, this system is also very simple, making it easier for sellers to handle administration. This is one of the reasons why the bai' al-murabahah contract can be used in social media-based online sales. One thing that consumers need to avoid is if there are sellers who offer products whose prices are far below market prices. For example, there is a party offering to sell smartphones or tablets which, if we buy them on the market, is around five million, then they are offered for only one million. A price difference that is too large could indicate the possibility of fraud in the sales transaction. However, if there is a price difference that is still within reasonable limits, then the transaction is still permitted. Several things can be the reason why often online sales based on social media can be more profitable than conventional direct sales:

- Cost savings occur, because the funds initially allocated for renting shops/kiosks can be allocated to add more goods.
- Wider network coverage.
- Minimize promotional costs.
- The influence of word of mouth.

The second thing that might be used in online sales, especially those based on social media, is bai' salam. Bai' salam means purchasing goods that are delivered at a later date, while payment is made at the beginning of the transaction. The goods being traded are not yet available at the time of the transaction and must be produced first, such as agricultural products and fungible products (goods that can be estimated and replaced according to weight, size and quantity) etc. Non-fungible items such as precious stones, valuable paintings, which are rare items cannot be used as greeting objects. The risk of the goods being traded remains with the seller until the time the

goods are delivered. The buyer has the right to examine and can reject the goods that will be delivered if they do not comply with the initial agreed specifications (Trisna Taufik Darmawansyah, 2020) .

Buying and selling salam is permitted by Rasulullah SAW with several conditions that must be met. The main aim of buying and selling salam is to meet the needs of small farmers who need capital to start planting and to support their families until harvest time arrives. Usury is prohibited, they can no longer take usury loans for this purpose so they are allowed to sell their products in advance. Greetings are beneficial for sellers because they receive payment in advance. Salam is also beneficial for buyers because generally the price with a greeting contract is cheaper than the price with a cash contract. Online sales, especially those based on social media, have several benefits for both buyers and sellers, namely:

- a) Opening hours are 24 hours, by using online sales sellers can sell various products 24 hours a day. This is different from conventional sales which may only have time, for example from 9 am to 10 pm. So this will provide benefits to both sellers and buyers who need a product
- b) It is easier and faster to find various kinds of products needed by buyers
- c) The price comparison process is easier and faster to carry out. Through online sales, potential buyers can compare prices on various types of goods offered more easily and quickly
- d) Easy to implement by anyone. Often one of the reasons people are reluctant to sell face to face is related to their lack of confidence when dealing with buyers directly
- e) Cheaper investment. Through social media-based online sales, sellers do not need to spend large investment funds to rent shops/outlets and hire employees.

Apart from the advantages of online sales, especially those based on social media, there are several weaknesses that arise from online sales, namely: Buyers cannot cash and carry the products they buy, buyers cannot pay attention to the details of the products they want to buy, p. This is one of the advantages of direct (conventional) sales where buyers can pay attention to the details of the product they are going to buy. (Destiya Wati, Suyudi Arif, 2022)

There are several problems that may arise in social media-based online sales, namely: Uncertain product quality. Because potential buyers cannot pay attention to the details of the product they want to buy, the quality desired by the potential buyer may result in deception from the seller. This is one of the problems that may arise on social media, namely the existence of offers of goods that want to deceive buyers, for example by offering a set of smartphones at a discount of more than 50% compared to market prices, the

potential for deceiving buyers. Apart from sellers, potential buyers can also appear

The only sales method used by sellers is to use online social media as the spearhead of sales. In this case, sellers utilize various social media which are used to sell online various products that they want to offer to potential buyers. If the seller only uses social media as the only sales method, then the seller must be diligent in always updating or re-posting the various displays being offered, this is so that potential buyers can continue to remember the products offered by the seller. Online sales as a supporting method for sellers. In this second case, the seller has a physical shop/outlet which is used to display the products offered so that potential buyers who are not sure about the appearance on social media can directly visit the physical shop/outlet, online sales as a support or sales method used to expand network coverage.

CONCLUSION

The development of contemporary buying and selling transactions no longer relies solely on face-to-face sales. Contemporary buying and selling transactions, along with technological developments, have given rise to other forms of sales, namely on-line sales. On-line sales are a form of sales that utilize technology such as smartphones, tablets, gadgets, and those that utilize the internet network. Online sales have fulfilled the pillars of contract in sharia rules, namely a) there is a seller and a buyer b) sighthah or ijab qabul has been fulfilled where consumers must agree to the written terms and conditions if the transaction process is to continue c) the object of the contract in on-line sales must be clear specifications d) the purpose of the contract must not conflict with sharia. The forms of transaction contracts that can be adopted in online sales are bai al-murabahah and bay al-salam. Bai' al-murabahah is the sale and purchase of goods at the original price with additional agreed profits. Meanwhile, bai' al-salam means purchasing goods that are handed over at a later date, while payment is made at the initial time the transaction is carried out. There are several advantages of online sales, namely: a) opening hours which can be 24 hours b) easier and faster to find and sell goods c) easy and fast price comparison process d) easy to implement by anyone e) cheaper investment.

Apart from the advantages, there are several problems that may arise in on-line sales, namely: a) uncertain product quality b) potential for deception from sellers c) potential for deception from buyers, so in on-line sales it is necessary to do several things that can be done to minimize these various problems, including: a) In online sales, the appearance and specifications of the goods being sold must be fully displayed b) An additional contract must be added in the form of the right to choose (khiyar) for the buyer if it turns out that the goods received have different specifications from the that is displayed in the advertisement c) Using secure payment media, this aims to protect both the buyer and seller.

BIBLIOGRAPHY

- Adi, F.K. (2021). Perspective of Online Buying and Selling in the Perspective of Islamic Law and the Civil Code. *Lishabab* , 2 (1).
- Antonio, M. Syafii. Sharia Banking: Theory and Practice. Jakarta: Gema Insani Press, 2001.
- Al Arif, M. Nur Rianto. Basics of Islamic Economics. Surakarta: Era Intermedia, 2011.
- Al-Bugha, Musthafa Dib. Sharia Transaction Smart Book. Jakarta: Hikmah, 2010
- Desy Safira, Alif Ilham Akbar Fatriansyah AL YASINI: Journal of Study and Research Results in the Field of Islam and Education Accredited by the Ministry of Research, Technology and Higher Education Vol. 5 No. May 1, 2020 pp. 58-64
- Astuti, D. (2018). Public Perception of Online Buying and Selling Agreements from a Sharia Economic Perspective. *Syarikat: Journal of Sharia Science Group* , 1 (1), 26.
- Destiya Wati, Suyudi Arif, AD (2022). Analysis of the Application of Islamic Business Ethics Principles in Online Buying and Selling Transactions at Humaira Shop. *Al- Mal: Journal of Economic and Business Studies* , 3 (1).
- Estijayandono, KD (2019). Online Buying and Selling Business Ethics in an Islamic Perspective. *Journal of Sharia Economic Law* , 3 (1).
- Fatriansyah, AIA (2020). ONLINE BUYING AND BUYING BUSINESS FROM AN ISLAMIC PERSPECTIVE. *Al Yasini: Islamic, Social, Legal and Educational Journal* , 5 (1).
- Johari, E. (2018). Online Buying and Selling from an Islamic Law Perspective. *Sehasen Law Journal* , 2 (1).
- M. Nur Rianto Al Arif Ijtihad, Journal of Islamic Law and Humanitarian Discourse, Volume 13, No. 1, June 2013: 33-48
- MAGHFUROH, W. (2020). Online Buying and Selling in Islamic Law. *Ahwal Syakhsiyah Scientific Journal* , 2 (1).
- Muhammad Yunus, Fahmi Fatwa Rosyadi Satria Hamdani, GKS (2018). FIKIH MUAMALAH'S REVIEW OF SALE AND PURCHASE AGREEMENTS IN ONLINE TRANSACTIONS ON GO-FOOD

APPLICATIONS. *Amwalun: Journal of Sharia Economics and Finance* , 2 (1).

Qanitah An Nabila A'yun, Nafisah Maulidia Chusma, Cindy Nurul Aulia Putri, FNL (2021). Implementation of Islamic Business Ethics in Online Buying and Selling Transactions in Popular E-Commerce in Indonesia. *Darussalam Islamic Banking Journal* , 2 (1).

Retno Dyah Pekerti, EH (2018). Online Buying and Selling Transactions from the Sharia Perspective of the Ash-Shafi'i Madzhab. *Journal of Economics, Business and Accounting* , 20 (2).

Rohman, H. (2020). *Online Buying and Selling Law* . Media Publishing Ambassador.

Runto Hendiana, ADA (2015). ONLINE SELLING AND BUYING TRANSACTIONS ISLAMIC ECONOMIC PERSPECTIVE. *Al Mumtaz: Journal of Sharia Economic Law Research (Muamalah)* , 3 (2).

Salim, M. (2017). ONLINE BUYING AND BUYING ACCORDING TO THE VIEW OF ISLAMIC LAW. *Al Daulah: Journal of Criminal Law and State Administration* , 6 (2).

Samawi, ML (2020). Review of Islamic law regarding online buying and selling. *Ad-Deenar: Journal of Islamic Economics and Business* , 4 (1).

Sriayu Aritha Panggabean, AT (2022). Online Buying and Selling from the Perspective of Islamic Law and State Law. *Jesya: Journal of Economics and Sharia Economics* , 5 (2).

Tho'in, M. (2016). Prohibition of Usury in Text and Context (Study of Hadith from Muslim History Concerning the Implementation of Usury. *Scientific Journal of Islamic Economics, LPPM STIE AAS Surakarta* , 2 (2).

Trisna Taufik Darmawansyah, MP (2020). As-Salam Agreement in the Online Buying and Selling System (Case Study of Online Shopping on Lazada.co.id). *Aghniya Journal* , 3 (1).

DIALECTICS OF LEGISLATION AND MAQASID SYARI'AH IN THE NARRATIVE OF IDDAH AND IHDAD FOR CAREER WOMEN

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Abstract

This paper discusses the concepts of ihdad and iddah for career women from the perspective of well-known scholars through the teachings of ijihad which are manifested in fiqh. The meaning of iddah and ihdad which emphasizes refraining during the idah period from decorating and wearing perfumes for wives who are divorced due to death or divorce which has been carried out since pre-Islamic times. The times and technological sophistication have opened new horizons, marked by corrections and formulations of applicable, adaptive, and humanist conceptions of fiqh for the present. The conceptions of ihdad and iddah for self-restraint, isolation and contemplation generally clash with current facts concerning the position of career women who demand extra work to meet the necessities of life. This demand requires women to always look attractive and maintain interactions with anyone, including the opposite sex and must be active outside the home to support finances and careers. Through the maqasid ash-shari'ah approach the author tries to unravel the two poles above so that the concept of fiqh can still be applied in the present era without negating individual and social rights. The results of this study indicate that ornamentation is considered an intermediary that can lead to an encouragement in the form of a marriage goal during the iddah period, which if the main purpose of ihdad can be eliminated by reasoning and emergency arguments, then the law of intermediary follows.

Keywords: *Ihdad, Iddah, Career Women, Preening, Divorce*

Abstrak

Tulisan ini membahas tentang konsep ihdad dan iddah bagi wanita karier dalam kacamata ulama masyhur melalui ajaran ijihadnya yang termanifestasikan dalam fikih. Makna iddah dan ihdad yang menekankan pada menahan diri selama masa idah dari berhias dan memakai wangi-wangian bagi istri yang dicerai karena kematian atau ditalak yang telah dijalankan sejak masa sebelum Islam. Perkembangan zaman dan kecanggihan teknologi telah membuka cakrawala baru, ditandai dengan adanya koreksi serta perumusan konsepsi fikih yang aplikatif, adaptif, dan humanis untuk masa sekarang. Konsepsi ihdad dan iddah untuk menahan diri, isolasi dan berkontemplasi secara umum berbenturan dengan fakta kekinian menyoal posisi wanita karir yang menuntut bekerja ekstra untuk memenuhi kebutuhan hidup. Tuntutan ini mengharuskan wanita selalu berpenampilan menarik serta menjaga interaksi dengan siapapun, termasuk lawan jenis serta harus beraktifitas di luar rumah untuk menunjang finansial dan karirnya. Melalui pendekatan maqasid ash-shari'ah penulis mencoba

mengurai dua kutub di atas sehingga konsep fiqh masih dapat diaplikasikan di era kekinian tanpa meniadakan hak-hak individu dan sosial. Adapun hasil dari penelitian ini menunjukkan bahwa berhias dianggap perantara yang dapat menimbulkan dorongan berupa tujuan pernikahan pada masa iddah, yang jika tujuan utama ihdad dapat dieliminir dengan argumentasi hajat dan darurat, maka hukum perantara mengikuti.

Kata Kunci: Ihdad, Iddah, Wanita Karier, Bersolek, Talak

Introduction

Pre-Islamic Arab society had implemented legal practices known as iddah and ihdad which meant refraining during the iddah period from adorning and wearing perfume for wives who were divorced due to death or divorce. In practice, women who have just died from their husbands or even other family members must isolate themselves in a separate room for a whole year. During this period of exile, women are not allowed to wear perfume, cut their nails, comb their hair and change clothes. If illustrated in a hadith, the body odor of the woman who had ihdad was so bad that no one dared to approach her. If he leaves the room, the crows will immediately attack him because of the stench he emits (Susilo, 2016).

In this regard, Islam is present in an effort to regulate this practice fairly by determining and reducing the periods of iddah and ihdad which have been carried out since pre-Islamic times. However, as times have developed which have resulted in differences in the social conditions of society between the past and the present, with the future with technological sophistication opening new horizons, there are corrections and formulation of applicable, adaptive and humanistic conceptions of jurisprudence for the present. Iddah and ihdad in practice require women to avoid social interactions and activities that can attract the attention of men, such as dressing up, making decorations, and so on because they are considered to be an intermediary for marriage during the iddah period, which is prohibited by law. This is in direct conflict with the current facts about career women which require women to work extra to make ends meet.

This demand requires women to always look attractive and maintain interactions with anyone, including the opposite sex, and must carry out activities outside the home to support their finances and career. Two facts regarding the clash of classical fiqh concepts with contemporary conditions, which in this case are career women, are the object of interesting discussion to find a solution through the lens of maqasid ash-shari'ah so that the concept of fiqh can still be applied in the contemporary era without eliminating individual rights and social.

METHODOLOGY

This research was conducted using a legal research research approach. The object of the research is the enactment or implementation of the law studied in this research, which is related to the extent to which legislation and maqasid shari'ah are implemented in the narrative of iddah and ihdad for career women. This research will examine the challenges and opportunities for implementing this policy well. The problem approach used by the author is an exploratory approach. The exploratory approach aims to deepen knowledge about a particular phenomenon, or to get new ideas about that phenomenon. An exploratory approach is generally carried out on knowledge that is still new, there is not much information about the problem being studied, or even none at all (Amirudin and Zainal Asikin, 2012: 25). Exploratory qualitative research is generally qualitative research that tends to be more open to using various types of evidence and discovering new problems.

DISCUSSION

Iddah and its Scope

According to language, the word Iddah comes from the word al-'adad. Meanwhile, the word al-'adad is the masdar form of the verb 'adda-yauddu which means to count. The word al-'adad means the measure of something that is counted and the amount. The plural form of the word al-'adad is ala'dad as well as the plural form of the word Iddah is al-'idad. Etymologically, it means: "to count" or "calculation". This word is used to mean Iddah because during that period the woman who is performing Iddah is waiting for the time to come into effect (Amir, 2006)

The definition of Iddah in terms, many scholars give various meanings, such as Muhammad al-Jaziri gives the understanding that iddah is a woman's waiting period which is not only based on her menstrual period or purity but sometimes also based on the number of months or by giving birth and during During this period, a woman was prohibited from marrying a man (Rahman, 1969). A not too different understanding was also expressed by Sayyid Sabiq that Iddah is a name for the period of time a woman (wife) waits and is not allowed to marry after the death of her husband or after being separated from her husband. These two ulama's understandings slightly coincide in emphasizing the waiting period and the provisions for marriage during this waiting period (Sabiq, 1969). Apart from the two opinions above, there is also an opinion that Iddah is Abu Yahya Zakariyya al-Ansari giving the definition of Iddah as the waiting period for a woman to know the purity of the womb or for ta'abbud (worship) or for tafajju' (condolences) towards her husband (Abu Yahya, 1998).

Based on the definition above, it can be concluded that the waiting period set for women after the death of their husband or the dissolution of their marriage is either based on their menstrual or holy periods, the number of months or by giving birth to determine the purity of the womb, worship (ta'abbud) and condolences for husband, During this period women (wives) are prohibited from marrying other men. Meanwhile, according to the Big Indonesian Dictionary, there is a waiting period (not yet allowed to marry) for women

who are separated from their husbands, either due to divorce or divorce (Persero, 2018). Iddah from the perspective of Salaf Jurisprudence, the word Iddah is a derivation of the word al-'adad which comes from the verb "adda-ya'uddu" which means more or less (calculation, calculation or something that is calculated) (Zayn, 1996). The use of this word in fiqh is because the meaning of this word contains the meaning of count or sacred number or menstruation. Meanwhile, there are several different editorial definitions of shara'. According to the ulama' Shafi'iyah: "The waiting period is used by women (widows) to find out the emptiness of the uterus, devotion to Allah and condolences for the death of the husband." Meanwhile, according to the Hanafiyyah ulama: "The waiting that women (widows) must do when a marriage breaks up or the like" According to another Hanafiyyah ulama: "The name for a period used to spend whatever remains as a result of marriage." According to the Malikiyyah ulama' as expressed by Ibn ar-Rif'ah: "The period that prevents marriage is due to the breakdown of the marriage, the death of the husband or the husband's divorce" (Edy, 2016).

Iddah in Legal Aspects and Its Types

Iddah dalam Sistem Hukum Indonesia

1. Compilation of Islamic Law

The Compilation of Islamic Law regulates iddah issues, including Articles 153, 154 and 155, namely:

- a. For a wife whose marriage breaks up, a waiting period or iddah applies, except qobla al dukhul and the marriage breaks up not because of the husband's death.
- b. The waiting time for a widow is determined as follows:
 - If the marriage is dissolved due to death, even if qobla al dukhul, the waiting period is set at 130 (one hundred and thirty) days:
 - If the marriage is broken up due to divorce, the waiting time for those who are still menstruating is set at 3 (three) sacred times with at least 90 (ninety) days, and for those who are not menstruating it is set at 90 (ninety) days;
 - c. If the marriage breaks up due to divorce and the widow is pregnant, the waiting period is determined until the birth;
 - d. If the marriage is dissolved due to death, and the widow is pregnant, the waiting period is determined until the birth.
- c. here is no waiting time for those who break up their marriage due to a divorce between the widow and her ex-husband qobla al dukhul.
- d. For marriages that are dissolved due to divorce, the waiting period is calculated from the date of the decision of the Religious Court which has permanent legal force, while for marriages that are dissolved due to death, the waiting period is calculated from the death of the husband.
- e. Waiting time for wives who have menstruated and are not menstruating during their iddah due to breastfeeding, so their iddah is three times their menstrual period.
- f. In the event that the situation in paragraph (5) is not due to breast-feeding, then the iddah is for one year, but if within one year she menstruates again, then the iddah

becomes three holy times.

2. Iddah According to the Law

Iddah period or waiting period or mourning period in the law. No. 1 of 1974 is outlined in article 11, and then further regulated in Government Regulation no. 9 of 1975. (1) the waiting time for a widow as intended in article 11 paragraph (2) of the Law is determined as follows:

1. *If the marriage is dissolved due to death, the waiting period is set at 130 (one hundred and thirty) days.*
2. *If the marriage is broken up due to divorce, the waiting time for those who still have their period is set at 3 (three) sacred times with at least 90 (ninety) days and for those who do not have their period it is set at 90 (ninety) days.*
3. *If the marriage breaks up and the widow is pregnant, a waiting period is set until she gives birth.*

2. Consequences of Iddah Law

Women who are divorced or abandoned by their husbands are subject to the law of iddah, namely: The prohibition on being divorced or proposed to, is contained in Surah al-Baqarah verse 235:

“And there is no sin in you courting these women [148] with innuendo or you hide (the desire to marry them) in your heart. Allah knows that you will mention them, so do not make a promise to marry them in secret, except just saying (to them) good words.

This is prohibited because it can arouse hostility with the husband (or husband's family) in the first place. Prohibition on marrying or being married, according to Surah al-Baqarah verse 235

meaning: "And do not make 'azam (resolve) to enter into marriage, before the end of his 'iddah. and know that Allah knows what is in your heart; So fear Him, and know that Allah is Forgiving, Most Forgiving."

This is prohibited because a woman who is 'iddah talak raj' still has the right to reconcile with that woman. Apart from that, the aim of a woman's 'iddah talak bain' or death is also to avoid confusion in her lineage. According to Ulama' Hanafiyyah, women 'iddah because of divorce is haram to leave the house both day and night.

Evening. This is based on surah al-Talaq verse 1

meaning: "Do not put them out of their homes and do not they are (allowed) to go out unless they commit an abominable act bright"

Apart from this, surah al-Talaq verse 6 states that:

“Place them (the wives) where you live according to your abilities and do not make it difficult for them to narrow them down

their (hearts).”

The verse's command to keep women at home means a prohibition on taking or inviting the woman out (Wahbab, 1969). Thus, women who are divorced or left by their husbands die are required to perform 'iddah with the consequence of being prohibited from accepting proposals, entering into new marriages and leaving the house.

The Relevance of Iddah to Modern Science and Technology

Iddah remains relevant with the existence of modern knowledge and technology, because establishing the iddah does not consist of just one aspect, but is based on various things:

Uterine Cleansing

The assignment of heredity is a very important thing in Islamic teachings, therefore, women are prohibited from polyandry, that is, marrying several men at the same time, because the creation of babies only occurs in the womb of a woman, not a man. The seeds that men plant in women are unknown directly but can be known within a certain distance. This method is a natural method that can be done by anyone without the need for equipment that has been sought, because Islam is intended for all levels of society until the end of time. That is why the iddah of a divorced woman who is pregnant is only to give birth to the baby she is carrying.

Even though modern research shows that there will not be two fertilizations in one uterus in one pregnancy, Islam is wise enough to forbid women who are nurturing a man's seed from mixing it with the process of nurturing and growing the baby to be born, perhaps medically a woman who is sexually intimate. Some men can know for certain the owner of the seed they are carrying, but in other ways it can influence the child who will be born. For example, from an educational and psychological perspective, it will damage and disrupt the child which will ultimately cause chaos and moral damage in society.

Opportunity to Grieve and Think

In the case of divorce, iddah is a period of mourning and condolences for someone whose husband has died. Divorce due to death is a disaster that is beyond human power to resist, in this case those who divorce are still in a very close inner relationship, in an atmosphere of affection and love. Then, a woman who is in iddah raj'i may reconcile with her husband as long as the iddah period has not ended. So the iddah talak raj'i is a period of time that allows divorced husbands and wives to think and reflect on their relationship. Each of them introspects themselves in order to create a better relationship.

Based on the explanation above, it can be concluded that the development of modern science and technology cannot change the provisions on the length and shortness of the iddah period which have been determined and explained in the Al-Quran and as-Sunnah. Although there is a belief that the womb of a divorced woman is clean and reconciliation is impossible between husband and wife. Thus, iddah in Islamic teachings is ta'abbudi,

not ta'aqul (Huzaimah, 2005).

Ihdad and the Laws That Accompany It

Ihdad etymologically means to hold back or stay away. Definitively, as stated in several books of jurisprudence, it is "to stay away from anything that could tempt a man to him during the iddah period" (Amir, 2006). According to Abu Yahya Zakaria al Anshary, ihdad comes from the words ahadda, and

Sometimes it can also be called al hidad which is taken from the word hadda. Etymologically (lighawi) ihdad means L-man'u (prevention or prohibition).

Meanwhile, according to Abdul Mujeib, ihdad is a period of mourning for a wife whose husband has died. So that is 4 months and 10 days accompanied by prohibitions, including: covering your eyes, adorning yourself, leaving the house, except when forced (Tihami, 2009). The scholars provide many explanations about ihdad. With different expressions, Wahbah al Zuhaili gives a definition of Ihdad, namely leaving behind perfumes, jewellery, eye shadow and oils that smell good or not. However, it is not forbidden to beautify the bed, carpet, curtains and household utensils. He is also not prohibited from sitting on silk (Tihami, 2009). Regarding who she performs ihdad for, almost all scholars are of the opinion that ihdad is only performed for husbands who marry her in a valid marriage and who die during their marriage and does not apply to others.

Why he had to mourn has become a topic of discussion among the ulama. This applies to women who are divorced from their husbands because of his death. This is the original purpose of the stipulation of mourning in Islam. the goal is to honor and remember her deceased husband. The basis for the obligation to mourn a deceased husband is the words of the Prophet which read:

"It is not permissible for a woman who believes in Allah and the Last Day to mourn for the dead except for her husband for four months and ten days."

As for husbands who divorce them in the form of talaq bain, scholars have different opinions.

a. Imam Malik is not obliged to mourn for anyone other than his dead husband.

b. Abu Hanifah believes that it is obligatory to mourn a husband who mourns him in the form of bain, allusion to the dead husband.

c. Imam Syafi'i said that mourning is for a husband who is divorced it's just sunnah.

d. Imami Shiite clerics also do not require divorced husbands to mourn in the form of bain. According to the consensus of the ulama, women who undergo the iddah of talaq raj'i do not have to undergo a period of mourning, in fact it is better for them to do something that can attract their ex-husband to reconcile. According to most scholars, there are four things that women who are mourning should avoid:

1. Wearing perfume, except just to get rid of body odor, either in the form of

toiletries or perfume. This is based on the words of the Prophet muttafaq alaih, which read: She should not touch perfume except when bathing from a small amount of menstruation or the tip of a fingernail.

2. Wear jewelry, except as strictly necessary.
3. Decorate yourself, either on your body, face or colored clothes.
4. Spend the night outside the house where he lives. This is based on the opinion of the majority of ulama who require women who die of their husband to perform iddah at their husband's house.

Some scholars, including Jabir binn Zaid, Al Hasan and Atha, are of the opinion that she does not have to live in her husband's house, so she can leave the house where she is praying. The basis of this opinion is the word Allah in surah al Baqarah (2) verse 240: So if you leave, it has nothing to do with what you do for his ma'ruf self. The purpose of enshrining iddah seen from the analysis of several definitions and legal bases above can be formulated:

- a. So that men do not approach and be tempted by women who are in 'iddah.
- b. So that women who are in 'iddah do not approach and be tempted by men.

Ibnu Rusyd called these two things *sad aldzari'ah* (Susilo, 2016). This means closing the path of evil. The path in question is the interaction of women' iddah with men (the two goals above) and dressing up or preening. Meanwhile, what is prohibited is proposals (*khitbah*) and marriage while the woman is in the 'iddah period. Therefore, it can be said that the legal law of enforcing iddah is to protect the attitude of women from falling into marriage during the prohibited iddah period. Due to the objectives of iddah as mentioned above, it is very natural that the emphasis of ulama in writing iddah fiqh is on two things:

- a. Take off jewelry or preen.
- b. Avoiding social interactions.

Therefore, everything that leads to these two things is prohibited during iddah. According to ulama', clothes and jewelry that should not be worn during the period of iddah and iddah are clothes that can beautify oneself (*zinah*) and encourage the acceleration of new marriages.

Compilation of Islamic Law (KHI) regarding iddah

Iddah (mourning) for women whose husbands have died has been regulated in the Compilation of Islamic Law (KHI) regarding the period of mourning for a person, article 170. Chapter XIX of the Compilation of Islamic Law (KHI) regarding the "period of mourning" is as follows: A wife whose husband has died is obliged to carry out a period of mourning during the iddah period as a sign of condolences and at the same time to guard against the emergence of slander. a. Husbands whose wives leave them carry out a period of mourning according to their decision.

From this it can be illustrated that a woman (wife) has the obligation to carry out iddah and iddah, because her husband left her dead for four months and ten days. This is a condition where the wife must refrain or mourn for four months and ten days. During that time, the wife should express her sorrow by not wearing any decorations, not wearing bright eyes and not leaving the house. This method aims only to honor the

husband's death. Once the iddah period has expired, there is no prohibition on decorating oneself, making proposals, or even holding a marriage contract.

Ihdad for Career Women

The position of women in the views of pre-Islamic communities. Very low and despicable, they do not regard him as a human being with a spirit, or only consider him to be of a lowly spirit. For them, women are the source of evil and the source of disaster. 121 At that time, Islam came as a guide to good news and a warning for humans. Views towards women changed and became a matter of happiness for the ummah at that time so that the position of women was elevated and all forms of injustice and arbitrariness were eliminated (Ihwan, 2002).

The concept of ihdad is to forbid iddah women from adorning themselves, which has been discussed in the purpose of ihdad in the Shari'a. Likewise with career women who work outside the home, because the position of men and women are the same, how will the career woman face ihdad while she also has to work outside the home? Therefore, the author tries to analyze the application of ihdad for career women and compare it with the views of Islamic law. The first is the ihdad application for career women who must look attractive. In reality, there are career women who really need to appear in beautiful, good and attractive clothes, so that they can build lots of relationships and improve their careers. Women like this, for example, women who are leaders in companies, women who are in charge of promotions and marketing, women who are in charge of public relations and protocol, or women who rely on appearance for their careers such as models, dancers and singers. There are also career women who in an effort to improve their careers do not need to look attractive, do not need to wear beautiful and good clothes, such as doctors, lawyers, judges, government employees, lecturers, consultants, scientists and laboratory workers. For this kind of woman it doesn't matter whether she dresses well with jewelry on her body or not. It won't affect his career. If a woman like the one mentioned above performs ihdad because her husband died, then in principle the woman must carry out ihdad, because this is a religious requirement. However, the woman should try as much as possible to leave behind jewelry and clothes that are prohibited from wearing during the 'iddah of her husband's death. He must make this effort to the fullest, especially if he is pursuing a singer, model or something similar (Adnan, 2015). However, on the other hand, career women are required by circumstances to maintain social relations by always looking attractive and adorning themselves so that they can complete their work without having to be shunned by co-workers or many even avoid working with them due to their unattractive (embarrassing) appearance. This may have an impact on destroying the woman's work and personal career as well as the stability of the workplace because the career woman cannot complete her work well and on time. Especially if this type

of work or career for women has implications for the benefit or public welfare, such as the President, members of the legislature (DPR/MPR), and others. This will have a dangerous impact on the public.

Therefore, looking attractive for career women is important to maintain their career and work. It can be formulated that the goal of an attractive career woman is to maintain her career and work so that it remains a source of fulfilling life's needs. So looking attractive is a key to career and employment. If we look at the substance of having an attractive appearance, the goal is to maintain a career and job so that it remains a source of fulfilling life's needs, then dressing up is classified as an urgent need to fulfill life's needs, which if not fulfilled will lead to the destruction of career and work which has implications for economic collapse. Therefore, it is appropriate that *hajat* glasses which occupy an emergency position are used to establish the law, that career women are allowed to dress up (*leave ihdad*) when carrying out their career or work activities (Edi, 2016). In relation to women who are forced to do something forbidden during *ihdad*

However, the woman must try first so that she does not do anything that is haram, because if a woman has lost her husband's death, if she does not have *ihdad* it means she is disobedient to Allah SWT if she knows that abandoning *ihdad* is haram (Wahbah, 1969). If he has tried hard to be able to perform *ihdad* and turns out he can't, then he must first see whether his condition has reached the emergency level or not. What is meant by emergency is something that threatens the safety of religion, life, reason, offspring and property. If according to his estimates or research it falls into the emergency category, then he may not perform *ihdad*. If it turns out that it is not considered an emergency, especially if it is just for prestige, or the career she is fighting for is just for a good name and to be admired and respected by people, or just to seek additional wealth, then in any case *ihdad* is still obligatory for the woman.

Second, in developing and improving careers, there are women who have to have direct contact with other people, some who don't. Career women who are not directly involved in developing their careers, for example book writers, novelists, lab researchers, designers, caricaturists and painters. For this kind of woman, *ihdad* is certainly not a problem. In other words, giving *ihdad* will not destroy his career. Meanwhile, career women who have to deal directly with other people, such as lecturers, doctors, field researchers, entrepreneurs, lawyers, singers, government officials, members of parliament, etc., clearly have an attachment to the issue of *ihdad*, whether they have to *ihdad* or can leave. *ihdad* for the sake of his career. In this case there are several notes, including: If a woman who has to deal directly with other people in developing her career and work can carry out her duties without having to dress beautifully or be made up, then she is obliged to have *ihdad*. If the woman cannot avoid wearing good clothes, adorning herself, wearing perfume or other things that are prohibited in *ihdad*, she may leave *ihdad* as long as her situation has reached the emergency

level as stated previously, but she must first try to maximum to be able to do ihdad.

CONCLUSION

Considerations that can change the laws of iddah and ihdad when they collide with career women's problems are considerations of necessity and emergency considering the effectiveness of hajat and emergency so that the legal resolution of iddah and ihdad for career women can be said to be more applicable, effective and humane for the current era with consideration of hajat and emergency.

Iddah for career women must still be carried out considering that the legal illat of iddah is more ta'abbudi in nature. However, in terms of the legal consequences of iddah, in the form of a prohibition on leaving the house, this cannot be applied to career women considering that career women's careers and work are necessary, because they are a source of fulfilling life's needs which are classified as urgent needs to preserve life which if not fulfilled will fall into destruction. economy (poverty). Considering that ihdad for women who are in iddah is limited to sad aldzara'i, meaning that dressing up is considered an intermediary that can give rise to encouragement in the form of the goal of marriage during the iddah period, which if the main goal of ihdad can be eliminated with the argument of necessity and emergency, then the law of intermediary follows.

BIBLIOGRAPHY

- Abd ar-Rahman al-Jaziri, *Kitab al-Fikih*, (Mesir: Maktabah at-Tijariyah al-Kubra,1969).
Abu Yahya Zakariyya al-Ansari, *Fath al-Wahhab*, cet. II, (Semarang: Toha Putra, 1998).
Adnan Buyung Nasution, *Problematika Ihdad Wanita Karir Menurut Hukum Islam*, Tesis PascaSarjana Universitas Islam Negeri Sumatera Utara, (Medan,2015).
Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, (Jakarta: Kencana, 2006).
As-Sayid Sabiq, *Fikih as-Sunnah*, II (Jakarta:PT Pena Pundi Aksara).
- Edi Susilo, *Iddah dan Ihdad Bagi Wanita Karir* (The Indonesian Journal of Islamic Family Law Volume 06, Nomor 02, Desember (2016).
- Himpunan Peraturan Perundang-undangan Dalam Lingkungan Peradilan Agama, Direktorat Pembinaan Badan Peradilan Agama Islam Direktorat Jenderal Pembinaan Kelembagaan Agama Islam Departemen Agama RI.
- Huzaimah Tahido Yanggo, *Masail Fikihiyah: Kajian Hukum Islam Kontemporer*. Bandung: Angkasa 2005.
- Ibnu Rushd, *Bidayat al-Mujtahid Wa Nihayat al-Muqtasid*, (Beirut: Dar al-Fikr, 1998), Jilid II.
- Ikhwan Fauzih, *Perempuan dan Kekuasaan; Menelusuri Hak Politik dan Persoalan Gender*
- Dialectics of Legislation and Maqasyid Sharia in the Iddah Narrative...

- dalam Islam.* (Jakarta: Amzah, 2002).
- Kamus Besar Bahasa Indonesia*, Badan Pengembangan dan Pembinaan Bahasa, cet. ke-3, Jakarta: PT Balai Pustaka Persero, 2018.
- Tihami dan Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap*, (Jakarta: Rajawali Press, 2009).
- Zayn al-Din Ibnu Nujaym al-Hanafi, *al-Bahr al-Raiq Sharh Kanzu al-Daqaiq*, (Maktabah Shamelah Vol. VI), jilid IV, 138., lihat juga Wahbah az-Zuhaily, *al-Fikih al-Islamiy Wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1996), Jilid VII.

ANALYSIS OF THE REMAINING VALUE OF CASE COST POSITIVE LEGAL PERSPECTIVE AND SHARIA ECONOMIC LAW (CASE STUDY OF KENDAL RELIGIOUS COURT)

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Abstract

*This article discusses about the remaining down payment on case fees at the Kendal Religious Court. The primary data sources used direct interviews with the Kendal Religious Court, including: judges, cashiers and the bank. While secondary data sources are from various scientific journals, books, photos, videos and other documents. The results shows that the causal factor for the remaining down payment on case fees at the Kendal Religious Court is none other than the temporary nature of the initial estimate managed by the cashier. Where the estimate is taken from the *relaas* or call report that has been estimated beforehand.*

The factors that cause the expiration of the remaining down payment at the Kendal Religious Court are first, there is an emotional attitude shown by the reporting party who feels he is very happy or very hit by the decision of the chief judge which can result in him being reluctant to deal with it and take the rest to the cashier. Second, there is an element of distance, effort, time and cost from the reporting party which turns out to have a small down payment. Third, the absence of the reporting party or attorney at the final hearing.

Keywords: *Expiration, Down Payment of Case Fees, Positive Law and Sharia Economic Law*

Abstract

This article discusses the expiry of the remaining terms and conditions for cases at the Kendal Religious Court. The data source used was direct interviews with the Kendal Religious Court, including: judges, cashiers and the bank. Meanwhile, secondary data sources come from various scientific journals, books, photos, videos and other documents.

Based on the results of this research, it shows that the causal factor for the remaining case fee deposit at the Kendal Religious Court is none other than the temporary nature of the initial estimate managed by the cashier which is taken from the *report* or summons report that was previously estimated. The factors causing the expiration of the remaining balance at the Kendal Religious Court are *first*, the emotional attitude shown by the reporting party who feels that he is very happy or very devastated by the decision of the chief judge, which can result in him being reluctant to deal with it and taking the rest to the cashier. . *Second*, there are elements of distance, energy, time and costs on the part of the reporting party which is evident

The penjar has a little remaining. *Third*, the absence of the reporting party or legal representative at the final trial.

Keywords: Expiration, Court Costs Reduction, Positive Law and Sharia Economic Law

INTRODUCTION

In the judiciary we are familiar with the term "**no fee, no case**" which means that for cases that have been submitted to the Religious Courts, especially Kendal, a fee is charged which is called a retainer, except for prodeo or free cases.

This is stated in Article 121 paragraph (4) Herzien Inlandsch Reglement (HIR) which states that,

"Entering into the list as in the first paragraph is not carried out if it has not been paid in advance to the clerk an amount of money which will be calculated later, the amount of which is temporarily estimated by the head of the court according to the circumstances for the clerk's office fees and costs for making all calls and notifications required to both parties and the price of the stamp duty that will be used."

A court fee deposit is money or fees entrusted to an agency as collateral for payment of a registered case.

The fine is still in the estimation stage, the final calculation will be made after the decision of the judge on duty. Filing fees are regulated in Supreme Court Circular (SEMA) No. 04 of 2008 concerning Collection of Filing Fees, Republic of Indonesia Supreme Court Regulation (PERMA) Number 03 of 2012 concerning Settlement and Management Process Fees at the Supreme Court and Subordinate Bodies, Government Regulation (PP) Number 05 of 2019 concerning Types and Levels of State Revenue Not a Tax that Applies to the Supreme Court and Subordinate Bodies, Article 2 paragraph (4) of Law Number 48 of 2009, Articles 192-194 RBg, and Articles 182-183 HIR where *Rechtreglement voor de Buitengewesten (RBg)* is procedural law civil and criminal law which applies in courts outside Java and Madura, while the *Herzien Inlandsch Reglement (HIR)* is civil and criminal procedural law which applies in courts in Java and Madura.

In general, it is the person who sues or the reporting party who bears all the legal costs of the case. The costs referred to are all costs which include: clerk's fees, notifications, summons, stamp duty, and other costs required to complete the case process (Endang, 2020). The estimated amount of these costs is determined according to the distance from where the plaintiff/applicant lives, added to the distance from the place of residence. The only thing left is for the defendant/respondent, where the distance requirement is measured in kilometers from the center of the Kendal Religious Court Office. The court fee deposit will be returned to the party

plaintiff/applicant if there is an advantage in payment.

The excess or remaining deposit can be asked for and taken to the court cashier after the decision of the panel of judges. The maximum limit for taking the remainder is 6 (six) months after the case is decided.

If it is due but the plaintiff/applicant has not collected it, the court will give a warning in the form of a letter sent via the bailiff. If the summons is still not possible via letter, the remainder of the case fee deposit will be removed from the case book journal and entered into the state treasury as Non-Tax State Revenue (PNBP). As regulated in Article 1948 of the Civil Code which explains that there are 2 (two) categories of release, namely firm and tacit. Where tacit release can be seen from the expression of an action that raises suspicion that someone does not want to use something that was obtained." And the Supreme Court Circular Regulation (SEMA) Number 4 of 2008 which reads:

"If there are excess court fees that are not used in the litigation process, then these fees must be returned to the entitled party. If these costs are not collected within 6 (six) months after the party concerned and recorded in a separate book as unclaimed money (1948 Civil Code). This unclaimed money is periodically deposited into the State Treasury."

RESEARCH METHODS

This article is included in the category of field research types. The approach used in this research is a qualitative approach, a research approach that emphasizes photographing the phenomena studied in the research and then describing the research results in narrative form. This qualitative approach is used to examine the law regarding the remaining retainer of case fees that exceeds the expiration date. This research also describes the differences based on positive law and sharia economics regarding the remaining down payment on case fees.

There are 2 (two) data sources used, namely primary and secondary. The primary data source used direct interviews with the Kendal Religious Court, including: judges, cashiers and the bank. Meanwhile, secondary data sources come from various scientific journals, books, photos, videos and other documents. Data collection techniques use interview techniques, observation, literature study and documentation. The data obtained was then analyzed using qualitative descriptive data analysis techniques.

DISCUSSION/RESULTS AND DISCUSSION

Expiration Viewed from Positive Law

Expiration according to positive law is regulated in Articles 1946-1993 of the Civil Code, which means the time limit for legally obtaining and releasing a right in accordance with the requirements of statutory regulations. As previously explained, it does not conflict with norms of decency and public order, does not disturb the comfort of other people, and does not abuse other people's rights.

Expiration can arise due to statutory regulations, namely in Articles 1946-1993 of the Civil Code. But apart from that, it can also be caused by an agreement or agreement between the parties, whether written in a notarial deed or not. Even though the expiration date is regulated in law, there are also elements of requirements which must be taken into account by someone who wants to control property rights using this route. In other words, if these elements are not met, then expiration cannot be used as a reason to master it. Things to pay attention to are as follows:

1. There is good faith in obtaining it

Having a sincere intention is one of the conditions for the expiration to be allowed. Where these intentions are accompanied by actions that reflect good manners and morals in everyday life. Apart from that, he must be able to act wisely with what he has to improve welfare

general.

2. There is a right base

It is a way for someone to obtain ownership rights.

This method must be in accordance with legislation without using coercive methods to obtain rights from other people.

3. The existence of an object whose owner is unknown for 30 years for immovable objects without a legal basis, 20 years for immovable objects with a legal basis, and 3 (three) years for movable objects (Subekti, 2014).

Various Expirations

1. Expiry of acquisition (*Acquistieve Verjaring*)

Is the application of expiration as a way to obtain a right to an object. As regulated in Article 1963 of the Civil Code which explains that, "Whoever, in good faith and

based on a legal right, acquires an immovable object, an interest or other receivable which does not have to be paid on behalf of,

obtain ownership rights over it by expiry date, with possession for twenty years, obtain ownership rights without being forced to show the basis of the rights."

A person holds an immovable object which initially does not belong to him, but over time the object can become its owner. For example: Anita has controlled a piece of empty land without any legal conditions for 30 years and as long as she uses it there is no interference from other people, then the land becomes hers.

2. Exemption from engagement (*Exintieve Verjaring*)

Is the application of statute of limitations in releasing an obligation or legal claim. This means that a person can be free from a bill if the bill is more than 30 years old. Like debts and receivables. A person who has a debt that is more than 30 years old and is not collected by the debt provider, according to legal provisions he is released by paying the debt.

As regulated in Article 1948 of the Civil Code which explains that there are 2 (two) categories of release, namely firm and tacit. Where tacit release can be seen from the expression of an action that raises suspicion that someone does not want to use something obtained (Supriyadi, 2011).

Expiration Viewed from Sharia Economic Law

It has the same meaning as the expiration of positive law, namely the time limit on the use or use of an object.

But the only difference is the nature of the expiration date. In Islamic law, there is no such thing as **"a dependent or obligation can be terminated by expiration"**. This means that all obligations that originate from a contract are permanent. Like debts and receivables.

In positive law, the debt can be released from the debtor if for more than 30 years the debt is not taken by the creditor. But in Islamic law, a person who has a covenant or agreement must abide by it even if he is old. This is regulated in QS Ali Imron verse 76, $\text{يٰۤاَيُّهَا الَّذِيْنَ اٰمَنُوْا اذْكُرُوْا نِعْمَتَ اللّٰهِ عَلَيْكُمْ اَلَّذِيْنَ كَفَرُوْا سَوْفَ يُعْطَوْنَ الشَّرْكَ اَلَّذِيْ لَمْ يَكُن لِّاللّٰهِ شَرْكًا شَيْئًا اَلَّذِيْ لَمْ يَكُن لِّلْمُشْرِكِيْنَ مِنْ عِندِ اللّٰهِ اَلَّذِيْ لَهُ السَّمْعُ وَالْاَبْصَارُ اَلَّذِيْ لَهُ السَّمْعُ وَالْاَبْصَارُ اَلَّذِيْ لَهُ السَّمْعُ وَالْاَبْصَارُ$

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$\text{يٰۤاَيُّهَا الَّذِيْنَ اٰمَنُوْا اذْكُرُوْا نِعْمَتَ اللّٰهِ عَلَيْكُمْ اَلَّذِيْنَ كَفَرُوْا سَوْفَ يُعْطَوْنَ الشَّرْكَ اَلَّذِيْ لَمْ يَكُن لِّاللّٰهِ شَرْكًا شَيْئًا اَلَّذِيْ لَمْ يَكُن لِّلْمُشْرِكِيْنَ مِنْ عِندِ اللّٰهِ اَلَّذِيْ لَهُ السَّمْعُ وَالْاَبْصَارُ اَلَّذِيْ لَهُ السَّمْعُ وَالْاَبْصَارُ اَلَّذِيْ لَهُ السَّمْعُ وَالْاَبْصَارُ}$ B Long live God, So beware And This is it A BF n m for me B

Meaning: "(Not so), in fact whoever keeps the promise (he made) and is pious, then indeed Allah loves those who are pious."

The concept of expiry in the Wadi'ah contract

In essence, the *al-wadi'ah* contract is an agreement to help each other commanded by Allah SWT solely to seek His blessing. It is certain that the contract is ratified but the terms and conditions must also be taken into account. The meaning of *al-wadi'ah* itself has been explained in the previous discussion, namely a contract to entrust goods to another person who must look after the goods properly until the owner takes the goods. Even though the goods are in the hands of the recipient of the deposit, ownership rights are still in the hands of the first party or the original owner. So, the recipient is only tasked with carrying out the trust that has been given.

In a historical hadith by Abu Hurairah RA, in a book by Ahmad Dahlan on the theme of Sharia Banking, it is explained that *the al-wadi'ah* agreement does not have any restrictions. This means that things cannot end without someone wanting to end them.

In the book by Hendi Suhendi entitled Fikih Muamalah, it explains the reasons why the *al-wadi'ah* contract can end, including:

1. One of the people entrusting the entrustment or receiving the entrustment dies
2. The goods entrusted to the deposit are taken by the original owner
3. Transfer of ownership of the goods entrusted to the entrusted recipient
4. If the recipient of the goods has looked after it for a long period of time, and the owner does not take the item and then the recipient looks for information about the owner and the result is that the place of residence is not known, then the entrusted item is allowed to be used for much more valuable purposes (Hendi, 2009) .

From this it can be concluded that, in the *al-wadi'ah* contract the expiration system is not enforced. This is because the nature of *al-wadi'ah* only maintains the mandate of the custodian and ownership is still in the hands of the first person. And the contract can end when one of the two breaks the agreement.

Implementation of Case Cost Reductions at the Kendal Religious Courts

A court fee retainer is an amount of fees entrusted by a litigant to a judicial institution to pay for a case that has been registered. Penal fees for cases are regulated in Article 90 paragraph (2) of Law Number 50 of 2009, Second Amendment to Law Number 7 of 1989 concerning Religious Courts, Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, Articles 192-194 RBg, Article 182-183 HIR, Republic of Indonesia Supreme Court Regulation (PERMA) Number 3 of 2012 concerning Case Settlement Process Costs and Management

at the Supreme Court and the Judiciary Bodies under it, the Supreme Court Circular Letter (SEMA) Number 04 of 2008 concerning the Collection of Case Fees, and Article 121 paragraph (4) which confirms that the payment of down payment fees for this case is one of the formal requirements for a lawsuit. With payment, the lawsuit can be accepted and processed properly. A lawsuit is deemed not to exist if the litigant does not pay the downpayment within the specified time.

In the Religious Courts, in general it is the person who sues or the reporting party who bears all the costs of the case as explained in Article 89 paragraph (1) of Law Number 7 of 1989 which states that "court costs in the field of marriage charged to the plaintiff or applicant". Apart from marriage cases, the burden of costs is given to the losing party. However, within the outer scope of the Religious Courts, the one who is obliged to cover all costs in all cases is the defeated party. As explained in Article 181 paragraph (1) HIR which states that,

"Whoever is defeated by decision will be sentenced to pay court costs. However, all or part of the costs of the case can be calculated between the husband, blood relatives in direct lineage, brothers and sisters or family members, especially if both parties are defeated in some way."

The down payment costs detailed by the Religious Court cashier are still temporary. Next, wait for a decision from the panel of judges regarding the exact costs. If it turns out that there is a shortage in the costs, the panel will inform the parties in the case directly. However, if the party does not appear at the hearing, the Registrar will make a summons and inform them that there is a shortfall in down payment fees. The maximum payment limit is one (1) month after the case is decided by the panel of judges and if within this limit it has not been paid, then the court acts decisively by crossing out the case from the case register and if there is any remaining fee, it will be returned to the Plaintiff/Applicant. as a party to a case which is limited to 6 (six) months from the time the case is decided by the panel of judges.

Payment Scheme

1. The reporting party or legal representative comes to the Kendal Religious Court office where they will be given an ID card according to their respective interests by the security guard on duty

2. After that, come to the service ambassador who will be directed according to their respective interests and given a queue number at the queue counter provided.
3. After the queue number has been called, then come to the information desk (1 and 2) to register your case. Before being registered, the officer will check the files brought and submitted by the reporting party, then estimate the court costs or what is known as the down payment as outlined in the Power of Attorney to Pay (SKUM). The letter is proof of power given by the court cashier to the reporter or legal representative to pay the down payment to Bank 4. Then the SKUM is given to desk 3 (cashier) to record the estimated costs and give a number to the case.
5. Finally, the litigant or their legal representative submits the SKUM and pays the estimated downpayment of case costs to the bank that has collaborated with the court, where the Kendal Religious Court takes Bank Syariah Indonesia (BSI).

However, when the bank officer has not yet arrived at the office, the estimated down payment will be given to the cashier and the down payment will be given directly to the bank after the presence of the bank officer. Then the bank provides proof of receipt in 3 (three) copies that the down payment of the case fees has been paid. Where 1 (one) copy will be brought by the bank itself, 2 (two) copies will be brought by the reporting party and 3 (three) copies will be brought by the court.

6. The receipt given by the bank to the reporting party is then given to the cashier along with the SKUM to be signed and stamped in full. After that, the SKUM is given again to the reporting party

The estimate can be calculated based on the distance from where the reporting party lives which is added to the distance from where the reported party lives, which here is often called the radius. The jurisdictional area of the Kendal Religious Court was explained at the beginning of the discussion, namely that it is divided into 4 (four) parts, including radius I, II, III and IV. Where each radius has a different value. The further away from the Kendal Religious Court office, the more costs you have to incur. This estimated downpayment is determined based on the Decree (SK) of the Chairman of the Kendal Religious Court Number: W11-

A7/48/HK.05/II/2021 concerning Changes in Case Fee Fees at the Kendal Class IA Religious Court (Rohmad, 2022).

Amount of Court Fee Penalty

Calculation of case down payment fees is regulated in Article 121 paragraph (4) HIR or Article 145 RBg which states that the retainer for case costs is calculated based on the estimated costs of the clerk's office and

all types of party summons costs as well as material costs. Apart from that, it is also regulated in Article 90 paragraph (1) of Law Number 50 of 2009 Second Amendment to Law Number 7 of 1989 which explains the details of case costs, including:

1. Clerkship fees and stamp duty
2. Administrative costs, such as editorial costs, duplicating case files, duplicating copies of decisions, filing and binding files and other necessary documents
3. Costs of witnesses, expert witnesses, translators and oath taking
4. Costs for summons, notification, inspection or other costs is required.

The amount of these costs is regulated by the Minister of Religion with the approval of the Supreme Court, which will be detailed to the litigants, which will make it easier to obtain information about the amount of costs covered and what costs must be incurred by the litigants.

The cost of the matter set by the Supreme Court, among others:

1. The first instance process is regulated and determined by the chairman of the first court in accordance with applicable statutory provisions
2. The appeal procedure has a nominal value of Rp. 150,000.00 (one hundred and fifty thousand rupiah)
3. Cassation in civil and state administrative cases with a nominal value of Rp. 500,000.00 (five hundred thousand rupiah)
4. Reviewer of nominal civil and state administrative cases Rp. 2,500,000.00 (two million five hundred thousand rupiah)
5. Cassation in commercial civil cases with a nominal value of Rp. 5,000,000.00 (five million rupiah)
6. Review of commercial civil cases with a nominal value of Rp. 10,000,000.00 (ten million rupiah)
7. Free case costs at the first level, appeals and cassation whose value is below IDR 150,000,000.00 (one hundred and fifty million rupiah) will be borne by the state

These fees apply to the Supreme Court and High Court. Meanwhile, the first level Religious Court is adjusted to the decision of the Chair of the Religious Court which is stated in the Decree (SK). Details of case fees at the Kendal Religious Court are as follows: 1. Petition Cases

COST	NO	COMPONENT	RADIUS	RADIUS	RADIUS	RADIUS
			I	II	III	IV
	1	Registration	30.000	30.000	30.000	30.000

2	Filing of Submission	75.000	75.000	75.000	75.000
3	of Deed by JS 2X @Rp. 10,000,-	20.000	20.000	20.000	20.000
4	Call (2x)	160.000	180.000	200.000	240.000
5	Announcement decision	80.000	90.000	100.000	120.000
6	Editorial	10.000	10.000	10.000	10.000
7	Duty stamp	10.000	10.000	10.000	10.000
Amount		385.000	415.000	445.000	505.000

2. Matter of Divorce Lawsuit

NO	COMPONENT COST	RADIUS I	RADIUS II	RADIUS III	RADIUS IV
1	Registration of	30.000	30.000	30.000	30.000
2	Submission of	75.000	75.000	75.000	75.000
3	Deed by JS 3X @Rp.10,000,-	30.000	30.000	30.000	30.000
4	Call (2x)	160.000	180.000	200.000	240.000
5	Decision notification	80.000	90.000	100.000	120.000
6	Editorial	10.000	10.000	10.000	10.000
7	Duty stamp	10.000	10.000	10.000	10.000
Amount		635.000	695.000	755.000	875.000

3. Divorce Matters

NO	COMPONENT COST	RADIUS I	RADIUS II	RADIUS III	RADIUS IV
1	Registration of	30.000	30.000	30.000	30.000
2	Submission of	75.000	75.000	75.000	75.000
3	Deed by JS 3X @Rp.10,000,-	30.000	30.000	30.000	30.000
4	P Calls (3x)	240.000	270.000	300.000	360.000
5	T Calls (3x)	320.000	3.100.000	400.000	480.000
6	Editorial decision notification	80.000	90.000	100.000	120.000
7		10.000	10.000	10.000	10.000
8	Duty stamp	10.000	10.000	10.000	10.000
Amount		795.000	3.615.000	955.000	1.115.000

4. Simple Lawsuit Case

NO	COMPONENT COST	RADIUS I	RADIUS II	RADIUS III	RADIUS IV
1	Registration	30.000	30.000	30.000	30.000
2	Filing	75.000	75.000	75.000	75.000
3	Submission of Deed by JS 3X @Rp.10.000,-	30.000	30.000	30.000	30.000
4	P Calls (2x)	160.000	180.000	200.000	240.000
(3x)	T Calls	240.000	270.000	300.000	360.000
6	Decision notification	80.000	90.000	100.000	120.000
7	Editorial	10.000	10.000	10.000	10.000
8	Duty stamp	10.000	10.000	10.000	10.000
Amount		635.000	695.000	755.000	875.000

For reporting parties who live outside the jurisdiction of the Kendal Religious Court, the case fee will be adjusted to the local Religious Court and a fee will be charged for correspondence with the following conditions: 1. Plaintiff: 2 x Rp. 14,000 = Rp. 28,000, 2. Defendant: 3 x Rp. 14,000 = Rp. 42,000(PA, Kendal, 2022)

Analysis of Case Fee Penalty at the Kendal Religious Court

Refund of the remainder of the court fee deposit is mandatory. This is because the initial agreement between the reporting party and the Court Cashier was an *al-wadi'ah* agreement, in which the reporting party only entrusts money to settle the case with the court. So in conclusion, the court or the bank have no obligation to swallow the balance of the deposit, because it belongs purely to the reporting party. Procedures for collecting remainder include:

1. The reporting party met the cashier and then asked if there was anything left against previously paid deposits
2. The cashier will ask for a receipt given by the Member Judge regarding the decision of the case

3. The cashier checks the court fee deposit
4. If there is a balance, the cashier will return it by giving a receipt as proof that the remaining balance has been returned (Meyda, 2022).

In the Kendal Court itself, every time a retainer is paid and after the case is declared complete, the retainer from the reporting party always remains, in other words it is never correct and the retainer is rarely stated to be insufficient. This is due to the initial registration of the party

PTSP or cashier is limited to temporary assessments. These estimates include *calls* or call reports. So the main factor is the call. PTSP or cashier takes the middle way in estimating how often the litigant will be summoned. If the estimated call turns out to be less, it will be added and vice versa. If it turns out that there are more summonses, the remaining court fees will be reduced or the remaining court fees will be deducted and returned to the litigants. And the reality is that from the past until now, the court fee deposit has never been left over. Even though it was only tens of thousands of rupiah (Rohmad, 2022).

In an *al-wadi'ah contract*, even though the contract is only for safekeeping, it is permissible for the entrusted party to take the

safekeeping fees. Heri Sudarsono, *Sharia Banks and Financial Institutions*, 115.. However, this does not apply to a judicial institution that strongly rejects additional fees, in this case the Kendal Religious Court. The courts and banks working together do not take advantage of depositing the deposit (Rohmad, 2022).

According to Mega, an employee of Bank Syariah Indonesia (BSI), there are no additional fees for depositing deposits. This is because the account used by the court in this custody is a Giro account. However, in the last 6 (six) months the Court requested Net-Banking application facilities from BSI so that it could check balances, transfer transactions, transfer between banks and so on. Using this application costs Rp. 10,000/month. And it turns out there is a problem regarding the admin fees, where the High Religious Court (PTA) does not allow these additional fees. This is because the application used is an account in the name of the local court. Given these pros and cons, BSI proposed withdrawing the application to BSI KC Kendal. However, this was not possible, until finally the Bank took the initiative to cover the application costs. Down payment can also be made online, namely using the E- Court application. For this application, there is an additional fee for using the application online.

The nominal value is around Rp. 3,500 (three thousand five hundred rupiah).

And he also said that the court fee deposit collected at the bank was still intact, where it was not used for other purposes, only the physical money was used. This is because the down payment physical money is mixed with other money in the bank. And if the court asks for the money back, the bank must be ready to provide the money. So it can be concluded that the nominal down payment amount in the bank account remains intact, only the physical money is used (Mega, 2022).

Analysis of the Remaining Remaining Deposit for Case Fees in the Religious CourtsKendal

The meaning of expiration itself has been explained in the previous sub- chapter, namely the time limit used in returning the remaining down payment on case fees, namely 6 (six) months after a case is declared terminated. If it is not taken within the time limit, it will be handed over to the state where it will later be removed from the State Financial Journal and recorded as unclaimed money.

This notification is included in Article 2 paragraph (2) of Government Regulation (PP) Number 05 of 2019 concerning Types of Non-Tax State Revenues that Apply to the Supreme Court and Subordinate Bodies (PERMA, 2019) and paragraph (2) of the Court Circular Letter Agung (SEMA) Number 4 of 2008 concerning Collection of Case Fees (SE, 2008).

According to Mr. Rohmad as Judge of the Kendal Religious Court, the excess deposit actually expires because sometimes the reporter or legal representative does not take the remainder or does not report to the cashier if it turns out that the deposit remains.

This is due to the emotional attitude of the reporter which can result in him being reluctant to handle it and take the rest to the cashier. This emotional attitude can be proven by the reporting party feeling very happy or very saddened by the decision of the chief judge. Apart from that, there are elements of distance, energy, time and costs on the part of the reporting party where it turns out that the retainer has little remaining. This is a consideration for whether to take it or not. Where they think that the remaining deposit is not worth what they spend when they want to collect it, whether in terms of costs or the time and energy spent and added to the long queues. For example, in the divorce case number 666/Pdt.G/2022/PA.Kdl which has a remaining deposit of Rp. 10,000 (ten thousand rupiah), the remainder has the possibility not to be taken. This is because the remaining costs are not commensurate with the costs incurred and the distance traveled.

For example, if this party lives far from the court office, it is possible that he will give up the remaining Rp. 10,000 rather than having to take it a long distance.

The next cause is the absence of the reporting party or legal representative at the final hearing, where the reporting party did not know that it turned out that the down payment previously paid had a balance until in the end no one was there to take care of it and collect it. The cashier will not even check whether the deposit for a case will remain or not. Because the cashier will only check and give the remainder if the reporting party or legal representative gives it

Receipt as proof of termination of a case. However, the registrar will give a warning letter to the reporting party stating that they must immediately collect the remainder (Rohmad, 2022).

The application of this statute of limitations is based on the non-use of the rights of the reporting party who is the owner of the remaining down payment on case fees and the Kendal Religious Court as the manager of the down payment on case fees. Apart from that, the implementation of this expiration date also aims to bring order in the administrative sector at the Kendal Religious Court so that there is no accumulation of costs. And also to minimize the occurrence of use by irresponsible parties. Therefore, it is necessary to determine the legal status of the remainder of the deposit, namely that it be managed by the state and used for the public interest.

Analysis of the Expiration of the Remaining Deposit for Case Fees from a Positive Legal

Perspective and Sharia Economic Law. In essence, the trial process in a judicial institution also requires costs to be used to resolve a problem that has been registered. These costs include: 1. Clerk's fees and

stamp duty

2. Administrative costs, such as editorial costs, duplicating case files, duplicating copies of decisions, filing and binding files and other necessary documents

3. Costs for summoning witnesses, expert witnesses, translators and taking the oath

4. Notification fees, inspections or other necessary fees

All of these costs are deposits or advances paid by the litigants to the Court Cash Holder, where these costs are temporary estimates whose final decision will be made by the panel of judges processing the case. It has been clearly stated previously that this down payment uses

an *al-wadi'ah yad amanah* agreement , which means that the money handed over is money entrusted to you by the reporting party and the money cannot be used outside the interests of processing the case.

In the down payment itself there is never any remaining amount. This means that the deposit always remains and the remainder must be returned to the original owner. This is based on the previously used contract. The balance of the down payment will be returned if the reporting party reports to the Cash Holder of the Kendal Religious Court if the down payment has been left over. The penalty can be taken when the reporting party has submitted a receipt for the decision of a case given by the panel of judges to the Cash Holder or Cashier. According to the previous discussion, according to Mr. Rohmad as a Religious Court Judge Kendal, there are several problems regarding the reasons why the balance of the deposit was not collected, one of which is emotional factors where the reporting party sometimes feels that he is very happy with the decision of the chief judge or vice versa, where the reporting party feels that the decision makes him discouraged. This is what makes the reporting party unwilling to deal with the penalty a second time. The second factor that causes the remainder of the downpayment not to be collected is the failure of the reporting party to attend the decision hearing (Rohmad,2022).

If the remainder of the deposit is not collected within the 10 (ten) day period, the registrar will issue a letter of warning directly, which letter is specific and does not incur additional costs. If it is still not collected by the time limit for collecting the remainder, namely 6 (six) months, then the remainder is considered to have expired and will be handed over to the state treasury.

Mechanism for disbursing remaining deposits from Court Cash HoldersKendal's religion to the state includes:

1. The cash holder or cashier will issue the remaining deposit from the Case Register Book, in this case the Kendal Religious Court uses the Case Tracking Information System (SIPP) application
2. The cash holder inputs the remaining recapitulation data to be returnedto the State
3. The remaining money and the results of the recapitulation are handed over to the Treasurer
Kendal Religious Court Reception
4. The revenue treasurer creates and submits the billing code to Bank Syariah Indonesia (BSI) so that payments are processed into the State account
5. The bank provides a receipt as proof that it has paid it to the state (Yudit, 2022).

From the theory of the expired concept which has been explained

previously, the researcher concludes that the existence of the expired concept regarding the remaining down payment on case fees is a unilateral decision where only the legislator can make a decision and ratify it. And of course the community or reporting party must comply with the regulations that have been made.

This concept can also be applied to transfers of ownership rights that occur between the reporting party and the country where only one party confirms.

According to positive law, the concept of expiration as a reason for allowing the transfer of ownership of a right from the individual to the state is very clear. This is proven in Article 584 of the Civil Code which provides the essence that a person's property rights can change ownership status, namely by: 1. Taking (*theorigening*)

A person can acquire rights over a thing, when the thing has no legal owner. That is, the item belongs to everyone who is universal. Forexample: fishing in the river.

2. Attraction by other things (*natrekking*)

Ownership can be acquired when the thing increases large caused by nature. For example: a fruit tree.

3. Expiry (*verjaring*)

Ownership rights can change hands if the object exceeds the maximum limit or expires and certain conditions are stated in the Law Article 1946 of the Civil Code.

4. Inheritance

Property rights can be obtained by inheritance. This means that someone bequeaths or gives goods to another person as an heir, in this case the goods can be said to belong to the heir, which originally belonged to the heir.

5. Submission

Property rights can be obtained by handing over an item free of charge to another person.

Meanwhile, in sharia economic law, the factors that cause an item or object to be owned by someone include:

1. *Ikhraj al-Mubahat* (property whose legal owner is unknown)

Mubahat objects can be owned if someone has the intention to own them and no one else owns the object.

2. *Khalafiyah* (inheritance)

Khalafiyah is a replacement for someone who will occupy the old ownership position. Such as inheritance and responsibility when

destroying other people's property.

3. *Tawallud min Mamluk* (breeding)

It is ownership that produces something new from something old, productive goods can reproduce into something useful and more productive, for example: chickens lay eggs and produce chicks.

4. *Uqud* (contract)

It is an alliance, agreement and agreement between one person and another person which is proven by saying *ijab* and *qabul* which then produces satisfaction between the two.

The concept of expiration is expressly permitted in positive law.

However, this is different from the concept in sharia economic law, where there are no expired reasons for obtaining one's rights. However, this concept falls into the category of *Uqud* (contract) which is at the start of the down payment

case fees there is an agreement between the cashier and the reporter regarding the existence of the expiration concept applied at the Kendal Religious Court. This agreement can be proven by the reporting party signing a statement of payment of down payment of case fees. Even though they have signed it, there are still many reporting parties who are not aware of the concept of expiry of the remaining down payment on case fees. This can be caused by the reporting party only focusing on the signature so that they are not clear in reading the statement given by the cashier and are less active in asking the cashier. Not only that, the reporting party will also be informed if the remaining deposit for the case fee is not immediately collected within 10 (ten) days after the case is deemed completed. Where the Registrar will inform you by sending a letter of warning containing an order to collect the remainder and the concept of expiry for the remainder of the court fee deposit which is not immediately collected.

By the reporting party signing the payment statement, without realizing it, he had agreed to all the provisions enforced at the Kendal Religious Court, especially regarding court fee deposits. Therefore, the reporting party must comply with the regulations that have been implemented and must fulfill all obligations that have been previously agreed, even though they are not aware of the concept of expiration of the remaining down payment for the case fees. This is in accordance with the substance of Surah al-Maidah verse 1 which reads:

H
 LM-E-H-
 Ay yyy yyy
 A B B Y M
 T lyy'm yn hyym I don't like it
 HOUD Hiblaa Hawa F HAWA O N Amen Oh God Yes
 AM
 H-H-H-M-Y Allah Na y H H t and d YAI-S Q Gi KEHM LIYA ALI LHAM until AM

yy y yy It means: "O you who believe, fulfill those vows.

Livestock is permitted to you, except for those which are read to you. (That is) by not permitting hunting while you are performing Hajj.

Indeed, God establishes laws according to what He wants".
(QS Al-Maidah: 1)

In the paragraph above, it is explained that you must carry out and fulfill the previously agreed contract, even if one of the parties does not know clearly about the existence of the agreement, they must always fulfill the agreement as appropriate.

Apart from the concept of engagement, there is also a concept of control in the administrative sector at the Kendal Religious Court so that it does not exist

accumulation of money. And also to minimize the occurrence of use by irresponsible parties, which in sharia economic law, using the remainder of the court fee deposit without the knowledge of the owner is an act known as Ghasab, where this act is prohibited by Allah SWT. This can be proven by the revelation of the Koran, Surah al-Baqarah verse 188, which reads:

Take Kohl T How much is the solution? A E They talked to me Y B And Kahlawa or y yy yy yy and
 Mother security He is disgusted
 nal lan She

Meaning: "And do not let some of you consume the property of others among you in a false way and (do not) bring (the affairs of) that property to the judge, so that you can consume part of the property of others by (doing) sin, even though you knowing" (Al-Baqarah: 188).

Given the concerns regarding the issues above, therefore, it is necessary to determine the legal status of the remainder of the down payment, namely that it be managed by the state and used for the public interest or what is known as *maslahah murlah*. The concept of transferring ownership rights explained above is related to the concept of *maslahah murlah*, which allows a judge to make a decision on an expired case. Because essentially the initial goal of a court is to solve a problem by achieving the concept of public benefit. Apart from that, it can also keep the court away from complicated problems in making a decision over a long period of time (Mukhsin, 2017).

Maslahah murlah can be interpreted as something that can produce benefits for other people, but there are no arguments that require or prohibit this benefit, it's just that according to human reason, these benefits have important value in social life (Wahbahm 2011). *Maslahah Murlah*, which is obtained from the expired concept, aims to avoid acts of ghasab as well as wasting the remainder of the court fee deposit which is considered unimportant because the money is considered to be unclaimed money.

Not only that, the remaining penalties in the Kendal Religious Court are not only in the hundreds but in the millions.

Data obtained from the cashier shows that the remaining court fees as of December amount to 34,771,000 (thirty-four million seven hundred and seventy-one thousand rupiah) with a total of 130 (one hundred and thirty) cases, of which it is impossible to keep the money forever. the cashier, because in essence it belongs to the party

reporter(Meyda, 2022). Therefore, to minimize the use of money by irresponsible parties, this amount of money needs to have a clear legal status. The concept of expiry of the remaining down payment on case fees as stated in Government Regulation (PP) Number 5 of 2019 concerning Types and Levels of Non-Tax State Revenue at the Supreme Court and Subordinate Bodies is the result of the *ijtihad* of legal experts regarding the status of clarity regarding the transfer of ownership from the reporting party to a country where the theory focuses on the public benefit without any coercive action to have other people's rights.

Conclusion

The causal factor for the remaining case fee deposit at the Kendal Religious

Analysis of the Expiration of the Remaining Deposit for Case Fees...

Court is none other than the temporary nature of the initial estimate managed by the cashier. Where the estimate is taken from *reports* or call reports that have been previously estimated. The return of the remainder of the deposit in the case is mandatory because initially, the relationship between the reporter and the court was to use an *al-wadi'ah yad amanah* agreement, which means a custody agreement in which the goods or assets entrusted to him may not be used outside his interests. Factors causing the expiration of the deposit that has been

The advantages of the Kendal Religious Court are *firstly*, there is an emotional attitude on the part of the reporting party which can result in him being reluctant to deal with it and taking the rest to the cashier. *Second*, there is an element of distance, energy, time and costs on the part of the reporting party which turns out to be a fee. have a little left. *Third*, the absence of the reporting party or legal representative at the final trial, where the reporting party did not know that it turned out that the down payment previously paid had a balance until in the end no one took care of it and took it.

BIBLIOGRAPHY

Books

Al-Qur'an, *Al-Quran and its Translations*. Jakarta: 2018.

Sudarsono, Heri. *Sharia Banks and Financial Institutions Descriptions and Illustrations*. Cet-2. Yogyakarta: Ekonisia, 2003.

Supriyadi. *Basics of Civil Law in Indonesia*. Kudus: Kiara Science, 2015.

Wahbah az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*. Terj. Abdul Hayy Al-Kattani. Jilid IV. Jakarta: Dar al-Fikr, 2011.

Ghazaly, Abdul Rahman. *Muamalat Fiqh*. Jakarta: Kencana, 2015.

Please, Yahya. *Civil Procedure Law Concerning Lawsuits, Trials and*

Court ruling.

- . *Position and Authority of Religious Courts, Cet-2*. Jakarta: Sinar Graphics, 2003.
- Rahmat Hidayat. *Fiqh Muamalah*. Medan: Tungga Esti, 2022.
- Abu Ishaq Al-Shatibi. *Al-Muwafaqat Fi Ushul Al-Shariah*. Volume II. Egypt: Dar al-Qalam, 2005.
- Afandi, M. Yazid. *Mu'amalah Fiqh*. Yogyakarta: Logung Pustaka, 193AD.
- Al-Tirmidhi, Abu 'Isa Muhammad bin 'Isa bin Thaurah bin Musa bin al-ÿahhak al-Sulami al-ÿarir al-Bughi. *Sunan At-Tirmidhi*. Depok: Gema Insani, 2015..
- Mustofa, Imam. *Contemporary Muamalah Fiqh*. Yogyakarta: Kaukaba Dibantara, 2015.
- Nawawi, Ismail. *Classical and Contemporary Muamalah Fiqh*. Print 2. Bogor: Ghalia Indonesia, 2017.
- Mardani. *Sharia Economic Fiqh*. Jakarta: Prenada Media Group, 2012.
- Mughiroh, Al-imam Abi Abdullah Muhammad bin Ismai'il bin Ibrahim bin, and Bardizbah al-Bukho>ri> al-Ju'fi Al-Mutawafi. *Shoh{ih{Bukhori*. Beirut: Dar al-Fikr, 1994.
- Subekti, R and Tjitrosudibio. *Code of Civil law*. Cet XII. Jakarta: Pradnya Paramita, 2014.
- Satrio, J. *Law of Contracts (Concerning the Elimination of Contracts Part Two)*. Bandung: Citra Aditya Bakti, 1996.
- The other, Abi Isa Muhammad bin Isa bin. *Sunan At-Tirmidhi 2*. Beirut: Dar al-Fikr, 2005.
- Julia. *Civil Law Textbook*. Lhokseumawe: Biana Education, 2015.

Legislation

- Republic of Indonesia Supreme Court Circular, "04 of 2008, Collection of Case Fees". June 13, 2008.
- Government Regulation (PP), "05 of 2019, Types of Non-Tax State Revenue Applicable to the Supreme Court and Subordinate Bodies". January 23, 2019.
- Republic of Indonesia Supreme Court Regulation "03 of 2012, Fees for the Settlement and Management Process at the Supreme Court and Subordinate Bodies". April 10, 2012.

Fatwa of the National Sharia Council of the Indonesian

- Ulema Council** Fatwa of the National Sharia Council of the Indonesian Ulema Council, "02/DSN MUI/IV/2000, Savings", 1 April 2000.
- Fatwa of the National Sharia Council of the Indonesian Ulema Council, "36/DSN-MUI/X/2002, Wadi'ah Certificate at Bank Indonesia", 23 October 2002.

Interview

- Rohmad, interview by researcher, interview 1, transcript, 06 December, 2022.

Kartikasari, Mayda Wulan. interview by researcher, interview 2,
transcript, December 06, 2022

Rahayu, Mega Putri. Interview by researcher, interview 3, transcript, December
06, 2022

Pradita, Yudit Retsya. Interview by researcher, interview 4, transcript, December
15, 2022.

Other

Decree (SK) of the Chairman of the Kendal Religious Court, "W11-
A7/48/HK05/I/2021, Changes in Case Fee Fees at the Kendal Religious
Court." January 05, 2021.

Implementation of the Musyarakah Contract (Akad) in the Property Business in Kudus Central Java Indonesia

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Abstract

Regulation of *musyarakah* contracts there is a tendency to understand differently in the community regarding the process of implementing musyarakah contracts in joint business activities in which one party causes losses in business based on the absence of openness in carrying out obligations. The purpose of this writing is to complement the shortcomings of the existing authors, since it is limited to the economic aspects of Islam and the author discusses the legal aspects. With the description of the problem as follows: 1) How is the implementation of the musyarakah agreement in property business activities in Kudus. 2) Factors that are the basis for the implementation of sharia contracts in the property business? 3) Does the practice of a musyara contract have implications for customer trust in buying property? The approach used is a qualitative approach. The application of anauthentic contract-based contract is in accordance with legal norms involving notaries, developers, and parties. Musyarakah agreement in the property business in Kudus has knowledge of religiosity as knowledge based on sharia contracts. Thus, customer trust in transacting sharia property business has applied sharia values in the form of musyarakah contracts.

Keywords: *musyarakah, Sharia Contracts, Properties business*

Abstract

Arrangement contract deliberation there is trend understanding Which There are differences in society regarding the process of implementing a musyarakah contract in joint business activities where one party causes losses in business based on No exists openness in operate obligation. Objective writing This is For complete lack from writer Which There is, Because limited on aspect economy Islam And writer discussing legal aspects. With a description of the problem as follows: 1) How implementation of musyarakah contracts in property business activities in Kudus. 2) Factors- factors that form the basis for implementing sharia contracts in the property business? 3) Does the practice of musyara contracts have implications for customer trust in buying property? Approach used is qualitative approach. Application contract based deed authentic in accordance with norm law Which

involve Notary Public, developer, And para party. Contract deliberation in business property in Holy own knowledge religiosity as knowledge based on contract sharia. With thereby, trust customers in sharia property business transactions have implemented sharia values in form contract deliberation.

Say Key: musyarakah, Contract Sharia, Business Property

INTRODUCTION

Property becomes one of the primary human needs as a realization of the feasibility of living to take refuge, rest and enjoy life with family. In addition, property also has a family learning function, economic function, recreation function, worship function, social function and other activities related to humans as individual and social beings in society. Property itself is defined in the KBBI as property in the form of land, buildings and facilities and infrastructure which is an inseparable part of the intended land and / or building. (Language Center Dictionary Drafting Team, ed.3, Big Indonesian Dictionary, Balai Pustaka, Jakarta, 2008, p.898).

Property as *hajjah dharuriyah* is captured by business people as a promising economic opportunity. Devolepers are here to offer the property products they work on, with a variety of systems, both cash and credit offers. Property business opportunities are rife nationally, including in the city of Kudus, Central Java.

For home ownership as a goal that must be achieved by individuals, there are many ways taken in order to obtain it, be it by saving first from a long time ago to then be able to buy it and even until someone makes a loan as capital to buy it. (Rahima, 2020)

Sharia-based developers also take this business opportunity (opportunities) to fight the dominance of conventional-based businesses that are considered usury. Although the toughest challenge (weakness) of Devoleper Sharia is the low liquidity of capital owned to be able to compete with conventional developers as competitors (threats) in seizing this opportunity. Moreover, it has not been supported by ideological sharia-based capital regulation to provide stimulation of sharia-compliant profit-sharing cooperation, as well as constraints on the land acquisition process where the role of the government is still inclined to the hegemony of capitalism through the power of banks.

The implementation of the Islamic economic concept by sharia-based property developers is seen in the current phenomenon in the property world that is trying to escape from bank and non-bank financial institutions. The birth of a new property developer community, offering property solutions based on pure sharia. One of them is a sharia property in Kudus Al madinah Griya Asri which is open in 5 places in the Kudus area. Likewise, Bumi Kudus Syariah Simangu Housing, Jati, Kudus, Housing with sharia financing, without banks, without

usury, without BI checking, without confiscation, without a bathil contract, is located in Pasuruhan Kidul Village, Jati District, Kudus Regency.

This phenomenon, from the point of view of researchers, is an interesting and even solutive thing for the property business in shari'a, until the end it will be able to shift the home ownership loan (KPR) system by conventional banks or Home Ownership Financing (PPR) by banks labeled shari'ah. Some of the contracts used in Sharia property transactions in business are based on *Fiqh Muamalah Islam* such as *the Syirkah Abdan* contract for the internal sharia Property Management team, with land owners/financiers through buying and selling on credit or *mudharabah*, marketing activities with *ijarah* or *syamsarah contracts*, and *bay' al-istishna'* with payment in cash or installments to the User.

However, in this study, it examines the musyarakah contract, or specifically called *Musyarakah Mutanaqisah*. According to Hosen (2009) *Musyarakah Mutanaqisah* (diminishing partnership) is a form of cooperation between two or more parties for the ownership of an item or asset, where this cooperation will reduce the ownership rights of one of the parties, while the other party increases its ownership rights. Interestingly, the researcher formulated this study in 3 problems, 1) How is the implementation of the musyarakah agreement on property business activities in Kudus? 2) What are the supporting factors and obstacles to the implementation of Musyarakah in the property business in Kudus 3) How is the implementation of the musyarakah contract on property business activities in Kudus from the perspective of sharia economic law?

RESEARCH METHODS

This method and type of research uses a descriptive qualitative type of research, where qualitative research itself is a research method with an analysis procedure that does not use statistical or numerical analysis procedures. The research approach used by the author in this study is a qualitative approach (qualitative research). The qualitative approach according to Creswell is: "Qualitative research is an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The research builds a complex, holistic pictures, analyzes words, reports detailed views of informants, and conducted the study in natural setting [2]. Data collection uses observation techniques, structured interviews, and documentation. The data analysis used is the Descriptive Qualitative Analysis Method.

RESULT AND DISCUSSION

How is the implementation of the musyarakah agreement on property business activities in Kudus

Musyarakah is defined as a merger, mixing or union. Musyarakah means partnership cooperation or in English it is called partnership (Mardani, 2014). The

words syirk and syirkah/syirkah alternately, but the commonly used is the first word. The meaning of the word leads to al-ikhtilāṭ (mixing) [4][5](Humaemah, 2019)(Humaemah, 2019)(Humaemah, 2019).

Fiqhly, in his book, as-Sailul Jarrar III: 246 and 248, Imam Asy-Shaukani wrote as follows, "(Syirkah syar'iyah) is manifested (realized) on the basis of equally ridha between two or more persons, each of whom expends capital in a certain measure. Then the joint capital is managed for profit, on the condition that each of them gets a profit according to the size of the shares handed over to the syirkah. But when they all agreed and agreed, the profit was divided equally between them, even if the amount of capital was not the same, then it was permissible and valid, although their shares were fewer while others were larger in number. In sharia perspective, this kind of thing is not why, because business ventures are the most important thing based on ridha sama ridha, tolerance and airy chest(Naf'an, 2014).

Az-Zuhaily (1989: 792-793) in Edwin Rahmat *mentioned*, *musyarakah* is a cooperation agreement between two or more parties for a certain business to which each party contributes funds with the opportunity that profits and risks will be borne together in accordance with the agreement(Yulianto, 2015).

Musyarakah is a cooperation agreement that occurs between capital owners (musyarakah partners) to combine capital and do business together in a partnership, with a ratio of distribution of proceeds in accordance with the agreement, while losses are borne proportionally according to capital contributions(Naf'an, 2014).

Legal Base of Musharakah

Musyarakah is a contract that is allowed based on the Qur'an, sunnah, and ijma'. Al Qur'an Q.S An Nisa verse 12

.So,F

"Of the truth most of the people of the association are partly they do zalim to some of the others, except those who have faith and work the shaleh charity; and very few are these".

In Surah An-Nisa (4) verse 12, the notion of *syarukâ'* is to ally in possession of property obtained from inheritance. Whereas in Surah Shâd (38) verse 24, the recitation of al-khulathâ' means syarukâ', that is, people who mix their property to be managed together. "God one party does not betray the other. If one of the parties has betrayed, I am out of them." (HR. Abu David, who was abdicated by al Hakim, from Abu Hurairah)

Ibn Qudamah in his book, *al Mughni*, has said: "Muslims have been consensual about the legitimacy of society globally despite differences of opinion in some elements of it" (Muhammad Syafi'i Antonio, 2010). Based on juridical considerations, the legal basis based on DSN MUI Fatwa No.08 / DSN-MUI / IV / 2000 concerning *musyarakah* financing (<https://tafsirq.com/fatwa/dsn-mui/pembiayaan-musyarakah> accessed Monday, July 18, 2022 at 22:00). Those that must be fulfilled in the transaction are several, which are as follows: a. Contractors, business partners, b. The object of the contract, namely capital (*mall*), work (*drabah*), c. *Shighar*, i.e. Ijab and Qabul. Types of *Musyarakah*

Broadly speaking, *musyarakah* is categorized into two types, namely *ownership musyarakah* (*syirkah al amlak*), and *contract musyarakah* (*syirkah al aqad*). The *ownership musyarakah* is created because of an inheritance, will or other condition resulting in the ownership of one asset by two or more persons. In this *deliberation*, the ownership of two or more persons shares in a real asset, and also shares in the profits that the asset generates. The *musyarakah* contract is created because of the way of the agreement, it is agreed that two or more parties agree that each of them contributes to the *musyarakah capital*, and agrees to share profits and losses (Djuwaini, 2010).

Shirkah Amlak

Syirkah amlak is a *syirkah* that occurs not because of a contract, but because of a certain effort or occurs naturally (*ijbari*). Therefore *syirkah amlak* is divided into two: *Syirkah ikhtiyar* (voluntary), that is, *syirkah* born by the will of two allied parties. For example, two people who have a congregation to buy an item, or two people get a grant or will, and both receive, so that both become allies in property rights and *Syirkah jabar* (coercion), that is, a communion that occurs between two or more people without their will the inherited goods become the property of the person concerned. The law of these two types of *syirkah* is that each ally is like a foreign party over his other ally, so that one party is not entitled to take any action against the property without the permission of the other, because each ally has no power over his brother's share.

Syirkah Uqud

Syirkah uqud is two or more persons performing an agreement to cooperate (unionize) in capital and profit. That is, this cooperation is preceded by a transaction in investment and an agreement on the distribution of its profits. Hanafiah scholars set the conditions for *syirkah uqud*. For the validity of *syirkah uqud* that must be fulfilled include:

1. *Tasarruf*, which is the object of the *syirkah* contract, must be represented. In *syirkah uqud* the profit obtained is a joint ownership that is divided according to the agreement. On this basis, each member of the

musyarakah has the authority to other members of the union to perform *tasarruf*. Thus each party becomes a representative of the other party.

2. The distribution of profits must be clear. The share of profits for each member of the *deliberation* must be clearly determined, for example, 30%, 20%, or 10%. If the distribution of profits is not clear, then *syirkah* becomes *fasid*, because profit is *mauqud* alaih rukun dari *musyarakah*.

3. The profit must be a commonly owned part as a whole, not by determination for example for A 200, B 500. if the profit has been determined, then the *syirkah* contract becomes a *fasid*. Because *syirkah* requires participation in profits, if the determination is made to a certain person, it will affect the nature of the conspiracy. individuals, there are many ways taken in order to get it, be it by saving first from a long time ago to then be able to buy it and even until someone makes a loan as capital to buy it. However, it is currently very difficult to obtain home ownership in cash, this is due to the unavoidable rise in house prices (Rahima, 2020). Then the credit system becomes an alternative. Meanwhile, the majority of housing loans are dominated by conventional banking (Sunarto, 2018).

Factors that are the basis for the application of sharia contracts in the property business?

Based on research that has been carried out on several sharia properties in Kudus, the marketing strategy used by sharia housing is in accordance with the theory previously explained, namely Promotion is an activity carried out by companies to show, communicate the products they produce to the public. Promotion carried out by sharia properties is by promoting via OLX online media, social media facebook, instagram, tiktok and brochures available at marketing offices. The price list is in accordance with the products offered accompanied by an explanation of the product, As for discounts or prizes included When launching sharia housing. Design, namely the design of the products offered always considers the values of Islamic law in designing their homes, besides that it also provides freedom to consumers if they want to change the design of the house according to the wishes of consumers but still must not violate Islamic values.

The location is closely related to public facilities such as places of worship, markets and shopping. Especially sharia properties in kudus prioritize the location of worship in every location that is opened, to make it easier for residents of housing to worship. Participants, namely people who work in sharia housing upholding akhlaq, islamic economics and an attractive appearance have a great influence on consumer perceptions or success in delivering services and products

offered by the company. The web, namely sharia property, designs information systems according to current technological developments, namely web-based marketing information systems, by utilizing web media to expand the sharia property marketing network does not pursue for local people even to the point of leaving the area (Mincarti et al., 2020). Devolepers who are moved to open sharia property opportunities, such as the holy sharia house Gondang Manis Kudus, the holy sharia house Gondang Manis and Al Madinah Property Syariah. They are sharia property developers who have been doing the starting point of their business in Kudus since August the last five years, one of the founders is Mr. Setyo Utomo. Al Madinah Property Sharia for example, since its establishment principled should not separate between proselytizing and business not solely worldly. It can be said that the property business with the sharia system is *deferentiation* with other property businesses based on ansich profit, without considering the sharia law. Sharia property emphasizes its business processes or even to the concept of its occupancy. Sharia property has the characteristic of anti-usury to build islamic *hadharah* (civilization) or that is justified in Islam. Sharia property prioritizessakinahan for its residents, so it is very urgent to process its ownership and utilization in accordance with syara'.

Since the beginning of the kudus sharia property, it has wanted to implement a sharia system in selling property. Because business is not only *profit oriented*, but there are nuances of da'wah, ukhuwah and *taysir* (providing convenience) for consumers. More important than all that is to seek Ridho Allah swt. As stated by the Developer, Mr. Setyo utomo: "At the beginning of the establishment of Al Madinah Property Syariah, I wanted to apply sharia principles in property buying and selling transactions, with an agreement according to the fikh that I learned and followed, opportunities were very good in business and strengthened ukhuwah".

Regarding the choice in the field of Property, according to him, man is commanded to develop property so as not to deprive the offspring of weak offspring both faith, knowledge, physique and property. Developing treasures in the era of hedonistic capitalism there are two options, namely: gold and property. Gold follows the value of the currency, although it is anti-devaluation but the predecision is different from Property which has capital gains and generates cashflow.

As one of the Sharia property developers, Al Madinah Property Syariah has the *tagline* NON RIBA HOME LOANS, No BI Checking, No Interest, No Usury, No Fines / Confiscation.

This tagline is an attraction for consumers who want to avoid syubhat contracts, especially haram, thus making Sharia Property in Kudus as one of the attractive choices for consumers.

In general, Sharia Property in Kudus carries out the nauseamah maliyah

syar'iyah without usury in business and property ownership, opening up opportunities for business people to be able to cooperate or partner in developing sharia property in Kudus. Cooperation through syirkah contracts based on Islamic sharia contracts. The partnership opportunities offered are:

First, the Land Partnership uses the syirkah *Mudharabah* agreement, which is the land owner giving up land he owns himself, to be used as property development land, while Sharia Property in Kudus provides a system of development, marketing, and property design, with profit sharing through profit sharing. It is this partnership that is the object of research by researchers, related to the effectiveness of the property business.

Second, capital cooperation uses *the syirkah mudharabah* contract.

Third, the sale of land with a valid contract is a contract for buying and selling land to pay tempo.

Fourth, marketing cooperation using the *syamsara contract*, which is a realtor contract. The advantages offered by Sharia Property in Kudus that uses sharia-compliant management are financial benefits and sharia-compliant mu'amalah proselytizing to land owners, Users (buyers) and the general public. So that the success for Sharia Property in Kudus to achieve a definite profit is fortunately. Sharia property in Kudus offers a *deference* compared to the previous property business. Sharia property in Kudus emphasizes its business processes even to the concept of occupancy. Sharia property has the characteristic of *hadharah* (A form of civilization influenced by certain keyakninan) of Islam or that is justified in Islam (Sunarto, 2018).

Effectively, entrusting Sharia Property in Kudus to provide customer satisfaction as a form of effectiveness. The fulfillment of the commitment of Sharia Property in Kudus, Sharia Property prioritizes the validity of its residents, with the concept of shari'a housing as well as the ownership process and its use as desired by Syara' (Sylvana et al., 2020). In terms of property ownership of Sharia Property in Kudus, it absolutely passes to the buyer. This is like fiqh muamalah one of the main pillars of the Sharia Property business in Kudus that the law of an object / item that can be owned by an individual, public interest or the state. So that it is also justified to be an item that can be of business value as is being carried out by Sharia Property in Kudus. Land and buildings are geographically positioned property of wealth / immovable property. Ownership carries the consequence of the right to avail, or transfer benefits to anyone the owner desires. This includes buying and selling in the property business over land and buildings to own and occupy.

Does the practice of a musyara contract have implications for customer trust in buying property?

The musyarakah agreement in the application of the property business in kodus has implications for public trust with a universal understanding of Islamic values related to mutually beneficial cooperation (syirkah) as usvita called (Usvita, 2021)(Pramana & Rastini, 2016)(Pramana & Rastini, 2016)(Pramana & Rastini, 2016) Trust is an important thing for a committee or promise, and commitment can only be realized if one day it matters. Trust exists if customers believe that the service provider can be trusted and also has a high degree of integrity. The trust of the customer is all the knowledge that the customer has and all the conclusions that the customer makes about its objects, attributes and benefits.

Trust has a belief that will ultimately create a brand image for a company. because of the conformity of sharia law. Sharia law is the implementation of all transactions in Islamic financial institutions that will achieve sharia law conformity, if in the implementation of each transaction avoids elements of maysir, gharar, haram, usury, and bathil (Usvita, 2021). Even, This includes buying and selling in the property business over land and buildings to own and occupy. sharia property can build resilience during the COVID-19 pandemic and provide a model of business resilience by exploring its ability to be resilient during the COVID-19 pandemic. strengthening developer commitment, strengthening cash flow management, increasing and disseminating sharia property knowledge, and emerging dynamic capabilities to respond to shocks and maintain the continuity of the sharia property business (Fauzi & Rahadi, 2021).

This means that customers are very confident in doing property business because it is in accordance with all aspects of human life with aqidah, sharia and akhlaq. With the many Islamic elements contained in an activity and transaction carried out by the developer, customers will be more confident to buy sharia-based property.

Conclusion

Based on the practice of musyarakah contracts in the property business in Kudus that occur during transactions not only as a result of social experience but as a result of the trust of people who have knowledge of religiosity as a reproduction of knowledge based on sharia contracts. Thus, customer trust in transacting sharia property business has applied sharia values in the form of musyarakah contracts. This study provides a perspective in looking at the practice of musyarakah contracts in the property world not on static causal factors but in the dynamic process of how people's confidence in buying property. Follow-up studies that accommodate a wider sample and diverse sources of informants can be a source of knowledge for deeper understanding and better social structuring.

First of all, thanks to Allah S.W.T for His mercy and guidance. We acknowledge the support received from Sharia Faculty of Kudus Islamic Institute.

Special appreciation to all of the informan to complete the data. In addition grateful acknowledgement to Prof. Abdurrahman Kasdi as Rector of Kudus Islamic Institue for continuous support and encouragement to all lecturers to improve their ability and skill.

References

- Fauzi, A. A., & Rahadi, R. A. (2021). Toward a Business Resilience Model: The Case of Sharia Property in Surabaya Raya Area during COVID-19 Pandemic. *European Journal of Business and Management Research*, 6(4), 252–261. <https://doi.org/10.24018/ejbmr.2021.6.4.986>
- Humaemah, R. (2019). Special Requirements In Variety Contract Shirkah On Literature Fiqh School of thought. *Ulumuddin : Journal Sciences Islam* , 9 (1), 61–80. <https://doi.org/10.47200/ulumuddin.v9i1.282>
- John W. Creswell. (1998). *Qualitative inquiry and research design: Choosing among five designs*, , CA. sage publication.
- Mardani. (2014). *Sharia Business Law* (1st ed.). Prenada Media Group. Mincarti, I., Mulyono, H., System Information, M., Dynamics Nation, S., & Jl Gen Sudirman Thehok-Jambi, J. (2020). System Analysis and Design Information Marketing Housing area Sharia Based Web On PT. SustainableEternal Blessing. In *Journal Management System Information*
- Mohammed Shafi'i Anthony. (2010). *Bank Sharia: From Theory to Practice* (1st ed.). Echo Human Press.
- Naf'an. (2014). *Financing Musharakah And Mudharabah* . House Knowledge. Pramana, I., & Rastini, N. (2016). Influence Quality Service To Trust Customer And Loyalty Customer Bank Independent Branch Veteran Denpasar Bali. *E-Journal Management University Udayana* .
- Rahima, A. (2020). Sharia Banking Opportunities and Challenges Financing Ownership Property Residential in Indonesia. *JESI (Journal Economy Sharia Indonesia)* .
- Sunarto, A. (2018). *Effectiveness Business Property With Contract Mudharabah Di Ahsana Sharia Property* .
- Sylvana, A., Awaluddin, M., & Mutahajjid, A. (2020). Marketing Strategy Model Based on the Benefit of Sharia Property Developers in Indonesia. *PalArch's Journal of Archaeology of Egypt / Egyptology*, 17(7), 8123–8135. <https://www.archives.palarch.nl/index.php/jae/article/view/3587>
- Usvita, m (2021). INFLUENCE RELIGIOUSITY AND TRUST CUSTOMERS TO DECISION SAVE ON BANK NAGARI SHARIA KCP SIMPANG FOUR. *Journal Appreciation Economics* . <https://doi.org/10.31846/jae.v9i1.339>
- Wahbah Az-Zuhaili. (2006). *Al-Fiqh Al- Islamic Wow Adillatuh* (4th ed.). Dar al thought Yulianto, E. R. (2015). ANALYSIS FINANCING PROPERTY USE

ACADE MMQ (Consultation MUTANAQISAH) (Study Case On Bank Muamalat Indonesia). *Syria Studies* , 7 (1), 37-72.

Policy Employment in Kudus

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Abstract

The Job Creation law (Undang-Undang Cipta Kerja) which was legally promulgated in November 2020 had a major impact on the employment sector. If sorted, the employment cluster is regulated in more detail in Government Regulation (Peraturan Pemerintah/PP) Number 34 of 2021, PP Number 35 of 2021, PP Number 36 of 2021, and PP Number 37 of 2021. The promulgation of these four regulations certainly has legal consequences for regional governments to synchronize and harmonize law. This study aims to find out employment policies in Kudus Regency, as well as to find out the synchronization and harmonization of the law on the Job Creation Law. This type of research is field research, and is carried out using a statutory approach, then analyzed qualitatively to obtain results. The results of the study show that the Kudus Regency's Manpower Office (Dinas Tenaga Kerja) has implemented the Job Creation Law, and has conducted regular outreach to companies in Kudus Regency by online (due to the Covid-19 pandemic). In practice, the Sukun Group as a company has not been able to fully implement the Job Creation Law and is still making limited adjustments to several Government Regulations by negotiating them with the Labor Union. In synchronizing and harmonizing law, creative work laws are not fully aligned with the elements of justice because several articles in government regulations as their derivatives do not bring about equitable justice, and are only beneficial to some parties.

Keywords: *policy, employment, legal synchronization*

Abstrak

The job copyright law which was legally enacted in November 2020 has had a major impact on the employment sector. If ordered, employment clusters are regulated in more detail in PP Number 34 of 2021, PP Number 35 of 2021, PP No 36 Year 2021, as well as PP No 37 Year 2021. Invitation fourth This PP certainly has legal consequences for regional governments to synchronize and harmonize laws. This research aims to find out employment policies in regency holy, as well as For know synchronization And legal harmonization of the Job Creation Law. This research is of the field research type, and was carried out using a statutory approach, then analyzed qualitatively for get results. Research result shows that the Kudus Regency Manpower Service has implemented the Job Creation Law, and has carried out regular online outreach to companies in Kudus Regency (due to the Covid-19 pandemic). In practice, Sukun Group as a company has not been able to fully implement the Copyright Law Working and still making limited adjustments to several Government Regulations by negotiating them with the Labor Union. In synchronization and harmonization of laws, laws invite cipt Work No aligned fully with element justice Because Some articles in government regulations as derivatives do not bring equal justice, and are only beneficial for some parties.

Say key : *policy, employment, synchronization law*

INTRODUCTION

Employment is a fundamental aspect of human life because it includes social and economic dimensions. One of the important goals in economic development is the provision of sufficient employment opportunities growth force Work Which more fast from on chance Work. The imbalance between the provision of jobs and the growth of the workforce will give rise to unemployment which will later become economic instability which will also impact instability in other areas of life.

The government, through its policies, has formulated a set of employment regulations through Law Number 13 of 2003 concerning Employment. The preamble to the law states that development national held in frame development man Indonesia as a whole and the development of Indonesian society as a whole to create a society that is prosperous, just, prosperous, equitable, both materially and spiritual based on Pancasila And Invite Invite Base Country Republic Indonesia Year 1945 (Constitution No 13 Year 2003). In point (b), the preamble also emphasizes that labor has a very important role and position as actors and development goals. Labor law places employment as an integral part of the aspect development national based on Pancasila And Constitution The 1945 Foundation of the Republic of Indonesia was implemented in the framework of the complete development of Indonesian people and the development of Indonesian society as a whole for increase dignity, dignity, And price self power Work and make it happen public prosperous, fair, prosperous, And equally, Good material and spiritual (Explanation General Act No 13 Year 2003).

The enactment of Law Number 13 of 2003 concerning Employment provides new hope for the world of employment which was previously felt to be burdensome. for para worker. Various regulations previous part which is a colonial product, places workers in a disadvantageous position in labor placement services and an industrial relations system that emphasizes differences in position and interests so that it is seen as inappropriate again with need period now and demands that time will come. With birth Invite Invite number 13 Year 2003, it is hoped that basic rights and protection for workers can be fulfilled Work And workers/laborers as well as on moment Which simultaneously can realize conditions conducive to the development of the business world. Apart from that, the law is a comprehensive regulation because it covers development resource man, enhancement productivity And Power competitiveness of Indonesian workers, efforts to expand employment opportunities, staff placement services Work, And coaching connection industrial. So that Law _

Employment has discuss Lots matter Good about rights employee up to the system Remuneration (Rudi Hartono & Holy Ramadhani, 2020).

During its journey, Law Number 13 of 2003 concerning Employment was felt to be no longer relevant to current developments and accommodated all interest worker And businessman. In statements 2019, Hanif Dhakiri as Minister Power Work period time That mention relationships economy world now want market power Work Which more flexible. Furthermore explained that the current employment regulations This like "kanebo dry" Which No only burdensome world business, but Also not good for the labor climate in Indonesia.

Through various considerations, the government ultimately promulgate Law Number 11 of 2020 concerning Job Creation. This law was promulgated on November 20 2020. At the beginning of its journey, the public opposed this law because it was considered not in accordance with labor principles and was more profitable for entrepreneurs. However, in the plenary meeting on 5 October 2020, the DPR RI passed the Job Creation Bill.

In the consideration of point (b) of the Job Creation Law, it is stated that with create Work expected capable absorb power Work Indonesia Which as widely as possible in the midst of increasingly competitive competition and the demands of economic globalization (Law Number 11 of 2020). However, Job Creation also stated that the new regulations stipulated in this law aim to strengthen protection for workers and increase the role of workers in supporting the investment ecosystem. This actually strengthens the developmentalism paradigm which is quite central in this Law, which implies that investment and economic development are the most important things main role in the development of a country (Policy Paper: Critical Notes and Recommendations on the Job Creation Bill).

Invite Invite Create Work consists from 1187 page, 15 chapter, And 186 articles. The Job Creation Law is compiled from 76 laws which cover several clusters such as simplification of business licensing, investment requirements, employment, protection and empowerment of MSMEs, ease of doing business (including the taxation cluster), research and innovation support, government administration support, imposition of sanctions, land acquisition , central government investment and national strategic projects, area economy special.

From the employment cluster, the government has issued four Government Regulations (PP) related to the employment cluster. The four PPs are PP Numbers 34, 35, 36 and 37 of 2021. In their implementation, the four PPs were rejected by the KSPI (Confederacy Union Worker Indonesia). According to KSPI, existence fourth PP

This actually threatens Indonesian workers because of the presence of foreign workers whose permits are made easier. Apart from that, the PP also indicates that it supports the practice of *outsourcing* (outsourcing) for workers which has been opposed by worker groups. Other matters that are still being disputed are regarding PKWT, PKWTT, layoffs, and the issue of UMK and UMR which until now are considered not pro-worker and only benefit employers.

So far, articles related to employment policy have been limited to two aspects, namely on level implementation And problematic. Which First, on Implementation Policy Employment About Exchange Work in Service Power Work in Sukabumi Which Already walk with Good If seen from side disposition and structure bureaucracy. However from side communication And source Power man has been implemented but is not yet optimal (Syariyah et al., 2020), and Implementation of the Policy to Reduce Urban Unemployment at the Lubuklinggau City Employment Service Which Not yet accomplished Because increase number unemployment which continues to increase every year. Inaccurate data base, not in the return of the AK 1 card after being issued, the lack of job opportunities, and placement position Work No in accordance with the field (Biological, 2021). In another article, Employment Problems in Batam City According to Law Number 13 of 2003 concerning Employment consist of juridical factors, in the form of errors in the interpretation of laws, weaknesses in the registration system, non-regulation of sanctions to violation PKWT And weak system labor inspection (Handayani & Angrayni, 2018).

Presence Act Create Work along with four rule its derivatives through The PP certainly brings fundamental changes to labor regulations throughout Indonesia. Employers must adapt the law to the workers they employ, from contract issues to salaries. This basic issue must be applied immediately so that there is legal certainty for both parties (employers and workers). Based on this background, researchers plan to carry out study title "Policy Employment in Regency Holy".

METHOD STUDY

1. Election object study

Policy employment is object main in study This. This research was analyzed based on the employment aspects contained in the Job Creation Law along with derivative regulations contained in Government Regulations.

2. Approach Study And Election Data

This research uses a conceptual approach, and is supported by primary data, which consists of laws and regulations related to the employment sector. As well as, by data secondary, that is use results study or

previous research from scientific journals, scientific articles, and books which discuss topics similar to this research.

3. Process Study And Analysis Data

Study This is field research, and also literature so that the data that has been collected is analyzed interpretatively and hermeneutically. Clarity of interpretation will function as a reconstruction of ideas hidden behind legal rules. This interpretation teaching uses the hermeetic method (Peter Mahmud Marzuki, 2005), so that what is produced in this research will be able to contribute to legal development. The research results are presented descriptively to answer the issues and topics this research.

RESULTS AND DISCUSSION

Policy employment in Kudus Regency

In general, the Kudus Regency Regional Government has implemented it Law Number 11 of 2020 concerning Job Creation, especially Employment Clusters. This was conveyed by Agus Juanto, as Head of the HIPK Division of the Kudus Regency Manpower Service.

The Covid-19 pandemic also has an impact on conditions employment in all region (Witono, 2021). In Regency Holy, in line with What Which become *jobs desc* from Service Power Work, his party has carried out outreach to companies in Kudus Regency via *zoom meetings* (because of the Covid-19 pandemic) every month. This is done to socialize the new regulations regarding employment clusters in the Law Create Work. Business the even in response Good by company. Agus Juanto, in the explanation claim that party company precisely more understand the points contained in the Job Creation Law. Because companies are direct implementers of these rules.

Based on existing provisions, all Company Agreements (PP), Employment Agreements Together (PKB), And Agreement Work Time Certain (PKWT) must be registered with the Kudus Regency Manpower Office. This is done as monitoring by the Manpower Office to see whether the PP, PKB and PKWT are in line with regulations on. Matter This even done For avoid employment disputes Which often appear from PKWT.

According to records from the Manpower Office, there are 196 PPs, 96 PKBs and 5,000 PKWTs registered. This was obtained from 729 companies in Kudus Regency. However, this figure is still far from the actual number. This is due to limited access to register PP, PKB and PKWT online. The limitations in question are the limitations of entrepreneurs adapting with technology For register PKWT the. Register

Online PKWT is still considered complicated because it requires digitalizing signed documents.

In response to these obstacles, the Manpower Department still allows entrepreneurs to register the PKWT manually (physical file) with the Manpower Department within 7 days after the PKWT is signed. The file will then be analyzed to be calculated as a registered PKWT. Such PKWT registration is carried out as a control from government as well as as means For align between Legislation, Company Regulations, and Collective Labor Agreements.

Regarding the Company Agreement (PP) and Collective Labor Agreement (PKB), as for PP And CLA Which enter to Department of Manpower No so straight away Approved. According to Mr. Agus Juanto, the PP and PKB that have been registered with the Kudus Regency Manpower Office will first be examined by the Kudus Regency Manpower Office Mediator Team. The team will review the contents of the PP and PKB. If the contents of the PP and PKB are not in line with the Legislative Regulations Which more tall, so Party Department of Manpower will provide notes Which need repaired by party Company. There is correct This is a form of control to avoid employment conflicts or disputes in the future.

Based on the experience gained by Agus Juanto and the team, the important points that are prone to correction are the termination of employment (PHK) points. This makes sense because layoffs are an important aspect for the sustainability of the fate of workers in the company. Layoffs are also a frequent cause of employment disputes. Agus Juanto added that the reason or reason why the company laid off employees was the most crucial point. Because, apart from being based on statutory regulations, these points must also be discussed with the Labor Union to then be mutually agreed upon in Company Regulations and Employment Agreements. Together. If there are things that Even if it is unclear, such as multiple interpretations or vague, the Manpower Office will also make corrections. In this case, the Kudus Regency Manpower Office has implemented it principle balance so that can balancing right And obligations of both parties (employees and employers). Apart from the precautionary principle, the Manpower Office in this case also uses the precautionary principle. This is important because the Manpower Office needs to pay close attention to the contents of the PP and PKB so that the meaning or interpretation that emerges does not conflict with higher regulations.

In this case, the Manpower Office has made efforts to synchronize the law between PKWT, PP and PKB with more detailed laws and regulations. high, namely Law Invite Job creation along with derivative regulations. Legal Synchronization is an effort to seek clarity or linkage of a rule with higher law in terms of tracing what constitutes its legal umbrella. The aim of this synchronization activity is to seek harmony between people regulation Which discuss things with each other related to order No each other overlap and actually complement each other (supplementary).

The PP takes effect from the time it is ratified by the Manpower Office, while the PKB comes into effect from the time it is signed by both parties. The validity period for both PP and PKB is two years.

Regarding PKWT, according to Agus Juanto's experience, many workers are dissatisfied with the contents of PKWT and career paths. This is related to PKWT, namely the Agreement Work Time Certain Which where para worker will Work in only a certain time. In this case, the workers are worried about continuing their career at the company. There is a fear on the part of the workers that if the contract (certain time) expires, they will not continue. In this case, the entrepreneur follows the rules of the statutory regulations to carry out PKWT first.

In statutory regulations, both Law Number 13 of 2003 and Law 11 of 2020 also recognize the existence of PKWT. Although legally there are differences in implementation. In Law 13 of 2003, PKWT is limited to a maximum of 3 years. Meanwhile, in Law 11 of 2020, the longest PKWT is 5 years. According to the Minister of Manpower, Ida Fauziyah, the difference in the PKWT period is to ensure legal certainty for workers. According to the Ministry of Manpower, the 3 year PKWT period in practice is often varied by employers. Thus making The PKWT period in Law 11 of 2020 is limited to a maximum of 5 years to reduce various legal irregularities in the field regarding PKWT.

Regarding outsourcing, in this case, the Kudus Regency Manpower Office has an opinion that arrangement switch Power of course changed in a way significant in terms of the scope of work that can be outsourced after the enactment of Law Number 11 of 2020. According to Agus Juanto, the absence of division of outsourcing and contracting in Law Number 11 of 2020 has resulted in unlimited types of work Which can be outsourced. Practice that according to him It will be detrimental to the workers because they are not direct employees of the entrepreneur, but rather employees of an outsourcing company. Apart from that, this practice will have an impact on the increasingly unclear fate of workers because whether they will be on a continuous contract or whether it will be completed during the contract period between the entrepreneur and the company. switch Power finished. Agus Juanto example if practice switch Power the good one is at the State Electricity Company (PLN). PLN carries out outsourcing work for office boy and cleaning service employees with outsourcing companies for a 5 year contract period. If the 5 year contract period expires, PLN will continue the outsourcing with another outsourcing company but will not replace the office boy and cleaning service personnel. This could be an example of good outsourcing implementation because even though the outsourcing company changed, the outsourced personnel did not follow suit. Compare this with the current outsourcing practice where when the contract expires between the entrepreneur and company outsourcing, so personnel Which outsourced automatic finished and a new problem arose. These include the emergence of new unemployment, as well as a series of other problems that follow layoffs (PHK) from outsourcing companies to cleaning service employees or office boys.

Another matter relating to employment policy is regarding the Determination of the Regional Minimum Wage (UMR). If in previous regulations the determination of the UMR was based on Decent Living Criteria (KHL), now based on Law Number 11 of 2020 and PP Number 36 of 2021 the determination of the UMR is based on economic growth and inflation (Province). These regulatory changes certainly have a significant impact on the increase in the UMR, which tends to be lower when compared to determining the UMR based on KHL calculations. In Agus Juanto's opinion, determining the UMR based on inflation and economic growth is considered inappropriate. According to him, the UMR is more appropriate if it is based on KHL considering that the elements of KHL are obtained from real prices in the market. These prices include the prices of basic necessities such as rice, sugar and clothing. These prices are the results of a survey by Manpower Department officers and will then be used as a reference in preparing the UMR. When compared with economic growth and inflation, the prices from the KHL survey are indeed closer to reality, and each region certainly has a different price range.

Meanwhile, the calculation of overtime wages has not changed, and still uses the same formulation as in the previous statutory regulations.

The use of foreign workers as regulated in PP 34 of 2021, in Kudus Regency has not experienced any significant changes. In an interview with Agus Juanto, Kudus Regency does not have any foreign workers. If there is any TKA are not permanent workers and are only temporary. Generally, foreign workers are employed by manufacturing companies when there are new machines. The existence of these foreign workers is to train local workers (mechanical technicians) to operate machines and repair them. If the technician is skilled, then the technician is responsible for operating the new machine.

Agus Juanto's statement is related to the Regency Kudus, as an industrial city, is a natural thing. Remembering in Kudus Regency has several national scale companies as well as the cigarette industry. The existence of machines new Which imported from Overseas is a necessity for the progress of an industry. Often, technicians from abroad are also hired temporarily for a short period of time.

In fact, the implementation of the Job Creation Law cannot be fully applied by companies. Results of an interview with Bintarno, SH as Head of Legal HRD at Sukun Group which has its head office in Gondosari Village, Gebog, Regency Holy said if company Not yet apply in full the Job Creation Law. Currently, the company is still carrying out a limited adaptation process by involving labor unions as discussion partners to seek mutual agreement.

According to Bintarno, Sukun Group is currently just implementing new regulations regarding Termination of Employment Relations (PHK) which have been agreed upon by the Worker Union, And Directors Company. For rule rule other, Still in process

negotiations. This step was taken because Legal HRD was paying attention to caution in determine your attitude No detrimental to workers but also does not violate the rules contained in the Job Creation Law. Apart from that, another reason put forward is to avoid demonstrations or other actions that will harm the company. So the company takes relatively slow steps for the common good.

Payload Invite Invite And Synchronization And Harmonization Law Invite Job Creation Law

1. Payload Invite Invite Job Creation And Rule Derivatives

a. Regulation Government No 35 Year 2021

1) PKWT And PKWTT

The Job Creation Law regulates 3 types of PKWT. First, the PKWT is made based on a time period. This PKWT is for work that does not take too long to complete; seasonal; new products, new activities, or additional products that are still under trial or exploration. If the PKWT is about to end, but the work has not been completed, it can be extended provided that the entire PKWT cannot exceed 5 years. That way, the PKWT period is a maximum of 5 years including extensions. If the PKWT is extended, it is counted as the worker's working period.

Second, PKWT is based on the completion of a particular job. This PKWT is for work that is completed once or is temporary in nature. The clauses outlined in this PKWT include, among other things, the scope and limitations of a job being declared complete and the length of time for completing the job adjusted to its completion. something work. If work can resolved more fast from agreed time, then the PKWT is terminated by law when the work is completed. If the work has not been completed according to the time period agreed in the PKWT, an extension can be made until the work is completed.

Third, PKWT based on certain other jobs whose type and nature or activities are not fixed. This PKWT is for certain jobs that vary in terms of time and volume of work as well as payment of wages based on attendance or often called daily. Reytman remind there are provisions agreement Work daily Which must observed ie worker Work less than 21 days in 1 month. If this daily worker works 21 days or more for 3 consecutive months or more, then By law, the daily work agreement has changed to an indefinite work agreement (PKWTT).

After the PKWT ends or certain work is completed, the employer is obliged to provide compensation according to the worker's length of service. Compensation money is given to workers who have worked continuously for at least 1 month, and this compensation does not apply to foreign workers (TKA).

2) Switch Power

After the enactment of Law Number 11 of 2020 and PP Number 35 of 2021, Article 64 And Chapter 65 Act No 13 Year 2003 abolished And arrangement

The provision of worker/labor services in article 66 was changed to regulate work relations between outsourcing companies and the workers/laborers they employ, thus Law Number 11 of 2020 eliminate the division of outsourcing into types of contracting out work or types of providing worker/labor services. Law Number 11 of 2020 also abolished the articles in Law Number 13 of 2003 which regulate the requirements and restrictions on the types of supporting work and/or supporting service activities that can be partially handed over to other companies.

3) Termination Connection Work

The severance compensation arrangements in Law No.13 of 2003 concerning Employment have been amended through Law No.11 of 2020 concerning Job Creation. Provision the arranged more carry on in PP No. 35 Year 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination Connection Work (PP PKWT-PHK). According to analysis Labor experts, in general the Job Creation Law and PP No.35 of 2021 more give convenience for company do Layoffs rather than Employment Law .

There is Lots reason Which Can used businessman as pretext to do layoffs, Wrong the only one reason efficiency. Chapter 164 paragraph (1) Employment Law arrange businessman can do Layoffs Because The company closed because the company experienced continuous losses for 2 years or circumstances force (*force majeure*). Laborer entitled get severance pay 1 time provision Chapter 156 paragraph (2); Money award period Work 1 time provisions of Article 156 paragraph (3); and compensation money for rights in accordance with the provisions of Article 156 paragraph (4).

Then, Article 164 paragraph (3) of the Manpower Law regulates the reason for layoffs because the company closed, not because of losses for 2 consecutive years or not because of circumstances. force (*force majeure*) , But company do efficiency. Laborer entitled to severance pay equal to 2 times the provisions of Article 156 paragraph (2); period reward money Work 1 time provision Chapter 156 paragraph (3); And Money replacement right in accordance with Article 156 paragraph (4).

But the provisions for layoffs for reasons of efficiency have been changed in the law Job Creation and PP No.35 of 2021. Juanda said the layoffs were for efficiency reasons as arranged Chapter 43 PP No. 35 Year 2021 shared become 2 types. First, efficiency because the company experiences losses and workers are entitled to severance pay of 0.5 times the provisions of Article 40 paragraph (2); 1 x service pay as stipulated in Article 40 paragraph (3); and compensation money for rights in accordance with the provisions of Article 40 paragraph (4).

Second, efficiency For prevent happen loss. Worker who experienced Layoffs Because reason This get Money severance pay as big as 1 time provisions of Article 40 paragraph (2); 1 x service pay as stipulated in Article 40 paragraph (3); and compensation money for rights in accordance with the provisions of the article 40 verses (4).

b. Regulation Government No 36 Year 2021

There are many new norms regulated in PP No.36 of 2021. Wage policy enter program strategic national And government area (local government) Which must guided on policy government center.

Just like PP No.78 of 2015, wages are determined based on units of time and/or units of results. The difference is that now wages are based on units of time, right? Again daily; weekly; or monthly, But per O'clock; daily; or monthly . Hourly wages are only for workers who work part time. Calculation of hourly wages uses the formula for monthly wages divided by 126. The hourly wages agreed upon by employers and workers cannot be lower than the calculation based on this formula.

The minimum wage calculation formula previously regulated by PP No. 78 of 2015 has been removed and replaced with a new formula. Minimum wages are determined based on economic and employment conditions which include 3 variables, namely parity (balance, red) Power buy; level absorption power Work; And median wage. Minimum wage adjustments are made every year . The minimum wage adjustment is set at a certain value range between the upper and lower limits of the minimum wage in the area concerned.

For Regency/City UM (UMK), the Governor can determine if it meets 2 condition. First, average growth economy district/city in question for the last 3 years was higher than the average provincial economic growth. Second, the value of economic growth minus inflation for the relevant district/city for the last 3 years has always been positive, and higher than the provincial value.

Determination of the UMK for regions that do not yet have a UMK is carried out using 4 formulas which are calculated in stages. The calculation starts from calculating the relative value of the MSE to the UMP based on the power parity ratio buy (*purchasing power parity*) using the district/city purchasing power parity formula multiplied by UMP divided by provincial purchasing power parity. UMK adjustment For regions that already have a UMK, the calculation follows the adjustments minimum wage as regulated in Article 26 PP No.36 of 2021. In the event that the UMK for the current year is higher than the upper limit of the UMK, the regent/mayor must recommend to the Governor that the UMK value for the following year be the same as the UMK for the current year.

c. Regulation Government No 37 Year 2021

Condition For become participant JKP ie inhabitant country Indonesia (WNI); Not yet reach age 54 year on moment register; And have a working relationship with the entrepreneur. For workers who work in large and medium companies, the requirement to become a JKP participant is that they must have been included in the JKN, JKK, JHT, JP and JKM programs. For workers who working in a business entity micro And small at least included on program JKN, JKK, JHT, And JKM.

As the government promises that the JKP program will not burden workers and entrepreneurs. The JKP RPP sets the contribution at 0.46 percent of a month's wages covered government And source funding JKP. Government pay dues as big as 0.22 percent from wages a month And the rest taken from source

JKP funding comes from the recomposition of JKK and JKM program contributions. The upper wage limit used as a reference for contributions is IDR 5 million.

Three benefit JKP that is Money cash, access information market Work, and training work, given For participant Which experience Layoffs with work relationship based on agreement Work time certain (PKWT) And agreement unspecified time work (PKWTT). JKP benefits can be applied for after the participant has contributed at least 12 months within 24 months and has paid the minimum contribution 6 months in a row before it happens Layoffs.

The important thing is that JKP regulates 5 reasons for layoffs that do not receive JKP benefits. First, layoffs for reasons of resignation. Second, permanent total disability. Third, layoffs because workers reach retirement age. Fourth, layoffs because workers die. Fifth, the end of the PKWT because the time period has expired.

2. Synchronization And Harmonization Invite Invite Create Work

If look closely, arrangement Which There is in in Act Create Work, is policy Which support climate investment Which conducive And acceleration growth economy. Matter the supported with fact that the content contained in the Employment Cluster Government Regulations aims to facilitate the labor sector. Changes in PKWT, PKWTT, and regulations layoffs, even permission use power Work foreign is proof It is concretely proven that the current direction of government policy is pro-investment, especially for foreign investors with convenience look after RPTKA.

When viewed from the perspective of legal principles in the field of industrial relations, the Job Creation Law does not go hand in hand with the principles behind it. In the field of industrial relations, the principle of benefit is known, which means that all development efforts and activities must be utilized as much as possible for humanity and the welfare of the people. It is feared that the ease of investment provided through a set of regulations in the Job Creation Law will not bring benefits to the people, but rather to investors. In this case, the problem that is feared will arise is that there are local workers who are not absorbed, and are actually unable to compete with foreign workers whose use in Indonesia is made easier. Another problem that is predicted to arise in the business opening sector (development) is deforestation which does not bring benefits (ecological principles) to humans but actually has the potential to damage natural resources in Indonesia. It cannot be denied that as an agricultural country with the nickname the emerald equator, Indonesia has natural wealth and natural forests that stretch across the large islands of Indonesia. In practice, large-scale development carried out by investors does not bring sustainable benefits to the people and actually leaves behind agrarian problems and worsens the climate crisis.

In line with this, the principle of fairness and equity in industrial relations also means that the results achieved in development must be enjoyed fairly and equally in accordance with the principles of community service. If the Job Creation Law continues to be implemented with the spirit of large-scale opening up to investors, then fair And equally as Which mandated by Invite Invite No

will be achieved. The results achieved in development will only be enjoyed by a small number of parties (investors) while the people will only be spectators and workers.

It is feared that the promulgation of the Job Creation Law will bring back The Great Happiness for The Greatest Number as stated by Jeremy Bentham, where the birth of the law is not aimed at achieving justice but at other factors that are considered more profitable. In this case, all natural resources owned by Indonesia are seen as promising assets for carrying out large-scale development by opening the door to foreign investment as wide as possible, but ignoring the humanitarian aspect by viewing workers as an aspect outside of this development. Workers are actually seen as production factors whose wages are determined using a wage formulation based on inflation and economic growth.

In exposure Which given by HKHKI on webinars with the theme "Exploring the Important Points of PP No.35 of 2021: Integration or Inconsistency Regulation?", Jmat (26/3/2021), Ike Farida said if Act Create Its main work in the wage sector is in line with justice theory. This is when viewed from the aspect of wages which is based on a formulation based on units of time and results. The existence of bipartite, tripartite and settlement institutions dispute connection industrial become proof form vertical justice. Apart from that, the presence of PKWT is divided into three types as follows results description on show If presence Act Create Responsive work to market needs, especially in the digital era where money is present compensation Which No Once arranged in in Act previously is another manifestation of the theory of vertical justice. but that needs to get the line lower is justice Which substantive Which capable presented This Job Creation Law is not only for investors and the government, but also for workers as the most vulnerable element in the employment sector.

Laws should reflect the ideas behind them, namely justice. Laws are not just a product of political bargaining. If we move from the legal postulate "*Est autem just a justitia, sicut a material sua, ergo pruisfurit justitia aquam juice*" Which means "but law arises from justice as its mother, so that there was justice before its birth law.". So the work copyright law does not carry a mission of justice as its legal ratio.

CONCLUSION

In practice, the Work Law cannot be fully implemented in Kudus Regency. This is due to internal factors in the form of an adjustment process Which Still need time for company as well as Union Workers to reach consensus through deliberation. So, from a set regulations in Invite Invite Create Work new can executed

a small part, even though the Kudus Regency Manpower Service has already done so socialization.

If we look closely at the Ape Creation Law, it has a policy direction that is pro-investment and large-scale development by opening the door to development in order to increase economic growth. However, this development actually sacrifices legal principles in the field of industrial relations, and in particular harms the element of justice which should be behind every law that is born.

REFERENCE

Scientific Journal

Handayani, F., & Angrayni, L. (2018). Employment Problems in Batam City According to Constitution Number 13 Year 2003 about Employment. *Respublica Law Journal* .
<https://doi.org/10.31849/respublica.v16i2.1440>

Biological, A. (2021). Implementation Policy Reduce Unemployment Urban On Service Employment City Lubuklinggau. *Journal PAsira* .

Rudi Hartono, N., & Suci Ramadhani, A. (2020). Juridical Review of Work From Home Policies Based on the Employment Law. *Supremacy Journal* .
<https://doi.org/10.35457/supremasi.v10i2.1158>

Syariyah, NN, Nur, T., & Meigawati, D. (2020). IMPLEMENTATION OF EMPLOYMENT POLICIES ABOUT EXCHANGE WORK IN THE SERVICE LABOR CITY . Public *Spirit* : *Journal of Public Administration*
<https://doi.org/10.20961/sp.v15i2.42567>

Vitono, N. B. (2021). POLICY PROTECTION WORKER MIGRANT INDONESIA IN PANDEMIC COVID-19. *Indonesian Journal of Peace and Security Studies (IJPSS)* .
<https://doi.org/10.29303/ijpss.v3i1.57>

Book

Mamud Marzuki, Peter. Study Law, 2014. Prenadamedia Groups, Jakarta Ronny

Hanitijo Soemitro, *Methodology Study Law And Jurimetry* .

Article

Novianto m Hanturo. Synchronization And Harmonization Arrangement Regarding Regional Regulations, as well as the Material Test of Bali Province Regional Regulations Number 16 of the Year 2009 about Plan System Room And Region Province Bali 2009 – 2029

Kebijakan Ketenagakerjaan di Kabupaten Kudus

Paper Policy : Notes Critical And Recommendation To Bill Create Work.
Page 13

Smartlegal. 2021

Febri Jaya. Protection Right Right Worker Woman Post Revision Invite Employment
Act In Omnibus Law. page 1887

Regulation Legislation _

Law Number 13 of 2003 concerning Employment Law Number 11 of
2020 concerning Job Creation Government Regulation Number 78
of 2015

Regulation Government No 10 Year 2018

Regulation Government No 34 Year 2021 about Use Power foreign work

Regulation Government No 35 Year 2021 Agreement Work, Connection Work,
Time Work And Time Rest, And Termination Connection Work

Regulation Government No 36 Year 2021 about Remuneration

Government Regulation Number 37 of 2021 concerning Job Loss Guarantee Regulation
Minister Power Work And Transmigration Number 19 Year 2012 about
Conditions for handing over part of the work to another company.

Interview

Interview with Agus Juanto, Service Power Work Regency Holy, 24 June 2021.

Interview with Bintarno, Head Legal HRD Ethnic group Groups, 30 June 2021.

IMPLEMENTATION CONSTITUTION PROTECTION CHILD ON MINOR MARRIAGES RESULTING FROM PREGNANCY MARRIAGES OUT OF WEDDING (CASE STUDY IN PA KUDUS)

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Abstract

This study aims to explain the considerations of judges in deciding Dispensation for Marriage due to pregnancy out of wedlock, knowing the review of Law number 35 of 2014 concerning Child Protection for underage marriages due to pregnancy out of wedlock at the Kudus Religious Court. Researchers used a type of field research (field research) with a qualitative approach. Sources of data obtained through data related to research subjects (primary data) and data sources related to literature related to research objects. The results of the study show that the granting of a marriage dispensation due to pregnancy out of wedlock is categorized as an urgent situation which will later provide clear legal certainty for the child to be born. The existence of a Marriage Dispensation is a legal solution but it is felt that it is not very educational for the next generation. The Law on Child Protection in response to underage marriages is actually contrary to Law Number 16 of 2019 concerning Marriage, because marriages are carried out under the age of 19 for both men and women, but if the request for underage marriage is granted due to pregnancy out of wedlock by considering the rights of children that have been regulated in Law Number 35 of 2014 concerning Child Protection and considering the rights of children in the womb of the prospective bride, underage marriages due to pregnancy out of wedlock are not entirely contrary to the Law Child Protection Act

Keywords: Marriage, Pregnancy out of wedlock, Child Protection

Abstrak

This research aims to explain the judge's considerations in deciding on marriage dispensation due to pregnancy out of wedlock, knowing the review of Law number 35 of 2014 concerning Child Protection against underage marriage due to pregnancy out of wedlock at the Kudus Religious Court. Researchers use field research *with* a qualitative approach. Data sources obtained through data related to the research subject (primary data) and data sources related to literature related to the research object. The research results show that the granting of Marriage Dispensation due to pregnancy outside of marriage is categorized under circumstances urge Which later will give certainty law Which clear for the child to be born. The existence of a Marriage Dispensation is a legal solution but it is felt that it is not very educational for the next generation. The Child Protection Law in addressing underage marriage is actually contradictory with Constitution Number 16 Year 2019 about Marriage,

because marriage is carried out under the age of 19 for men and women, will but If granted application marriage in lower age due to pregnancy out of wedlock taking into account the rights of children that have been regulated in Constitution Number 35 Year 2014 about Protection Child and considering the rights of the child in the womb of the prospective bride, underage marriage due to pregnancy out of wedlock is not completely contrary to the Child Protection Law.

Say Key: *Marriage, Pregnant in Outside Marry, Protection Child*

Introduction

The marriage age provisions contained in Law Number 1 of 1974 need to be adjusted again. So that's it an updated law was born, which re-set the minimum age limit for marriage. The minimum age limit for marriage was originally regulated by Law Number 1 of 1974 in Article 7 Paragraph (1) "marriage is only permitted if the man is 19 years old and the woman is 16 years old". However, then the provisions of Article 7 Paragraph (1) were amended by the new marriage law, namely Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning Marriage, so that it states that marriage is permitted if a man and a woman has reached the age of 19 years (Hilda, 2021).

The marriage law itself has provided opportunities for carrying out underage marriages as stated in Law Number 1 of 1974 concerning Marriage Article 7 Paragraph (2) that violations of paragraph (1) chapter This can request dispensation to court or other officials appointed by both parents of the male and female parties. Regarding the Marriage Dispensation, it can be seen from the table below at the Kudus Religious Court. This data collection is based on 2018-2021.

Table 1.1
Data Application Dispensation Marry Court Holy Religion

NO.	APPLICATION	2018	2019	2020	2021	AMOUN T
1.	Dispensation Marry	64	93	270	270	697

A person who needs this Legal Institution is basically just a matter of age, where in this case a person wants to carry out a marriage but is hampered by not being old enough. Protection Child in a way special has accommodated based on provision Law Number 35 of 2014 states that efforts to protect children need to be implemented from the time they are in the womb until they are 18 years old. Child Protection Issues Which Lots faced by one among them namely marriage

underage, where there is a fact of inconsistency in the Legislative Regulations between Law Number 1 of 1974 concerning Marriage and the Child Protection Law in terms of establishing provisions limit age a child (Levana, 2021: 211). Dispensation Marry is an application to obtain marriage permission for prospective couples who have not yet met the age limit for marriage. The Marriage Dispensation itself is an exception to the provisions of Article 7 Paragraph (1) of the Law Number 16 of 2019 amends Law Number 1 of 1974 concerning Marriage. When submitting an application for a marriage dispensation to the Religious Court, you must fulfill several requirements as stated in PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensations Article 5 Paragraph (1) (Bayu, 2020) .

As happened at the Holy Religious Court. The Religious Court is currently the only institution that has absolute legitimacy based on the provisions of Law Number 1 of 1974 concerning Marriage in granting permits for deviations from the marriage age limit intended for people who adhere to the Islamic religion. Based on the description above, the author feels interested in studying it more deeply which will be outlined in a thesis entitled "Underage Marriage Due to Pregnancy Out of Wedlock in the Perspective of the Child Protection Law (Case Study at the Kudus Religious Court)" .

METHOD

This type of research is field research (*Field Research*) which studies surrounding phenomena (Dedy, 2008). This field research uses observations in the form of case studies, namely research carried out in detail and in depth to obtain data regarding underage marriages due to pregnancy out of wedlock at the Kudus Religious Court.

The approach used in this study is a qualitative approach. Approach qualitative Which procedure his research sourced from writing, expressions, human behavior that can be observed (Suharsimi, 2006). The technique in the qualitative approach uses case study techniques in order to find out in more depth and detail about a problem that the author wants to research (Burhan, 2006).

Discussion

Consideration Judge in Decide Dispensation Marry consequence Pregnant in Extramarital Affairs at the Kudus Religious Court.

Kudus Religious Court in examining and deciding related cases with acceptance Application Dispensation Marry own the procedures and legal basis that have become guidelines for the Judges of the Kudus Religious Court in handling Marriage Dispensation Applications, with this legal basis determining whether the Application will be granted or rejected.

The basis for the judge's consideration in granting the request for marriage dispensation is as explained by Mrs. Azizah Dwi Hartini, one of the judges at the Kudus Religious Court. State that:

"The basis used by the judge in granting permission for a marriage dispensation application must meet existing requirements, such as bringing a rejection letter from the KUA. In case Which nature urge like This child in lower age pregnant in outside marry because of promiscuity, with this incident the parents immediately asked for a Dispensation Application Marry on Court Religion. If Already like That What Want to rejected? What want to find the sin of letting it go do they mingle more freely without marriage ties? If the reason is very urgent, the woman has become pregnant out of wedlock, it will be prioritized over other reasons. So, in the case of underage women who become pregnant out of wedlock, the judge gives permission by referring to the Law on Marriage, where there are no limits governing what reasons must be granted or rejected. From there the judge saw that the applicants had fulfilled the requirements set by the Kudus Religious Court" (Dwi Hartani, 2022).

Application Dispensation Marry on basically can given on urgent reasons. According to Constitution Number 16 of 2019 concerning changes to the Law Number 1 Year 1974 about Marriage on Chapter 7 Paragraph (2) What is meant is reason urge ie something circumstances Which No There is choice other and very forced must a marriage takes place , and there is supporting evidence Which Enough like letter information Which prove that age of the bride and groom woman Still in lower provision Which has arranged in Law Invitation and certificate from health workers supporting the person's statement old that marriage the very urgent And must immediately done. In Law Number 35 of 2014 concerning Protection. Children in Article 26 Paragraph (1) letter c states that parents are obliged and responsible for preventing underage marriages. In this case, underage women have been in a dating relationship and it is very difficult to separate them result pregnancy in outside marry, with based on For these reasons, the judge granted the application for Marriage Dispensation, so that the Marriage Dispensation was an effort to protect the child. Then, when granting a marriage dispensation, the judge considers the following things:

- a. In the matter of submitting the application, it is correct to submit it to the Kudus Religious Court according to the place of residence of the applicant, and knowing the applicable law in Indonesia that a person can only get married when they reach the age of 19 for men and women as determined based on Law Number 16 2019 about top changes Constitution Number 1 of 1974 concerning marriage.
- b. Whereas during the trial the judge gave advice to the prospective bride and groom and the parents of the prospective bride and groom regarding the risks of child marriage relating to education, reproductive health, economy, social, And mental as well as problematic House

children, even though they have been advised by the judge, all parties will still remain in their position to carry out the marriage.

- c. That the male and female candidates basically stated that plan marriage both of them based on desire themselves Because each other love No Because exists coercion from parents .
- d. During the trial, two witnesses were presented who gave evidence information Which principal that candidate The bride is pregnant because of the actions of the prospective groom.
- e. That in order to carry out a marriage, it must achieve its stated goals loaded as in Constitution Number 1 Year 1974 about Marriage on Chapter 1 ie Which form family eternal based on the one and only God.
- f. That age candidate bride Woman Not yet even 19 Year so they do not meet the marriage age requirements. These provisions are based on Law Number 16 of 2019 concerning amendments to Constitution Number 1 Year 1974 about Marriage precisely in Article 7 Paragraph (2). Requests for age dispensation can be based on urgent circumstances accompanied by supporting evidence.
- g. The marriage wishes of the prospective bride and groom have been approved by the applicants as the parents of the prospective bride are pregnant.
- h. That the petitioners requested the application under the provisions of Article 53 Paragraph (2) KHI without having to wait for their child to give birth first.
- i. That fact based on pregnancy that then Assembly Judge can be used as an urgent or emergency reason which can violate the age limit provisions in marriage for the prospective bride .
- j. is of the opinion that it is urgent that the marriage of the applicant's children take place immediately so as not to increase further misery. In line with the fiqh rules below:
It means: (reject prosperity more main than gain benefits).
- k. To prevent other damage, namely to prevent prospective brides and grooms from marrying under their hands.

Ibu Azizah Dwi Hartani as a Judge of the Holy Religious Court submitted based on the rules of jurisprudence as above that marriage can be seen as preventing the occurrence of acts that violate the law and norm morality which prolonged. Concluded in rule This jurisprudence is to attract benefits between a male and female prospective bridegroom which already weave relationship very tightly until can

worried that there will be continuous sins if you don't get married.

If the marriage is not carried out, it is feared that something that violates the law and moral norms could happen. This marriage dispensation is a form of child protection so that children can continue to grow, develop, participate and avoid fetal murder pregnant in outside marriage. Like Which has explained Mother Azizah Dwi Hartani, one of the judges at the Kudus Religious Court, gave the following statement during the interview:

"In handling the Marriage Dispensation, the judge will definitely ask about the readiness of the prospective bride and groom that they will soon get married as well as ensure that from candidate bride man And Woman there is no pressure to get married. Hearing the statements from the witnesses, the judge asked about the truth of the statements made by the applicant parties. The judge who decides on Marriage Dispensation always advises applicants who wish to marry off their underage children to still guide, supervise his son although child the has have their own family, because minors are still vulnerable to being selfish towards each individual, and cannot think long and hard when faced with a problem. "Therefore, apart from the judge giving advice to children who are about to get married, the judge also gives advice to parents to always look after their children and help solve problems if there is a problem" (Dwi Hartani, 2022).

In fact, the judge had tried to prevent the marriage from taking place because he saw that the child was not yet old enough, but the facts obtained at the trial showed that the prospective bride was already pregnant. As stated by Mrs. Azizah Dwi Hartani, one of the judges at the Kudus Religious Court when giving a statement during an interview as follows:

"The facts show that the prospective bride is currently carrying two bodies or is pregnant. As the judge who adjudicates, this interest is for the benefit of the prospective bride, the baby being conceived, and for the family as a manifestation of sad al-dzariah to avoid the possibility of further harm arising. The judge's concern for the applicant parties is also a reference in deciding on the Marriage Dispensation, because if the applicant parties find it difficult to carry out marriage it could be para party applicant do marriage sirri or underhanded marriage which is not valid before the law, especially if the prospective bride is pregnant out of wedlock so the marriage must be carried out immediately. When it comes to marriage children of the applicant parties "If you postpone it, you will definitely feel very embarrassed for your neighbors and it will become a bad conversation in the community" (Dwi Hartani, 2022).

With regard to the physical, psychological, biological and emotional aspects of the parties' children applicant For build House ladder. Mother Azizah Bi Hartani

The judge at the Religious Court stated during the interview as follows:

"Boys and girls who are adults can be seen when they are questioned during the trial and they are able to carry out adult work and minors who are considered to be biologically mature can be seen when they are able to have sexual relations which results in the bride and groom "Pregnant women and adults, in terms of body posture, can be seen when a child's body posture has matched that of an adult" (Dwi Hartani, 2022).

There are several factors that cause underage marriage, these factors are as follows:

- a. Of their own volition, underage marriages occur based on the will of those who already feel that they belong to each other.
- b. Economics, poverty has an influence on life, so that having married children will reduce the burden on the family a little lighter.
- c. Education, low levels of education make parents and the community tend to marry off quickly child they in lower limit age Which has determined by Law. There are also other factors, such as fear that the child will become an old maid.
- d. Getting pregnant out of wedlock is easy because of the very rapid development of technology And it's easy For accessed sometimes make child fall into promiscuity so that undesirable things happen. Although as good as whatever one's way Parents protect their children from the outside world, but they will still be affected even slightly.

The judge's consideration also took into account legal protection against underage marriage. This protection has been regulated in Law Number 35 of 2014 concerning Child Protection in Article 1 Paragraph (2) which states that child protection is all activities to guarantee and protect children and their rights. so that still life, grow, develop, And participate in a way optimally in accordance with human dignity, as well as receiving protection from violence.

With the existence of Law Number 35 of 2014 concerning Child Protection, the guarantee of protection of children's rights can be fulfilled. An explanation from Mrs. Azizah Dwi Hartani as one of the Religious Court Judges stated:

"Protection law very important For rights child especially in regarding marriage, because of frequent problems consequences arise from marriage underage, namely there is a fight in the household caused by a very young age" (Dwi Hartani, 2022).

Child protection is divided into 2 (two) parts, namely: First, juridical child protection which includes protection in the field law civil And protection in law public. Second

Non-juridical child protection which includes internal protection field education, field social, And field health. In lower this is the description Mother Azizah Bi Hartani as Judge Court Religion Holy related to the protection of children in underage marriages:

"Protection of children against underage marriages can be seen in general in the judge granting the Marriage Dispensation Application on the grounds that the prospective bride has become pregnant out of wedlock, which will benefit the children who will marry underage themselves and the children in the womb. The child in the womb will later be born with marital status Which legitimate And will get deed birth with status child father is not just mother's son" (Dwi Hartani, 2022).

In the concept of child protection, it is not only related to the protection of the child's body and soul, but also includes the protection of all rights and interests that can guarantee normal growth and development both physically and mentally. spiritual, physical, and social. On In essence, the protection of children's rights refers to statutory regulations whose policies guarantee the fulfillment of children's rights based on groups of vulnerable and *dependent children* .

Judging from the provisions of Law Number 35 of 2014 concerning Child Protection in Article 26 Paragraph (1) letter c, it expressly prohibits underage marriages, whereas in Law Number 16 of 2019 concerning Marriage Article 7 Paragraph (2) There are irregularities in the permissibility of underage marriages provided that the application for marriage dispensation is submitted in urgent circumstances. The application for marriage dispensation has been regulated in PERMA Number 5 of 2019.

At first glance, there are contradictions between the Child Protection Law and the Marriage Law. With contradictions in certain articles in the Law, it is necessary to be careful when seeking a solution to the Marriage Dispensation due to pregnancy out of wedlock.

A. Analysis Data Study

1. Analysis of Judges' Considerations in Deciding on Marriage Dispensation due to Unwed Pregnancy at the Kudus Religious Court.

Referring to PERMA, judges certainly do not go beyond the corridors set out in PERMA. When deciding and adjudicating applications dispensation marry in CHAPTER II Chapter 2 PERMA has stated that in adjudicating applications for marriage dispensation the judge is based on the principles: Good interests of the child, the child's right to life and growth and development, respect on opinion child, award on dignity And dignity, non-discrimination, gender equality, equality before the law, justice, usefulness and legal certainty (Saida, 2019).

Apart from that, a judge will carry out *ijtihad* to confirm the law in various cases Which has many interpretations. The judge can *ber ijtihad* with perfect if judge have knowledge

extensive knowledge in the fields of law and social sciences, knows the Qur'an, Sunnah and ijma' qiyas well, knows the jurisprudence and laws and regulations that are in force in Indonesia (Abdul, 2007) .

In consider Dispensation Marry consequence pregnant in outside The judge at the Kudus Religious Court based his marriage on the facts obtained during the trial, apart from that, the judge at the Kudus Religious Court referred to PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications.

There is a basis for the judge's considerations regarding whether the Marriage Dispensation Application will be granted or rejected during the trial, the basis for these considerations is as follows:

a. Consideration in law

- 1) PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications Article 5 Paragraph (1), namely:
 - a) Letter Permononan Dispensation Marry
 - b) Letter rejection from KUA
 - c) Notification letter of lack of marriage data from KUA
 - d) Photocopy ID card
 - e) Photocopy K.K
 - f) Photocopy DEED child para party applicant
 - g) Photocopy certificate education final child para party applicant.

If the conditions mentioned above have not been met, the Registrar will return the Marriage Dispensation Application file to the parents who have submitted the Application to complete the data that has not been met first, then if data in on has fulfilled all so Application The marriage dispensation will be registered in the Register after paying the down payment for the case.

The judge when deciding on the Marriage Dispensation Application must be appropriate based on objective Which has loaded in PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. These objectives are:

- a) By applying the principles that have been regulated as intended in Article 2, namely the principle of the best interests of the child, the principle of the child's right to life, growth and development, the principle of respect for the child's opinion, the principle of respect for dignity, the principle of non-discrimination, the principle of gender equality, the principle of equality in front of law, the principle of justice, the principle of expediency, the principle of public interest.
- b) And guarantee the implementation of a justice system that protects children's rights (Ilma, 2019).

- 2) No There is prohibition For Marry in accordance Constitution Number 1 of 1974 concerning Marriage in Article 8, namely:
 - a) There is no prohibition against the prospective bride and groom from getting married, because they are not related by blood in the straight down or straight up lineage .
 - b) There is no marital relationship with either the in-laws or the in-laws
 - c) No relate because of breast milk

The requirements contained in Law Number 1 of 1974 concerning Marriage in Article 8 are cumulative, which means they must be fulfilled. If the requirements have been met then the marriage can be carried out, however if one of the conditions has not been met then the marriage cannot be carried out.

- b. Consideration judge in outside law
 - 1) Ready physically _
 - 2) There is no element of coercion and the bride and groom love each other, as stated in Law Number 1 of 1974 concerning Marriage Article 6 Paragraph (1)
 - 3) Pregnant out of wedlock, in Law Number 1 of 1974 concerning Marriage Article 7 Paragraph (2) regarding deviations contained in Article (1) can submit an Application for Marriage Dispensation to Court Religion with reason child applicant has been pregnant out of wedlock, so this very urgent reason can be a strong factor in granting the Application for Marriage Dispensation.

In carrying out a marriage, administrative requirements must be met nor substantive. Giving Dispensation Marry in The situation of pregnancy out of wedlock is categorized as an urgent situation which will have a huge impact on the applicant and at the same time provide clear legal certainty. The role of the judge in granting Marriage Dispensation is needed by the community in order to obtain benefits, convenience and provide a solution to a problem for applicants who request Marriage Dispensation (Abror, 2018).

The judge's other consideration was to give dispensation to child Which has pregnant, on application This judge on The Kudus Religious Court often gives permission to carry out marriages. Based on the results of the interview, the judge stated that the basis for granting permission to request a marriage dispensation was to consider the legal consequences of the child being conceived.

Circumstances This judge must know law Which life in society as well consequence If No quick given certainty law from problem

This And judge Also must Can understand justice from every individual. From the sense of justice felt by individuals which is not necessarily the same as the sense of justice felt by families and other families. Deciding on the Application for Marriage Dispensation, the judge can position and describe the circumstances currently happen, so that judge Can choose the fairest principles of justice to make a decision.

From the large number of cases, the judge really has to dig up the facts related to the issue to be decided. Through existing evidence and witnesses, we can provide clarity on a law that is still not appropriate, and adapt the law to something concrete because regulations cannot cover all events that occur in society. If the contents of the law are unclear, the judge is obliged to interpret it to produce a decision that is as fair as possible according to the problem.

Decision Court Which done by judge will become a sign for they Which litigious that they Already Want to And obedient against the law. Even though the application for marriage dispensation is a nonconformity about limitation age child to Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage and not being able to implement preventive measures that have been mandated in Law Number 35 of 2014 concerning Child Protection.

The principles regulated in the Law on the Formation of Legislative Regulations, there are also theories that serve as a reference in the formation of statutory regulations, one of which is the *Lex Specialis Derogat Lex Generalis* Principle. When referring to the principle of *Lex Specialis Derogat Lex Generalis*, in this case the phrase *Lex Specialis* is Law Number 35 of 2014 concerning Child Protection, while the phrase *Lex Generalis* is Law Number 1 of 1974 concerning Marriage. When discussing marriage in Indonesia Of course Constitution Number 1 year 1974 concerning Marriage is the main reference which is considered to be the legal basis for the implementation of marriage in Indonesia. Starting from the definition of marriage, to the procedural requirements for carrying out a marriage (Abdus, 2019).

However with case dispensation marriage Which related regarding child protection, then in determining the legal basis for implementation, we want to prioritize the law which regulates the protection of children's rights, because In essence, the rules governing the implementation of child protection are the Child Protection Law. Therefore, it is necessary to pay attention to the principle of *Lex Specialis Derogat Lex Generalis* (Abdus, 2019).

Legal considerations by a judge for candidates who are pregnant outside marry ie more in point weigh it on protection against

child which will born by candidate bridegroom girl, candidate baby those who will be born have the right to life and get the right to legal protection (Lutfi, 2021).

Fulfillment of Child Protection attaches children's rights to the child's social status in social life as a form of protection for the interests of children experiencing problems. social. Based on Chapter 26 Paragraph (1) item c Constitution Number 35 of 2014 concerning Child Protection where parents are obliged to prevent underage marriages. Based on these provisions, the implementation of underage marriages must be prevented as much as possible, but preventing underage marriages has become difficult to implement with the existence of marriage dispensations at the Religious Courts.

Law Number 1 of 1974 concerning Marriage provides limit age somebody so that can do marriage namely in age 19 Year for man And Woman, according to writer in a way indirectly provides protection and ensures that the marriage can run well, be healthy, and maintain its longevity. This article contains the principle of maturity of the prospective bride and groom so that an ideal marriage can be achieved at a mature age. The law has set a marriage age limit, although someone who has not reached the specified age can still enter into a marriage provided they obtain permission from their guardian and from the Religious Court which is referred to as a request for marriage dispensation as regulated in Article 7 Paragraph (2) (Rani, 2018).

In this law there is absolutely no prohibition on carrying out such marriages in Islamic law or customary law. There is a fact that the hadith of the Prophet Muhammad only indicates the command to marry when a person is capable, which means that even if a person has reached the age of 20 years or more than what is stipulated in the law, but is not yet capable, it is not permissible to marry with the solution of fasting first until he is able (Beni, 2008).

The existence of Article 7 Paragraph (2) regulations opens up opportunities for society to commit deviations in the form of underage marriages for various reasons. This needs to be paid attention to the impact of underage marriage.

2. Review Analysis of Law Number 35 of 2014 concerning Protection Child to Marriage in Lower Age consequence Pregnant Outside of Marriage at the Kudus Religious Court.

Law Number 1 of 1974 concerning Marriage Article 1 states that marriage is bond born inner between a

men and women as husband and wife, with the aim of forming a happy and eternal family based on the Almighty Godhead.

Based on Law Number 1 of 1974 concerning Marriage, the legal requirements for a marriage are if it is carried out according to respective laws and beliefs, and recorded according to the Laws and Regulations.

Underage marriage which is in the spotlight is a person's age limit. There are still differences, there is no similarity regarding the age limit for being considered a child. The Civil Code regulates the age limit for children at 21 years, Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage regulates the age limit for children at 19 years, while in the Law Number 35 year 2014 about Protection Child sets the age limit for children at 18 years.

From the emphasis on distinctions that have been regulated, in Law Number 35 of 2014 concerning Child Protection there is more emphasis on children's rights in general when the child is in condition problem marriage in lower age consequence pregnant in out of wedlock.

On Application Marriage Dispensation against rights a child Besides having benefits, there are also problems that will arise after granted Dispensation Marry. Marriage in lower Age has a negative value from any perspective.

The normative marriage of a boy and a girl who has not yet reached the age of 18 clearly violates the provisions of the law. Number 35 Year 2014 about Protection Child. As is problem like This according to writer there is a number of matter which must be considered comprehensively in providing protection to a child. The existence of Law Number 35 of 2014 concerning Child Protection must be used as reference material in deciding on applications for marriage dispensation due to pregnancy out of wedlock by upholding the principle of the best interests of a child (Bahroni, 2019) .

In the Constitution Number 35 Year 2014 about Child Protection and Law Number 1 of 1974 concerning Second Marriage You're welcome have objective separately. Constitution Number 35 of 2014 concerning Child Protection has the aim of ensuring the fulfillment of the best life for a child, while Law Number 1 of 1974 concerning Marriage also has its own aim, namely to realize the best marriage based on age maturity even though there are provisions that allow marriage under age.

Law Number 35 of 2014 concerning Child Protection as an umbrella law For protect rights a child Which must

fulfilled. Even though the law does not regulate anything more more about rights a child Which carrying out an underage marriage as a result of being pregnant out of wedlock, however, a child who marries underage as a result of being pregnant out of wedlock is still a child who has rights that must be fulfilled, likewise the rights of children in the womb of the prospective bride must be fulfilled so that born from a valid marital status.

Marriage under age Actually contradictory with Constitution Protection Child, but from problem This If marriage under age Because pregnant in outside marry No quick For married then there are children's rights which actually conflict with the Child Protection Law. Children's rights that must be fulfilled are as follows:

- a. The right to life, to maintain the child's right to live by receiving adequate health standards and good care.
- b. The right to think and express, underage marriages are of course no longer able to think and express according to their age because a child is required to carry out various obligations of a wife, so by being granted a marriage dispensation for being pregnant out of wedlock it is hoped that this right will be fulfilled.
- c. The right to receive protection, a prospective wife who is pregnant and a child who is in the womb until the child is born has the right to receive protection, physical and psychological protection. Dispensation on basically can given reason Which urge,

According to Law Number 16 of 2019 concerning Marriage in Article 7 Paragraph (2), what is meant by urgent reasons is a situation where there is no other choice and it is very necessary for the marriage to take place and what is meant by sufficient supporting evidence is a certificate proving that the age of the bride and groom is still a minor in accordance with the provisions of the law and a certificate from a health worker supporting the parents' statement that it is very urgent for the marriage to take place. The legal considerations explained above are given for the interests of both partners and for the best interests of the marriage (Lutfi, 2021).

The marriage dispensation is an effort to protect underage marriages, which means that the existence of this marriage dispensation is to protect underage marriages, even though in reality underage marriages are strongly opposed because underage marriages are more harmful than beneficial. The protection provided by the marriage dispensation for underage marriages does not stop there, judges in giving decisions must also follow the guidelines related to providing decision to marriage in lower age like Which has

listed in PERMA Number 5 of 2019, thus this aims to For in the future If given dispensation marry so Married couples can build a household well and can avoid the negative impacts of underage marriage (Zufron, 1998).

Marriage Dispensation can be implemented if the child's rights can be fulfilled. In PERMA Number 5 of 2019 by applying the principles as intended in Article 2, namely the principle of the best interests of the child, the principle of the child's right to life, growth and development, the principle of respect for opinions, principle award dignity And dignity, principle non-discrimination, the principle of gender equality, the principle of equality before the law, the principle of justice, the principle of benefit, the principle of public interest (Mardi, 2017).

Whereas If in in problem marriage in lower age due to pregnancy out of wedlock is not implemented immediately, it will violate children's rights as regulated in Law Number 35 of 2014 about change on Constitution Number 23 Year 2002 about Protection Child on Chapter 1 Paragraph (2) Which protection child aims to guarantee the fulfillment of children's rights so that they can live, grow, develop, participate optimally in accordance with their dignity as human beings, and receive protection from violence and discrimination. If No quick held impact on on The prospective wife will feel embarrassed and experience stress and depression because psychologically the prospective wife is not ready to become a mother, and this will also have an impact to family Which will seen low in social life because the pregnancy was caused by adultery.

CONCLUSION

Based on from discussion in on there is a number of conclusion that can be taken are as follows:

1. When a judge grants a request for a marriage dispensation, it is based on legal rules, which means that when the judge makes a decision it must be in accordance with the legal arguments and evidence presented. When granting a decision, the judge also looks at the specific law overriding the general law. The judge's basis for determining the consequence dispensation pregnant in outside marry truly in circumstances Which very urgently as regulated in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage Chapter 7 Paragraph (2), Which Where If application No granted, there will be more harm than good.
2. Based on the Child Protection Law, responding to underage marriages is actually contrary to Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, because marriages are carried out in lower limitation age 19 Year for man And Woman, will but

If granted application marriage in lower age consequence pregnant outside marry with consider rights child Which has arranged in Law Number 23 of 2002 concerning amendments to Law Number 35 of 2014 concerning Child Protection Article 1 Paragraph (2) such as children's rights to live, grow and develop, participate optimally in accordance with their dignity as human beings, receive protection from violence, discrimination, And Also consider The rights of the child in the womb of the prospective bride must be fulfilled so born from status marriage Which legitimate, so underage marriage due to pregnancy out of wedlock is not completely contrary to the Child Protection Law

List References

- Abror, Khoirul. *Dispensation Marriage in Lower Age*. Yogyakarta: DIVA Press. Ali, Zainuddin. *Legal Research Methods*. Jakarta: Sinar Graphics, 2016.
- Ali, Zainuddin. *Methodology Study Law*. Jakarta: Ray Graphics, 2015. Al-Qur'an Al-Karim.
- Arikunto Suharsimi. *Research Procedures A Practical Approach*. Jakarta: PT. Rineka Cipta, 2006.
- Bahroni, Ahmad. "Dispensation Marry in Overview Constitution Number 35 Year 2014 about Protection Children" *Journal Transparency Law*, 2, 2019.
- Chandra, Mardi. *Aspects of Indonesian Child Protection Analysis of Child Marriage*, Jakarta: Pranamedia Group, 2017.
- Daulay, Haidar Son. *Empowerment Islam in Indonesia*. Jakarta: Rineka Create, 2009.
- Fatmawati, Nia. "Dispensation Marriage In Lower Age Consequence Pregnant In Outside Marry" *Diponegoro Law Reviews*, 5. 2016.
- Febriyanti Neng Hilda. "Public Legal Awareness of Underage Marriage in View from Law Number 16 of 2019 concerning Marriage" *Journal of Pancasila and Citizenship Education*, 4. 2021.
- Fitria, Olivia. "Age Limits in Marriage Based on Law Number 1 of 1974" *Lex Jurnalica*, 12. 2015.
- Hartini, Siti. "The Concept of Legal Protection for Women as Children in Determining Dispensations Due to Unwed Pregnancy" *National Conference for Law Studies: Legal Development Towards the Era of Digital Society*, 13. 2020.
- Hoerudin, Ahrum. *Religious Courts (Discussion of the Definition, Filing of Cases, and the Authority of Religious Courts after the Enactment of Law Number 7 of the Year concerning Religious Courts*. Bandung: Citra Aditya Bakti, 1999.
- Ilma, Mughniatul. "Dispensational Regulations in Strengthening the Marriage Age Limit Regulations for Children After the Birth of Law Number 16 of 2019" *Journal of Islamic Law and Social Institutions*, 2.
- Junawaroh. "Pregnant Women Out of Marriage Perspective of Islamic Law (Study of the Law of Marriage, Mentalaq, Iddah Period)" *Journal of Islamic Civil Law*, 21. 2020.

- Kurnia. *Constitution Republic Indonesia Number 1 Year 1974 about Marriage and Compilation of Islamic Law* . Surabaya: Kesindo Utama, 2010.
- Mahmud, Mathlub Abdul Najib. *Sakinah Family Law Guide* . Solo: Intermedia Era, 2005.
- Maulana Bani Sharif. "Protection of Women in Marriage Law in Indonesia: Discourse Update Constitution Marriage In The Problem of Marriage Age Limits" *Yingyang: Journal of Islamic Studies on Gender and Children*, 14. 2019.
- Muhajir. "Procedures and Completion of Underage Marriage Dispensation in Religious Courts" *Madinah: Journal of Islamic Studies* , 6. 2019.
- Vomiting Ana Latifatul. "Wedding Early In Indonesia (Perspective Enforcement And Protection)" *Widya Juridica Journal Law* , 2. 2019.
- Musfiroh, Mayadani Rohmi. "Marriage early and Effort Protection Child in Indonesia" *De Jure: Journal of Law and Syariah* , 8. 2016.
- Nuraeni, Reni. "Marriage Dispensation in Law Number 1 Year 1974 and Act Number 35 Year 2014" *Istinbath: Journal Thinking Law Islam* , 13. 2018.
- Prabowo, Bagus Agung. "Judges' Considerations in Determining Dispensations" *Ius Quia iustum Law Journal* , 20. 2013.
- Prasetya, Budi. "Perspective Constitution Marriage To Marriage In Lower Age" *Journal Scientific Untag Semarang* , 6. 2017.
- Puniman, Ach. "Marriage Law According to Islamic Law and Law Number 1 of 1974" *Yustitia Journal* , 19. 2018.
- Sapphira, Levana. "Protection Law To Child Which Do Underage Marriage Without Marriage Dispensation from the Court" *Journal of Notary Science*, 4, 2021.
- Santriati, Amanda Tikha. "Protection Right Education Child Displaced According to Constitution Protection Child" *El-Wahdah: Journal Education* , 1. 2020.
- Subekti. *Book Constitution Law Civil* . Jakarta: PT. Pradnya, 1999.
- Surianto. "Analysis of Child Marriage at an Early Age in View of Law Number 1 Year 1974 And Constitution Number 35 Year 2014" *Journal Of Law and Policy transformation*, 5. 2020.
- Tarigan, Azhari Kamal. and Nuruddin, Amir. *Civil Law in Indonesia: A Critical Study of Development Law Islam from Fiqh, Constitution 1/1974 until KHI* . Jakarta: Kencana, 2006.
- Wasono, Bayu. *Marriage Dispensation Consequence Pregnant outside Marry*. Bogor: Guepedia, 2020.
- Yulianty, Rezky. "Pregnancy out of wedlock from the perspective of the Compilation of Islamic Law (KHI) and Islamic Fiqh in the Office of Religious Affairs" *Islamic Criminal Law*. 13.

IMPLEMENTATION RESTORATIVE JUSTICE CASE CRIMINAL PERSECUTION IN ATTORNEY COUNTRY JEPARA PERSPECTIVE ISLAMIC LAW

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ABSTRACT

Restoratif adalah suatu proses dimana semua pihak terlibat sesuatu mengikuti tindak pidana tertentu bersama-sama memecahkan masalah bagaimana menghadapi akibat dimasa yang akan datang. Penelitian ini mencakup tiga hal, yaitu 1) Kasus tindak pidana kekerasan yang terjadi di Kejaksaan Negeri Jepara ini, pada kasus pertengkaran yang berakhir dengan kekerasan berupa pemukulan tersangka terhadap saksi korban, 2) Penerapan restorative justice pada kasus pidana kekerasan di Jaksa Negeri Jepara dengan mempertimbangkan adanya perdamaian antara korban dan tersangka, yang menyatakan untuk mengakhiri perselisihan yang timbul antara tersangka dan saksi korban. Karena tidak ada satu sama lain yang saling menuntut atau menuntut satu sama lain dalam hal apapun, setelah dengan ditandatanganinya perjanjian tersebut, maka proses perdamaian dapat dilaksanakan dan diselesaikan dengan Restorative Justice, 3) Implementasi Restorative justice di Peradilan Pidana Negara Kabupaten Jepara ini, berperspektif hukum Islam. Restorative justice sangat dianjurkan oleh Syariat Islam, Karena saling memaafkan atas perintah Allah SWT. Dalam Al-Qur'an penyelesaian konflik melalui pendekatan non litigasi menggunakan rancangan al-sulh atau ishlah (perdamaian). Konsep-konsep seperti hakam (arbiter atau mediator) dalam mekanisme tahkim dan al-sulh atau ishlah (perdamaian) merupakan konsep yang dijelaskan dalam Al-Qur'an sebagai media dalam menyelesaikan konflik di luar pengadilan.

Kata Kunci : Keadilan Restoratif, Perkara Pidana Penganiayaan, Hukum Islam .

Abstract

Restorative is a process for all parties involved in a particular crime to jointly provide a solution to the problem of how to deal with its consequences in the future. This study discusses three things, namely 1) Cases of criminal acts of violence that occurred at the Kejaksaan Negeri Jepara, in cases of disputes that end in violence in the form of beatings against witness victims, 2) Implementation of restorative justice in violent crime cases at the Jepara District Attorney taking into account the existence of peace between the victim and the perpetrator. which states to end disputes that arise between the perpetrator and witness victims not to sue or sue each other in any matter, after the signing of the agreement the peace process can be carried out and resolved with Restorative Justice, 3) Implementation of Restorative justice in criminal justice at the Kejaksaan Negeri Jepara, the perspective of Islamic law. Restorative justice is highly recommended by Islamic law, because forgiveness is commanded by Allah SWT. In the Qur'an conflict resolution through a non-litigation approach uses the concept of al-sulh or ishlah (peace). Concepts such as hakam (arbitrator or

mediator) in the tahkim mechanism and al-sulh or islah (peace) are concepts explained in the Al-Quran as a medium for resolving conflicts outside the court.

Keywords: Restorative Justice, Persecution Criminal Cases, Islamic Law.

Pendahuluan

In human life, we cannot be separated from criminal acts and crimes or a criminal act (strafbaat feit). For this reason, the existence of law is very necessary. Of course law become base base moral in escort achieved objective life Which aspired to together sake emergence order social. Of course law Also works prevent, reduce, And eradicate follow criminal (Bambang Waluyo, 2020: 1).

One effort is that the law must be implemented and enforced. Through law enforcement including the resolution of criminal cases. Especially Indonesia as country law, Of course enforcement law No ignore objective law.

LJ Van Apeldoorn, said that the purpose of law is to regulate social relationships humans peacefully. Peace among humans is maintained by law with protect interest law man certain, honor, freedom, life, property against those who harm them (Ade Maman Suherman, 2004: 9).

Restorative justice, namely justice is a process in which all parties involved in a particular crime work together to solve it problem How handle as a result in Century Which will come. Justice Restorative is model solution case criminal Which put forward restoration of victims, perpetrators and society. The main principles of Restorative Justice is the participation of victims and perpetrators, participation of citizens as facilitator in solution case, so that There is guarantee child or perpetrator No again disrupting the harmony that has been created in society (Apong Herlina et al,2004: 203).

Procedural and criminal justice mechanisms that focus on punishment transformed into a process of dialogue and mediation to create agreement on resolution of criminal cases that is fairer and more balanced for the victims and perpetrators. There are several studies that raise Restorative Justice, including: writing Eka Fitri Andriyanti, in Journal Education and development, 2020 about "Urgency Implementation Restorative Justice In Law Criminal Indonesia". Second, Writing Hanafi Arief, Ningrum Ambarsari, Al-Adl: Journal Law, 2018, about "Application principle restorative justice in system Justice criminal in Indonesia". Third writing Rama Wijaya, Journal Law Samudra Perempuan, 2021 concerning "The Role of the Prosecutor's Office in Restorative Implementation Justice for Children in Conflict with the Law in the Prosecutor's Office Country Prabumulih"

Third study on the study covers restorative justice Which expected can give justice Which actually for perpetrator And victim crime,

as well as society in general. Apart from that, there are legal issues arising as a result of the criminal act can be resolved properly by reaching agreement and agreement between the parties. Study This will elaborate furthermore how urgent implementation is restorative justice must receive the attention of all parties. Similarities between these studies with the author's research is the same in the discussion of restorative justice perspective law positive. Difference in study writer is work write This the discussion more focus to implementation restorative justice in handling a criminal case persecution in attorney Country Jepara.

Research methods

An approach is a basic principle or foundation used For appreciate something. As for approach Which done in study This is approach management, whereas in a way specification study Which used is descriptive that is as procedure breaker the problem being investigated, by explaining or describing the condition of the object on moment Now. Based on facts Which looks or as exists (Haidari Nawawi, 1995:73). And study descriptive This is research that is not directed at testing a particular hypothesis, but simply describe What exists about something variable, symptom or circumstances (Suharsimi Arikunto, 2002:310). Interview technique, data obtained using This technique is by asking questions orally and face to face between a or a number of person interviewer with a or a number of person Which interviewed (Wardi Bahtiar, 1997:72). interview with partiesrelated, namely: Head of the Jepara Prosecutor's Office Ayu Agung, SH., S.Sos. and Chief of Staff attorney Jepara Fiqhi Abdullah Baswara, SH. Technique Which used For obtain data regarding the implementation of restorative justice in treatment a criminal case Persecution in attorney Jepara.

RESULTS AND DISCUSSION

In in practice enforcement law often criminal hear term Restorative Justice or Restoration Justice Which in translation Language Indonesiaknown as restorative justice. Restorative or restorative justice Justice is a restoration of relationships and redemption of desired mistakes committed by the perpetrator of the crime (his family) against the victim of the crime (his family) (peace efforts) outside the court with the intention of and objective so that problem law Which arise consequence happen deed criminalthe can resolved with Good with achieved agreement And agreement between the parties. Justice that has been going on for a long time The criminal justice system in Indonesia is retributive justice. Meanwhile the What is hoped is restorative justice, that is, justice is a process where all parties involved in a particular criminal act together The same solve problem How handle as a result in Century Which will

come. Justice Restorative is model solution case criminal Which put forward recovery against victim, perpetrator, And public. Principle main Restorative Justice is exists participation victim And perpetrator, participation residents as facilitators in resolving cases, so that there is security for children or the perpetrator no longer disturbs the harmony that has been created in society (Apong Herlina et al, 2004: 203).

Liebmann in a way simple interpret restorative justice as something a legal system that aims to restore the welfare of victims and perpetrators And public Which damaged by crime, And For prevent violation oraction crime more carry on (Marian Liebmann, 2007: 25). Liebmann Also give formulation principle base restorative justice as following:

1. Prioritize support And healing victim
2. Perpetrator violation responsible answer on What Which they do
3. Dialog between victim with perpetrator For reach understanding
4. There is so For put in a way Correct loss Which caused
5. Perpetrator violators must own awareness about How method avoid crime in period front
6. Public duly follow as well as give role help in integrate two split party, Good victim nor perpetrator (Marian Liebmann, 2007: 25).

Restorative Justice (Justice restorative) as development important in thinking man based on tradition justice from Arab ancient, Greece, Roman And civilization Which accepted approach restorative even case murder, the restorative approach of the general assemblies (Moots) of the Germanic society that swept across Europe after the fall of Rome, Hindu India as ancient as Veda Civilization for Who "he Which redeem forgiven," And Buddha ancient, Tao, And tradition Confucianism Which he saw mixed with Western influence day This in North Asia (John Braithwaite, 2002:3).

Restorative Justice Concept

The concept of Restorative Justice is basically simple, namely the measure of justice is no longer based on retaliation in kind from the victim perpetrator (Good in a way physique, psychic or punishment), However deed Which hurtful That healed with give support to victim And requires the perpetrator to be held accountable with the help of the family and public when required.

Law enforcement is not an independent activity, but rather has a close reciprocal relationship with its community. Structure public give influence, Good form provision means social Which possible enforcement law That executed, nor give obstacles that cause it to be unworkable or lacking can be carried out optimally (Satjipto Rahardjo, 1993: 116). There are three principles base to form restorative justice, that is:

1. There be a restoration to those who have been injured (Happen recovery to they Which suffer loss consequence crime)

2. The offender has an opportunity to be involved in the restoration if they desire (Perpetrator own chance For involved in recovery circumstances (restoration)
3. The courts systems role is to preserve the public orders and the community role is to preserve a just peace (Court role For guard order general And public role For conserve peace Which fair) (Wikipedia, the free encyclopedia)

The concept of Restorative Justice has emerged over twenty years ago as an alternative resolution of juvenile criminal cases. Group The United Nations (UN) Juvenile Justice Work defines Restorative Justice is a process for all parties involved with certain criminal acts sit together to solve problems and think about how to overcome the consequences in the future come. Process This on basically done through discretion (policy) And diversion, that is diversion from process Justice criminal to outside process formalto be resolved by deliberation (Research and Development AgencyLaw And Right Asasi Man, 2016: 2).

Restorative justice aim For empowering para victim, perpetrator, family, And public For repair something deed against the law by using awareness and conviction as foundation for improving social life explains that draft Restorative Justice on basically simple (Nikmah Rosidah, 2014:103).

Position Law (Legal standing) To Application RestorativeJustice.

Regarding law enforcement in Indonesia, it cannot be ignored Law Number 8 of 1981 concerning Criminal Procedure Law because Based on the words alone, the term refers to implementation formal law. You could say that what is meant by law enforcement (law enforcement), the form of concreteness is the imposition of a crime or penalty. Related with matter the, according to Sauer There is three understandingbase in law criminal, that is characteristic oppose law, error And criminal(Dwidja Priyatno, 2007:9).

It is said in the description according to Bagir Manan, that law enforcement Indonesia can be said to be "communis opinio doctorum", which means that enforcement law Which Now considered has fail in reach objectives implied by law (Rudi Rizky (ed), 2008: 4). By Because That, be allowed A alternative enforcement law, that is Restorative Justice Systems, Where approach Which used is approach socio cultural and No approach normative.

Program justice restorative based on confidence that party Whichinvolved conflict must in a way active involved in finish And reduce consequence negative. They Also based, in a number of

case, on will For return to building taking decision Andlocal community. These approaches are also seen as tools to encourage peaceful expression of conflict, to promote tolerance And inclusivity, build award on diversity And promote practice public Which responsible answer (Rudi Rizky (ed),2008: 58).

Restorative Justice is an important development in human thought is based on the traditions of justice from ancient Arabia, Greek, Roman and even other civilizations accepted a restorative approach murder cases, the restorative approach of the general assembly (Moots) of Germanic society that swept across Europe after the fall of Rome, Indian Hinduism is as ancient as the Vedas Civilization for whom "he who redeem the forgiven," and the ancient Buddhist, Taoist, and Confucian traditions that he saw mixed with influence West day This in Asia North (John Braithwaite, 2002: 3).

Law Which progressive leave from assumption base that law isFor man, No on the contrary. Law No as institution Which natureabsolute And final, but as institution moral, be conscientious And BecauseThat very determined by his abilities For subserve to man.Law is something institution Which aim For deliver manto life Which fair, prosperous And make man happy. Humanity And justice become objective from everything in Wealive law. So sentence "law For man" meaningful Also "law For justice". This means, that humanity And justice There is inon law. The main thing is is emphasis on enforcement law fairWhich in Indonesia that is creation well-being public or Which oftencalled with "public Which fair And prosperous" (Rudi Rizky (ed), 2008: 58)."Restorative justice" as Wrong business to find a solution conflict in a way peace in outside court Still difficult applied. In IndonesiaMany customary laws can be restorative justice, howeverits existence is not acknowledged state or not codified in lawnational. Law custom Can finish that conflict appear in publicAnd give satisfaction on party Which conflicted. Appearance idearestorative justice as critics on application system Justice criminalwith imprisonment Which considered No effective finish conflict social.The cause, party Which involved in conflict the No involvedin solution conflict. Victim still just become victim, perpetrator Whichimprisoned too bring up problem new for family etc(Setyo Utomo, Pulpit Justitia Faculty Law University Suryakencana, Volume 5 Number 01: 86).

It needs to be stated that the concept of restorative justicecan not only be applied to the Supreme Court (MA). In the process criminal justice in general and the criminal justice process in Indonesia In particular, there are several stages or processes that must be gone through para searcher justice Good in level investigation, investigation, prosecution,

inspection in court until stage dropping decision judge. Even on stages Where para searcher justice do effort law (Goodeffort law normal nor effort law outside normal). With thereby, writer evaluate that Already should adoption And application draft justice restorative (restorative justice) done in various level or process Justice as stated on (Eva Achjani Zulfa. 2009:17). Restorative justice as Wrong business For look for solution conflict in a way peace in outside court Still difficult applied. In Indonesia Lotslaw custom Which Can become restorative justice, However its existence Norecognized country or No codified in law national. Law custom Can finish conflict Which appear in public And givesatisfaction on party Which conflicted. Appearance idea restorative justice as critics on application system Justice criminal with imprisonment Which considered No effective finish conflict social. The cause, party Which involved in conflict the No involved in solution conflict. Victim still just become victim, perpetrator Which imprisoned Also bring up problem new for family And etc (Setyo Utomo, Pulpit Justitia Faculty Law University Suryakencana, Volume 5 Number 01:86).

Case Persecution Handled by the State Prosecutor's Office Jepara

The Jepara District Prosecutor's Office is one of the District Attorneys in Central Java as the ranks of the Indonesian Prosecutor's Office with assigned areas in province Java Middle with wide region reach 32,548 km². The Jepara District Prosecutor's Office is led by Dwianto Prohartono, SH, MH who located at Jl. KH. Fauzan No. 3 Jepara. It's just that in practice it functions the more tend as extension hand Dutch mere. With say other, prosecutor And attorney on period colonialism Dutch carry mission veiled ie between other:

- a. Maintain all regulation Country
- b. Do prosecution all criminal act
- c. Carry out decision court criminal Which authorized. Function as tool ruler That will very obvious, specifically in implement offenses related to hatzaai articles there is in Wetboek van Strafrecht (WvS)

The role of the Prosecutor's Office as the only official prosecuting institution functioned First time by Constitution government era occupation soldier Japan No. 1/1942, Which Then replaced by Osamu Seirei No.3/1942, No.2/1944 and No.49/1944. The existence of the prosecutor's office exists on all level court, ie since Saikoo Hoooin (court grand), Koootooo Hoooin (high court) and Tihooo Hoooin (court country). At that time, it was officially stated that the Prosecutor's Office had power For:

- a. Look for (probing) crime And violation
- b. Demand Case
- c. Operate decision court in case criminal

d. Taking care of work other which is mandatory done according to law.

During the reform era, the Prosecutor's Office received assistance through its presence various new institutions to share roles and responsibilities. Presence new institutions with these specific responsibilities should be seen positive as partner attorney in combat corruption. Previously, effort enforcement law Which done to follow Corruption crimes often experience obstacles. This is not only experienced by Attorney, However Also by Police R.I as well as bodies other. Constraint the between others :

- a. Mode operandi Which classified advanced
- b. Perpetrator get protection from corps, superior, or his friends.
- c. The object complicated (compiled), for example Because related with various regulation
- d. It's difficult collect various proof beginning
- e. Management source Power man
- f. Difference perception And interpretation (in circles institution enforcer law Which there are)Means And infrastructure Which Not yet adequate
- g. Psychological and physical terror, threats, negative news, even kidnapping as well as burning law enforcement house (Interview Mr. Fiqhi Abdillah Daswara, SH., as Kasi Pidum Jepara District Prosecutor's Office on Monday March 23 2022 o'clock. 11.00 WIB).

On Friday 06 December 2019 at approximately 07.00 WIB at Field Bangsri join in Village Bangsri Subdistrict Bangsri Regency Jepara, Victim witness Suwanti Binti Sarmani (deceased) went to Bangsri field to exercise alone in the morning when he arrived at the Bangsri witness field victim jogging, around 4 (four) round suddenly come defendant drive bicycle motorcycle with hitchhiking his son want to taking him to school, in front of witnesses the victim the defendant mocked him with his mouth tilted (grotted) then the victim witness spoke "indeed nice So Widow" Then defendant return approaching witness victim And speak "indeed problem for lol if I Widow" Then suddenly defendant hit witness victim with method hand right defendant clenched his fist with the motorbike keys after which the defendant hit him the victim's eye was on the left side then the victim witness spontaneously grabbed it The defendant's veil said, "If my eyes wander, I won't report it police station in Indonesian what's wrong with my eyes? report it to the police station," to which the defendant replied, "just report it wedi in Indonesian just report it I'm not afraid" then was broken up by residents, witnesses, the victim was taken to the side and the defendant went upstairs In the incident, the victim witnessed bruising around the eyes and eyes defendant until blush And witness victim get it checked to Public health center Bangsr, after that the victim witness reported the incident to the Sector Police Bangsri. As a result of the abuse incident, the victim witness experienced bruises around the eyes, so that the victim's eyes were red and the victim's head was red Dizzy And No Can activity like usually during 10 (Ten) day

so that deed suspect threatened with 351 paragraph (1) Criminal Code (Interview Mr. Fiqhi Abdullah Daswara, SH., As Kasi Pidum attorney Country Jepara on Monday 23 March 2022 o'clock. 13.00 WIB).

Role attorney Country in Implementation Restorative Justice (Justice restorative) In Handling Case Criminal

As is known, in the Indonesian criminal justice system, The police have investigative powers and prosecutorial powers by Attorney, And power judge/judge criminal owned by Court. can held by himself by they who implements it.

Lots of it solution case Which taken through mechanism Justice, in matter This Justice criminal. Lots of it critics to completion cases, in the criminal justice system, are facts that must be faced public. Some facts are detrimental, such as frequent trials eat time Which long, cost Which expensive, complicated And considered Can fulfill society's sense of justice. As a system, of course there are many factors that cause ineffective and inefficient solutions enforcer law (legal structure), product legislation (legal substance) nor customs and legal culture of society (legal culture) (Badan Dan Research Development Law And Right Asasi Man, 2016: 2).

Smoothness process in implementation enforcement law in in Society is largely determined by the values held and applied within it public Which concerned. Mochtar Kusumaatmadja put forward law as a social gift, cannot be separated from the values that apply in it something public, even can said that law That is reflection of the values prevailing in society. Good law is a law that is in accordance with the living law within society, which of course is also appropriate or a reflection of values that prevails in that society. These values cannot be separated from attitudes (attitude) and the qualities that (should) be possessed by people who become member public the (Andi Hamzah, 2017: 19).

prosecutor is Wrong One apparatus country Which given task And authorized by law to carry out law enforcement. In Carrying out their duties and functions, prosecutors are organized in an institution which is named the Prosecutor's Office of the Republic of Indonesia or can be called the Prosecutor's Office. Task main attorney Which held by prosecutor is do prosecution case criminal. In carry out task prosecution, prosecutor given the authority to determine whether or not a case can be submitted to court And chapter What Which accused. Even prosecutor Also can stop prosecution based on opportunity or principle wisdom demand. Principle here it is Which become base for prosecutor For finish criminal cases outside of court using a restorative approach justice (Andi Hamzah, 2017: 1) .

Enforcement law in Indonesia, No will Can regardless from Law Invite Number 8 Year 1981 About Law Program Criminal Because based on



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after that, then for him will be punishment which very painful

And in qishaash that's there (warranty continuity) live for you, hi people which sensible, so you pious.”

In something history stated that when Islam hamper It is stipulated that during the Jahiliyah era there were two Arab tribes fighting against each other with each other. Among them there were those who were killed and those who were injured, even they killed slaves and women. They haven't had time to reply yetfeud Because they enter Islam. Each brag himself

with the number of troops and his wealth and swear not ridlo when the slain slaves were not replaced by free people, women replaced by man So come down sentence the said at above which insistedlaw qisas (Sayyid Sabiq, Volume 10: 28).

Para cleric in a way firm mention that right in criminal Islam divided into God's rights and human rights. Abdul Qadir Awdah explained that sometimes There is two right in One follow criminal. There is deed Which touch rights individual, However right public more dominant in inside such as: qazaf. There are also other actions that touch the rights of the community, but right individual more big compared to right public like: murder (Abdul Qadir Awdah, 2007: 204). In criminal law settings There are two modern models for crime victims, namely the model rights procedural and service models (Muladi and Barda Nawawi Arief, 1992:79-84). Application policy non penal in Islam, has long applied on finger qisas-diyat (criminal acts of murder and abuse), which in Indonesian criminal law is categorized as a serious crime that cannot be done effort peace. As-Sayid Sabiq commented, that provision Al- Baqarah (2):178-179 relating to the law of qisas-diyat contains several thinking:

1. Qisas is form legal correction ignorant Which discriminatory.
2. Law alternative, that is qisas, diyat, or forgiveness.
3. There is relief and ease from Allah regarding the application of the law qisas.
4. The existence of a reconciliation system between the parties concerned (victims or guardian and perpetrator).
5. Qisas guarantee the safe survival of human life. Qisas also acts as a deterrent so that others are afraid of committing criminal acts murder considering its severe punishment (Sayyid Sabiq, Volume 10, 1995: 26-29).

As it is expressed Ibnu Qayyim Al-Jauziyah, based on on firman Allah SWT, dalam surat Al-Hujurat (49)

This section contains a large, overlapping collage of text and symbols. It includes various characters, words, and phrases in different fonts and colors, such as 'h and a', 'Yes', 'AMR', 'S. L', 'Oh', 'God', 'T', 'h', 'a', 'B', 'Yes', 'E', 'm', 'a', 'Me', 'B q', 'S i', 'q'. The text is partially obscured and difficult to read due to the overlapping nature of the elements.

وَأِنْ مِنْكُمْ أُمَّةٌ أَعْتَدَتْ
لِلْجَاهِلِيَّةِ أَنْ يَكُونَ لَهُمْ
عَهْدٌ مَعَكُمْ فَحَبِطُوا
أَعْيُنَهُمْ فَاصْبِرُوا
إِنَّ اللَّهَ يَكْفُلُ
الْعَهْدَ لَكُمْ إِنْ كُنْتُمْ
مُؤْمِنِينَ

Meaning: "And if there is two group from them which believe that war you should make peace between the two! But if that one violates the agreement against the other, shall be the violator You fight that agreement until it recedes at God's command. If he has receded, make peace between the two according to justice, and you shall act justly; verily Allah loves people people which happen fair."

Based on Treatise Caliph Omar son Khatab; peace must based on clear corridors. Peace does not justify anything haram or forbidding something that is halal (Ibnu Qayyim Al-Jauziyah, 94). This basis is then seen in the context of criminal law, during this peace accommodate interest second split party, based on on pleasure both of them, understand good and bad And justice, peace can enforced. The application of peace as applied to murder and abuse, have similarities with the implementation of restorative justice in modern criminal law. Regardless of the pros and cons of what type of crime restorative justice can be applied as in the Islamic criminal law system as well as modern criminal law, but it must be acknowledged that Islam has long adhere to justice restorative before law criminal modern use it.

Justice restorative realize justice for para party, No only realize legal justice, but Also consider social justice, individual justice And Also moral justice. Justice Which Lots applied by apparatus law enforcement is only limited to legal justice. This is proven by many processes resolving criminal cases in society that actually harm the sense of justice in society. Legal when criminal law enforcement is applied based on above what is stipulated by the Criminal Code or other laws. But who doesn't What is realized is the intelligence of law enforcement officers in seeing which cases Which can continued And Which No. That's reason Why he gave authority like discretion nor right opportunity. In doctrine Islam, as confirmed by Marcel A. Boisard: justice is center motion from values moral Which principal (Muhammad Tahir Azhari, 2010: 121)

As one example is what Umar bin once did Khattab by releasing punishment to thieves. As one of a kind hudud crime, theft is the right of God, which means the state is not can follow involved in decided release. However, by his intelligence, Omar release thief udzq (dates by consider time famine which happened period that. Omar also ever release the boys Hatib which steal camel men from Museum. Things the said done after it knowing cause act that because them starving Omar ordered for give replace above price camel to camel owners, even higher than the initial nominal. See Ibnu Qayyim Al-Jauziyah, Guide., 430-431

CONCLUSION

Based on the discussion in this research which discusses about Implementation Restorative Justice (Justice restorative) In Case Handling Criminal (Studies Case Persecution In attorney Country Jepara), so the writer can conclude as following :

1. This case of violent crime occurred at the Jepara District Prosecutor's Office happen where is SUWANTI Binti SARMANI (deceased) as victims and NOVI MOVE ARYANTI Binti SUTIONO as defendant in case

- quarrel Which end with violence Which form beating suspect to witness victim.
2. Implementation Restorative Justice in violent criminal cases at the District Attorney's Office Jepara Where with consider There is peace between Victims and Suspects, where on November 9 2021 there were agreement peace between suspect Novi Get out of here Aryanti with witnessvictim Suwanti as letter statement peace dated 09 November 2021 Which on the main thing is state For end dispute that arise between the suspect and the victim witness not to sue each other or sue One The same other in regarding whatever Also after signed Letter Agreement the process peace can held And resolved with Restorative Justice.
 3. Implementation of Restorative justice in criminal justice at the District Attorney's Office Regency Jepara This very in accordance with values law Islam. Restorative justice is highly recommended by Islamic teachings/Islamic law, namely as follows he ordered afwu / To forgive and let go of everything that happened we experience both those related to relationships with fellow humans nor connection with Allah SWT. In in Al-Quran solution conflict through approach non litigation use it draft *al-sulh* or *ishlah* (peace). Concepts like *Hakam* (arbitrator or mediator) in the mechanism of *tahkim* and *al-sulh* or *ishlah* (peace), is a concept that explained in in Al-Qur'an as media in in finish conflict in outside court.

BIBLIOGRAPHY

- Alhafidz, Ahsin W. 2013. Dictionary Fiqh. (Jakarta: Azmah)
- Ali, Zainuddin. 2006. Islamic civil law in Indonesia. (Sinar Graphics, Jakarta)
- Arikunto, Suharsimi. 2002. Procedure Study Something Approach Practice. (Jakarta: PT. Rineka Create)
- Azwar, Saifuddin. Method Study, (Yogyakarta: References Student)
- Al-Husaini, Al-Imam Taquiuddin Ashes Bake. 2009. Kifayatul The end Translation Achamd Zaidun etc., (Surabaya: Build knowledge)
- Al-Albani, M. Nashiruddin. 2005. Summary authentic Muslims, (Jakarta: Echo Inhuman press)
- Al- Mubarak, Sheikh Faishol Son of Abdul dear 2002. Nailul Author Sacrifice Hadith- Hadith Translation Law Muammal Hamidy et al. (Surabaya: PT. Build knowledge)
- Bahtiar, Wardi. 1997. Methodology Study Knowledge Da'wah. (Jakarta: Logos Discourse Knowledge)
- Basyir, Azhar. 2000. Principles of Islamic Civil Law. (Yogyakarta: UII Press)
- Chuzaimah T. Yanggo And Hafiz Anshary. 1994. Problematic Law Islam Contemporary. (Jakarta: References Paradise)
- Department of Education and Culture. 1994. Big Indonesian Dictionary. (Jakarta: Balai Pustaka). Cet. 3 edition second

- Department Religion R.I. 2000 Compilation Law Islam. (Jakarta: Directorate General Institutional Development Religion Islam)
- Ghofur, Asari Abdul. 1993. Reflection Dynamics Law (Suite Thinkin Decade Final), (Jakarta : Andre Main), Cet. To 3
- Humaidillah, Memed. 2002. Culture Law Judge Child In Indonesia. (Jakarta:Echo Human)
- Maleong, Lexy J. 2001. Methodology Study Qualitative, (Bandung: Teenager Rosdakarya)
- Ma'luf, Louis. 1975. Al Munjid. (Beirut: Dar al-Masyrik)
- Muhdlor, A. Zuhdi. 1994. Understand Law Marriage, (Bandung: al-Bayan)
- Nawawi, Haidari. 1995. Instrument Study Field Social, (Yogyakarta: Elephant Mada University press)
- Nur, Djamaan. 1993. Fiqh Munakahat. (Semarang: CV Toha Son)
- Rasjid, Sulaiman. 2014. Fiqh Islam. (Bandung: Ray new Algensindo)
- Ramulyo, Mohd. Idris. 1995 Culture Law Judge Child In Indonesia. (Jakarta:Ray Graphics). Cet. 1
- Retnowulandari, Wahyuni. 2016. Application Restorative Justice On Act Criminal Child. (Jakarta: Publisher Trisula University)
- Rofiq, Ahmad. 1995. Law Islam in Indonesia (Jakarta : King Grafindo Homeland)
- Rofik, Ahmad. 1998. Law Islam in Indonesia. (Jakarta: PT. King Grafindo Homeland)
- R. Subekti & R. Tjitrosudibio. 2002. Book Constitution Law Civil.(Jakarta: Pradnya Pramita)
- Sabiq, Sayyid. 1981. Fiqh Sunnah Translated. (Bandung: PT. Alma arif). volume 2
- Sunday Sahrani et al. 2010. Jurisprudence Munakahat: Research Jurisprudence complete, (Jakarta: Rajawali press)
- Sugiono. 2007. Methodology Study Education Approach Quantitative, Qualitative And R & D, (Bandung: alphabet)
- Summa, Mohammed Amen. 2005. Law Family Islam in World Islam. (Jakarta: King Grafindo)
- Suriyanti J. Hasania. 2013. Punishment for Children in Design Concepts Criminal Code (within the Restorative Justice Framework). (Sharia Faculty Archives And Economy Islam, IAIN)
- Surtiretna, Nina. 1996. Restorative Justice, How it Works, (Bandung: PT. Teen Rosdakarya). Cet. 1
- Suryabrata, Sumardi. 1998. Research Methodology, (Jakarta: PT. Raja Grafindo Homeland)
- Syarifudin, Amir. 2011. Law Marriage Islam in Indonesia. (Jakarta: Kencana). cet. 3
- Tihami and Sohari Sahrani. 2010. Munakahat Fiqh: A Complete Study of the Fiqh of Marriage,(Jakarta: Rajagrafindo Homeland)
- Team Editorial Focus Media. 2005. Reflection Dynamics Law (Suite Thinking in Decade Final). (Bandung: Focus Media)
- Nusa Aulia Editorial Team. 2011. Compilation of Islamic Law. (Bandung: CV.



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Constitution R. I Number 1 Year 1974. 2013. About Marriage And Compilation
Law Islam. (Bandung: Image Umbara)

THE ROLE AND STRATEGY OF THE HOLY POLICE AGAINST TRAFFIC VIOLATIONS BY CHILDREN

Febriana Noor Afifah, Rahma Aulia

IAIN Kudus

Abstract

The purpose of this research is to find out the role and efforts that can be carried out by the police in resolving cases of traffic violations by children by paying attention to several factors that lead to minor traffic violations, the factors include: a. The first factor comes from the family: child traffic violations cannot be committed without parental/family support. parents/family allow him to ride a motorbike. educational factors, especially schools: Schools play a very important role in educating children. The final factor is the environment (associations): where the environment (associations) has a big influence on the development of children's thinking patterns, children are easily influenced by the surrounding environment. Judging from the factors above, the task of the police is to prioritize and follow up well to reduce traffic crimes committed by underage children or teenagers. Efforts that can be taken by the police to prevent violations of traffic regulations by minors: a. First of all, the police certainly provide an understanding of the importance of legal awareness and educate schools to provide advice about traffic regulations in schools. B. Follow-up action, with retaliation at the discretion of the police, allows the police to provide a deterrent effect and prevent children or teenagers from committing traffic crimes.

Keywords: Legal Policy, Violations, Traffic .

Abstrak

Tujuan dari penelitian ini adalah untuk mengetahui peran dan upaya apa yang dapat dilakukan pihak kepolisian dalam menyelesaikan kasus pelanggaran lalu lintas yang dilakukan oleh anak dengan memperhatikan beberapa faktor yang mengakibatkan terjadinya pelanggaran lalu lintas ringan, faktor tersebut antara lain: a. Faktor pertama berasal dari keluarga: pelanggaran lalu lintas anak tidak mungkin dilakukan tanpa dukungan orang tua/keluarga. orang tua/keluarga mengizinkannya mengendarai sepeda motor. Faktor pendidikan khususnya sekolah: Sekolah memegang peranan yang sangat penting dalam mendidik anak. Faktor yang terakhir adalah lingkungan (pergaulan): dimana lingkungan (pergaulan) mempunyai pengaruh yang besar terhadap perkembangan pola pikir anak, anak mudah terpengaruh oleh lingkungan sekitar. Dilihat dari faktor-faktor di atas, tugas polisi adalah memprioritaskan dan menindaklanjuti dengan baik untuk mengurangi kejahatan lalu lintas yang dilakukan oleh anak di bawah umur atau remaja. Upaya yang dapat dilakukan kepolisian untuk mencegah pelanggaran peraturan lalu lintas yang dilakukan oleh anak di bawah umur: a. Pertama, pihak kepolisian tentunya memberikan pemahaman akan pentingnya kesadaran hukum dan mendidik pihak sekolah untuk memberikan imbauan peraturan lalu lintas di sekolah. B. Tindak lanjut dengan tindakan pembalasan sesuai kebijaksanaan polisi, memungkinkan polisi memberikan efek jera dan mencegah anak

The Role And Strategy Of

atau remaja melakukan kejahatan lalu lintas.

Kata Kunci : Kebijakan Hukum, Pelanggaran, Lalu Lintas.

Introduction

As time progresses, modern patterns of behavior also develop . Plus technology is increasingly sophisticated and consumer behavior is increasingly high. So it can make it easier to complete activities quickly and efficiently. One of the impacts that occurs is increasing behavioral changes for teenagers . Teenagers are stages of change from childhood to adulthood. These changes are usually characterized by social, cognitive and biological changes. One example of social change that occurs is following what is becoming a trend, for example the use of motorized vehicles . It is not uncommon to find teenagers under 18 years old who drive without having a driving license . Of course this is caused by a lack of knowledge about traffic and a lack of control from parents.

One of the duties of the police agency is to regulate traffic for the safety of road users . The police work to resolve various problems. Various penalties have been imposed to enforce those who violate the road or cause road accidents and inconvenience. The police apparatus, in this case the police, acts in a political function as a deterrent and implementer. In addition, the traffic police also carry out regulatory functions and audit functions, especially in the area of approval or initiation. (Soekanto, 1989)

In the Kudus area itself there are children/ Teenager riding a motorbike. Those under 17 years of age are prohibited from riding motorbikes carelessly. This can be seen from the large number of people riding motorbikes when going to school, hanging out and other activities. Of the majority of them, there are quite a few who pay proper attention to the ethics of motorcycling, meaning that most of them ride motorbikes recklessly, side by side, racing, not using helmets, not turning on or turning off the motorbike rating, and breaking through traffic signs. Sociologically, compliance with the law is a condition of compliance and compliance with applicable laws. (Rosana, 2014)

According to Article 22, Article 52 Paragraph 2 of the 2009 Road Traffic Law,

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vehicle modifications according to (1) endanger traffic safety, hinder traffic flow, or damage the road surface. Can't be damaged. / Load capacity of the road it passes through. (Yuserlina, 2019) People under 17 years of age often still have an unstable emotional level. easily influenced/offended and tends to be overly sensitive to criticism so that he is unable to control the situation well. So this can influence him to take actions that are beyond the limits in the public environment.

The main perpetrators of them riding motorbikes freely are parents. Where most of them choose practical things in terms of shortening the time in paying attention to children or teenagers when they are busy with a lot of activities. And from the start, it was permitted to ride motorbikes, so most children or teenagers would prefer to ride motorbikes. However, there are not only these factors, but also environmental factors, where most of their friends can already ride motorbikes. And this makes them behave in the same way as other friends and of course tends to choose their ego to follow the style of their friends or others.

To overcome this problem, parents must be dominant, we often find that parents easily let their children drive without being limited by the environment where their children live. However, school buses are also allowed, even from any point of view, it makes no sense for students to drive vehicles because they do not have a driving license (SIM). Teachers and parents must be firm in resolving this problem, if students do not obey school regulations, they will be punished or form a special team with the police to monitor school regulations. Another specific action is to announce through the media that students are the most serious traffic violators. (Anindhito a& Maerani, 2018)

Therefore, there needs to be cooperation from parents, legal officials and police officers in providing firmness in responding to this matter. And there is also a law protecting children or young people as an effort to protect children's freedom and human rights. However, parents are the ones who have the most dominant attitude towards this. So that it can anticipate and reduce the problem of traffic accidents.

From the explanation above, the problem can be formulated as follows: 1.) What are the weaknesses of the legal policy regarding traffic crimes committed by children or teenagers within the Kudus Police Station? 2.) What is the solution to the weak legal policy regarding traffic crimes committed by children or teenagers within the Kudus Police Station? 3.) What are the efforts and role of the police in responding to legal

policies regarding traffic crimes committed by children or teenagers within the Kudus Police Station?

RESEARCH METHODS

The research method used is sociological legal research. The sociological legal approach prioritizes research that aims to gain legal knowledge empirically by acting directly on the main problem. (Soekanto, 2005) Study Effectiveness : Ministry regulations and studies aim to find relationships between various symptoms or variables as data collection tools including documentary research , library materials and interviews. (Amiruddin, 2012) In this type of research, law is conceptualized as an empirical phenomenon which can be observed clearly and correctly. The Sociological Juridical Method in completing this research is descriptive analysis, supported by primary data sources and secondary data sources and described with analysis and providing a detailed and clear discussion.

The main data sources or legal case facts obtained by researchers were obtained through field research , by attaching information about the relevant sources. Meanwhile, secondary data sources were obtained through library research. Supporting data in this research are: 1) 1945 Constitution, 2) Criminal Law, 3) Law no. 11 of 2012 concerning the Criminal Code, 4) Law no. 17 of 2006 concerning the Second Amendment to Law no. 23 Concerning Child Protection, 5) Law no. 22 of 2009 concerning Road Traffic and Transportation, 6) books related to this research, 6) Documents resulting from research in the legal field, especially documents related to this research, 7) Guidelines for writing scientific papers.

In collecting data, researchers focus on what is available, with the aim of not straying into the discussion being discussed. Don't forget that this research also uses library research. This means collecting data obtained through reliable sources and literature, and of course scientific research. Regulations and other

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written sources related to the problem under study are used as a theoretical basis. Therefore, second hand information is obtained. Raw data is used to examine the operation of law in society through field observations, interviews, questionnaire surveys, and data collection methods from small documents.

The data analysis method used after the data is collected is the qualitative normative data analysis method. This reason is called normative because the study is based on existing regulations, namely active legal norms, while the characterization is based on information obtained through sources for clarification purposes.

The method in this research is a normative analysis method. This method is carried out by paying attention to the facts (field practices) that exist in society and comparing them with explanations in the literature. Furthermore, from this analysis, we discovered the effectiveness of the legal system, which provides the general public with the opportunity to learn general guidelines regarding juvenile traffic violations.

DISCUSSION

Weaknesses of the Legal Policy Against Traffic Crimes by Children or Adolescents within the Kudus Police Station

Something that becomes an obstacle is usually called a weakness. With these weaknesses, implementing legal policies against traffic crimes by children or teenagers does not work properly. So it is very necessary to know what kind of weaknesses and be able to find the best solution.

Case studies in this area can identify law enforcement weaknesses in maintaining law and order, especially those related to traffic violations by children and teenagers:

1. The public still lacks legal awareness

As modern lifestyles increase, there is a significant increase in mobility. The increasing level of consumers driving both 2-wheeled and 4-wheeled etc. is quite rapid and there is a lack of balance regarding the addition of appropriate road facilities and infrastructure. In addition, there is still low or lack of legal awareness regarding traffic law policies in creating public order by obeying traffic regulations. This gives rise to several aspects that can influence whether or not a good, comfortable, orderly and easy traffic system is created.

2. Lack of expertise on the part of the Police

Of course, we really hope that the police officers will play an important role in carrying out their duties well. Both in terms of quality in the form of technical mastery/investigation techniques and quantitatively. There are also things that arise from various cultural aspects, namely the behavior of officials who are stubborn, not providing good service, being discriminatory, manipulative and so on.

The law which is the legal basis for police authority still leaves behind various existing polemics, such as:

- a. There are still laws and regulations in the Dutch era. And it is considered unable to accommodate current developments, but its existence is still maintained to this day.

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traffic violations. What can be seen in the legal council trial is by checking the problem of road traffic violations which is carried out using the checking method in a very short time. Confiscation in traffic crimes in accordance with KUHP Article 38 paragraphs (1) and (2), namely: 1. Confiscation can only be carried out by investigators with the approval of the local regional legal council. 2. In urgent conditions, if the investigator is forced to act and does not obtain prior approval, the investigator can only confiscate movable property without prejudice to the provisions of paragraph (1). This can be done and must be immediately reported to the local government for approval. (Rizki, 2008)

Efforts and Role of the Police in Addressing Legal Policies Against Traffic

Crimes by Children or Adolescents within the Kudus Police Station

The National Police of the Republic of Indonesia (POLRI) is a police force that is directly responsible to the President. The police carry it out police missions throughout Indonesia . Among other things, maintaining security and discipline of citizens , upholding the law , providing protection, protection and providing services. The police are on their toes law enforcement representatives and security and discipline advisors . (Arif, 2021)

Article 1 (5) Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia explains the function of the police as follows:

"Security and order are a dynamic condition as one of the prerequisites for the implementation of the national development process which is characterized by ensuring order and upholding the law and maintaining peace which contains the ability to foster and develop potential and strength in warding off, preventing and overcoming all forms of law violations and forms of other forms of interference can be unsettling"

It can be seen from the contents of the article above that the police always carry out their dual role as law enforcers and social workers, as well as playing a role in the form of service. In general, the function of the police agency is to maintain security and orderly law enforcement.

Article 13 of Law Number 2 of 2001 regulates the main obligations of the Indonesian National Police, namely:

1. Maintain order, security and peace.
2. Enforcement.
3. Providing protection, guidance and service to the community.

Therefore , in carrying out its obligations, the Police have the right to provide investigation. Discursion is a broad authority or freedom of action. Police officers who are at the forefront of criminal law enforcement must be able to use the authority given to them as well as possible, especially in the best interests of children or teenagers who violate the law.

Law enforcement agencies carry out investigations in the criminal justice system. as aimed at advancing the public interest as regulated in the Preamble to the 1945 Constitution, additional functions for the public interest. In a welfare state it has several consequences for national administration, in other words the government must play a participatory

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role. Play an active role in socio-economic and law enforcement. Therefore, the government is obliged to serve the public. (Astari, 2015)

Article 18 (1) of Law Number 2 concerning the National Police of the Republic of Indonesia of 2002 regulates that the police have a legal basis for traffic crimes committed by children, namely discussions about the general interests of the Indonesian nation. In Indonesia, when carrying out their duties, the authorities can act according to their judgment. According to information from the Polda Metro Jaya Transportation Service, in 2018 there were 32 cases of child traffic crimes resolved by the police using appropriate reconciliation methods between perpetrators and victims. (Agustina, 2020)

According to Satjipto Rahardjo, "The task of the police is actually not far from the task of prosecution. Isn't it the job of the prosecutor to clarify the criminal law when dealing with certain perpetrators? (Prinst, 2014) therefore, the dissertation is actually an integral part of the legal supervision system itself. (Rahardjo, 2003)

Apart from being appropriate for carrying out investigations, there are also important things for carrying out police duties. The reasons are as follows:

1. The statute's language is too general to serve as a detailed implementation statement for local officials.
2. Law is a means of achieving justice and maintaining order, and the judicial process is not the only means of achieving these goals.
3. Consider the resources and skills of police officers. (Said, 2012)

Article 27 of the 1945 Constitution explains the equality of position in law and government for all of Indonesia. Police officers have an obligation to provide protection and create security and order for all. As explained by Barda Nawawi Arief in his book, which explains the goals achieved for the benefit of society through criminal justice, namely:

1. Maintaining Order inside.
2. Protects from criminal acts in the form of crimes, losses, etc.
3. Reconciliation to parties who violate the law.
4. Defend and maintain the integrity of views regarding social justice, individual justice and human dignity. (Nawawi, 2006)
- 5.

CLOSING

In implementing the Legal Policy Against Traffic Crimes by Children or Teenagers within the Kudus Police, it is very necessary to understand the influencing factors, the existence of weaknesses that need to be updated, and prepare the best solution to create a Legal Policy Against Traffic Crimes Crossing by Children or Teenagers in the Kudus Police Area.

1. Factors that influence traffic crimes by children or teenagers within the Kudus Police Station:
 - a. Family Factors

Family is the most important factor in forming a child's mindset in today's life. Where most parents or families provide support and even
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facilitate children with vehicles. which is without any supervision from them. So quite a few of them have committed traffic violations, and this has a big impact on public order.

b. Educational Factors, especially at School

School is a place where they are well educated. So there needs to be cooperation between schools and the police. There needs to be a requirement that the school impose restrictions or prohibit them from driving vehicles to school.

c. Environmental Factors (Social)

In everyday life, children or teenagers certainly play with each other. By frequently gathering together, the same pattern automatically forms. The increasing intensity of their relationships with each other will certainly have a negative impact on them.

2. The weaknesses that the police take in their efforts to enforce the law for children or young people regarding traffic crimes are:

a. Society still lacks legal awareness

b. Lack of expertise on the part of the police

c. Lack of adequate infrastructure that supports the proper implementation of a traffic law policy.

3. Solutions for efforts and roles that can be carried out by the police in anticipating the occurrence of traffic crimes by children or teenagers are:

a. Main Steps (Initial Attempts)

In anticipating the occurrence of traffic violations caused by children or teenagers who are still underage, by providing an understanding of how important it is to be aware of the legal policies that have been implemented in order to create public order, then by conducting socialization regarding traffic rules in schools . school. With the aim of holding this outreach, it is hoped that there will be cooperation between schools and police officers in providing an understanding of driving well and in accordance with traffic rules. Not only does it provide understanding but it should also prohibit them from riding motorbikes to school.

b. Repressive Efforts

This effort is a Police Discersion in carrying out its duties. Police officers have the authority to take direct action against traffic violators, especially children or teenagers who are underage. with the aim of providing a deterrent effect and preventing children or teenagers from committing traffic crimes.

BIBLIOGRAPHY

- Agustina, Sylvia C. (2020). *Us oenale* . 1 (2), 135-148.
The Role And Strategy Of

- Amiruddin. (2012). *Introduction to Legal Research Methods* . PT. Raja Grafindo Persada.
- Anindhito, D., & Maerani, IA (2018). Legal Policy Against Traffic Violations by Children in the East Java Regional Police Area. *Khaira Ummah Law Journal* , 13 (1), 183-192. <http://jurnal.unissula.ac.id/index.php/jhku/article/view/2598/1952>
- Arif, M. (2021). As Law Enforcer According to Law-. *Law Journal* , 13 (1), 91-101. <https://www.neliti.com/id/publications/146200/tas-dan-function-kepolisian-dalam-perannya-as-penegak-Hukum-menrut-undang>
- Astari, P. (2015). Philosophical Basis for Police Discretionary Actions Against Children in Conflict with the Law. *Legal Arena* , 8 (1), 1-18. <https://doi.org/10.21776/ub.arena.Hukum.2015.00801.1>
- Nawawi, B. (2006). *Anthology of Criminal Law Policy* . Aditya Bakti's image.
- PAF Lamintang, TL (2013). *Discussion of the Criminal Procedure Code according to the Science of Criminal Law and Jurisprudence* . Graphic Rays.
- Prinst, D. (2014). *Indonesian Children's Law* . PT. Aditya Bakti's image.
- Rahardjo, S. (2003). *Law Enforcement Issues* . New Rays.
- Rizki, GM (2008). *Criminal Code and Criminal Procedure Code* . Permata Press.
- Rosana. (2014). Legal Compliance as a Form of Community Legal Awareness. *TAPIS Journal* , 10 (1), 1-25.
- Said, A. (2012). Benchmarks for Assessment of the Use of Discretion by the Police in Criminal Law Enforcement. *Journal of Law and Justice* , 1 (1), 147. <https://doi.org/10.25216/jhp.1.1.2012.147-170>
- Samapto, SA (2009). *Settlement of criminal cases outside of court regarding alleged crimes under Article 359 of the Criminal Code in traffic cases* . STMIK AMIKOM.
- Soekanto, S. (1989). *A Sociological Review of Law on Social Problems* . Aditya Bakti's image
- Soekanto, S. (2005). *Introduction to Legal Research* . University of Indonesia Press.
- Yuserlina, A. (2019). Handling of Traffic Violations by the Bukittinggi Police Traffic Unit Against Students. *JCH (Journal of Legal Scholars)* , 4 (2), 334. <https://doi.org/10.33760/jch.v4i2.133>

CANCELLATION CONSTITUTION BASED ON THE PRINCIPLE OF OPENNESS IN THE LEGISLATION PROCESS

(Study To Decision Court Constitution Number 91/PUU-XVIII/2020)

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Abstract

The legislative process is tied to several principles, one of which is the principle of openness. Principle as collateral that in the process Legislation must be carried out in a transparent manner and provide wide space for public participation. However, during the legislative process stages of Law Number 11 of 2020 concerning Job Creation, academic texts and draft texts that are being drafted are not easily accessible to the public. This paper aims to analyze the considerations application principle openness in process legislation as a basis for canceling a law. This research was conducted on the Constitutional Court Decision Number 91/PUU-XVIII/2020. The analysis technique used is descriptive qualitative. From the research results it is known that laws can be annulled by the Constitutional Court if in the process the principles of law formation are not properly implemented. Because of Therefore, the upcoming legislative process must maximize the space for participation by the public.

Kata Kunci: Asas keterbukaan, Proses Legslasi, Pembatalan Undang-Undang

Abstract

The concept of openness is one of several that govern the legislative process. This idea ensures that the legislative process will be open to the public and will offer several chances for participation. The public does not have easy access to research papers or draft texts while Law Number 11 of 2020 concerning Job Creation is in the legislative process. The goal of this essay is to examine the factors that should be taken into account when using the openness of the legislative process as justification for repealing a legislation. The Constitutional Court's decision with case number 91/PUU-XVIII/2020 served as the subject of this study. Descriptive qualitative analysis is the method employed. The findings of the research indicate that laws may be revoked.

Keywords: *Fundamentals of transparency, Legislative Process, and Law Repeal*

INTRODUCTION

Every authority has the potential to carry out arbitrary actions by abusing power. Efforts to prevent abuse of power by not concentrating power in just one organ/institution. At least power needs to be separated into three power sectors. namely, the power of the state in forming laws, the authority of which is given to the legislature, the power of the state to implement the law, the authority of which is given to the executive, while to enforce the law, the authority of which is given. judicial institutions (Budiarjo, 2002: 151).

Member institution legislative is representation public Which own authority form Constitution. As institution Which represent people And own function legislation, then all of society's interests should be able to do so accommodated in process formation Constitution. (Yani, 2018: 349). In process legislation there is a number of stages ie starting from the initiative to draft a law, discussing the draft law; and approval of the ratification of the draft law (Asshiddiqie, 2009: 299).

Although ideally member body legislative represents the will of the people, but it is not uncommon for unilateral interests to be smuggled in that do not represent the interests of the people. Therefore, the legislative process still requires community participation For can guard their interests (Jati, 2012: 331). Involving the role of the community in the process of forming statutory regulations is an embodiment of one of the principles in Law Number 12 of 2011 concerning the formation of statutory regulations. invitation is the principle of openness.

Community participation is a means of deliberation to formulate interests and needs that must be met and protected in the legal system. In this way, the process of forming laws does not just fulfill the formal needs of legal documents but is able to produce accommodative regulations. However, in the process of drafting Law Number 11 of 2020 concerning Job Creation, only openness and involvement of elements of society in certain sectors of society with an interest were carried out. However, there are still many other elements that are not involved even though they will feel the impact of the enactment of this law.

In its development, the legislative process continues to ratify Law Number 11 of 2020 concerning Job Creation so that it has Power tie And Power forced. To matter the so

then a formal test was carried out at the Constitutional Court regarding the system method formation regulation Constitution Number 11 Year 2020 concerning Job Creation which is unable to produce accommodative policies Because No maximum application principle openness in the legislative process.

METHOD STUDY

The type of research used is normative juridical, namely focusing on the Constitutional Court Decision Number 91/PUU-XVIII/2020. This research uses a qualitative approach where data is collected through literature study. Literature studies are carried out by reviewing library sources and data collections has been classified. The data classification that has been carried out is then reduced and analyzed using descriptive analysis techniques.

DISCUSSION

Principle Openness In Process Legislation

People become a source of legitimacy of the power of a democratic government. In this way, the people are given the opportunity to be involved in every step of a government. On the other hand, one way of democracy is through a representative system. People elect certain parties to make decisions representing their interests. Constitutionally, one of the institutions that implements a representative system is the People's Representative Council (DPR), whose members are born from direct elections from the people. (Asshiddiqie, 2010: 414).

One of the functions of the DPR is explicitly and definitively stated in Article 20 paragraph (1) of the 1945 Constitution which confirms that the DPR has the power to form laws (legislative function). The existence of these provisions gives rise to juridical consequences, that is, every law is formed must be processed through the DPR institution. Legislative products are a means of realizing people's welfare

The principle of democracy states that law makers are a manifestation of people's sovereignty to realize the will of the people in the legislative process. Process carried out by representative people must represent interest people. Even though representative institutions have been formed, they must not close access to absorb the aspirations of the people and fight for them in institution board representative (Rajab, 2017). The people are the determining variable in the legislative process because the binding power of a legislative product will have an impact on the people. Community participation in the legislative process is a sociological basis for producing a good legal product (Syahmardan, 2012: 144).

Law Number 12 of 2011 concerning the Formation of Legislative Regulations provides a juridical basis that the process of planning, drafting, discussing, ratifying or enacting statutory regulations must be carried out in a transparent and open manner (principle of openness). The legal basis is at the same time give room participation public so that can convey ideas and ideas either orally and/or in writing in the Formation of Legislative Regulations.

As for stages formation regulation the legislation is as follows:

1. Planning

DPR through tool DPR equipment that specifically handles the legislative sector considers proposals from factions, commissions, members of the DPR, DPD, and/or the public in the process of preparing national legislation programs. Thus, at the planning stage for the preparation of the National Legislation Program (Prolegnas), the community was given room For participate in preparation list Bill. The legislative process is required to realize democratization which leads to the involvement of all parties with interests (*stakeholders*). Thus, the principle of openness must be applied when planning preparation begins.

Openness in the planning process requires the dissemination of information that is easily accessible to the public, either through digital platforms or socialized directly. Dissemination is intended to expand the distribution of information so that the wider community or stakeholders can provide input either verbally and/or in writing.

2. Drafting

Before script design Constitution submitted so First, a scientific study or research is carried out on certain problems that will be regulated in the draft law. The results of this research are the background to the emergence of a draft law which is considered a solution in solving society's legal problems. At the drafting stage, people's involvement is often represented by practitioners and experts who have expertise in the field being drafted in the legislative process. However, this does not close access to input from the people directly .

3. Discussion And agreement

There are two levels in discussing draft laws, namely: level I in commission meetings, joint commission meetings, meetings Body Legislation, meeting Body Budget, or meeting committee special

together with the minister representing the President and level II determines the fate of the draft law because it is faced with the choice of being approved as law or rejected.

4. Ratification/determination And invitation.

At this stage, people's participation is no longer there involved. Bills that have received mutual approval are submitted to the president to be ratified into law within a maximum period of 7 days from approval.

Evaluation performance in process legislation can be seen from the quantity and quality produced (Solihah & Witianti, 2016: 292). The legislative process produces legislative products that have three types, namely: first, responsive law. Responsive law was born from the will of the people and enforced with the principles of justice, not just *procedural justice* ; both laws are repressive. Law become a tool of power emphasizes coercion based on social control without considering the needs of the people; the three autonomous laws. Law is designed to control power from potential repression from power so as to create legal justice that is free from power intervention (Teak, 2012:336).

Legislative products are influenced by several important factors (Sarifuddin Sudding, 2014: 370) *First* , exists distribution information extensive review of the draft law to obtain input; *Second* , making objective political decisions based on research scientific For formulate need people; *Third* , The effectiveness of the legislative process without reducing the quality of the legislative product.

Laws are the result of *political* interests. Therefore, the constitution is designed so that laws are not just a means of fulfillment political interests by making space participation as right public And become obligation legislative institutions to provide means of participation. In Article 96 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, for example, it is clear that public participation is something that is mandatory in the legislative process.

Consideration Basic Deep openness Cancellation Law _

There were very significant changes to constitutional law post it changed Constitution Base Republic Country Indonesia Year 1945. In perspective *judiciary review* , testing a legislative products through institutions justice is only carried out to regulation in lower Constitution. However, judicial review of the Constitution cannot be carried out to institution court. Post amendment Law Invite Base Country Republic Indonesia Year 1945 And birth

Constitutional Court then judicial review of the new Constitution can be carried out (Triningsih, 2016:129).

There is expansion *judiciary review* show happen shift the supremacy of parliament to the supremacy of the constitution which positions all state institutions as equal. Constitutional supremacy provides *Juicy room review* for the people to sue a legal product. Meanwhile, legal products produced in a parliamentary supremacy system cannot be contested, because the legislature is considered to represent the people and its legislation is the will of the people it represents (Kurniawati & Liany, 2019: 113). Constitutional supremacy is expected to be able to realize equality and balance in institutional relations so that democracy is sovereign by the people can guaranteed through constitution (Fudin, 2022:213)

The variety of substances in Law Number 11 of 2020 concerning Job Creation certainly causes complexity both in terms of discussion and the quantity of articles produced, making it almost impossible to monitor carefully and thoroughly. Especially considering that the government is also speeding up the process prepared under the pretext of urgent need. It is an obligation in every drafting of legislation that the legal norms that are prepared originate from good planning. The interests of society are certainly above the interests of individuals or certain groups (Asshiddiqie, 2006:320). If this is not done then Legal norms in laws will be complained about to the Constitutional Court through a *judicial review process* . The Constitutional Court is a pillar in upholding the principles of the rule of law and providing maximum protection to democracy And rights base inhabitant country (Rishan, 2021:3).

Be found two type testing law namely: first, judicial material. In the review process, an authorized institution, in this case the Constitutional Court, investigates a law so that it can assess the conflict between statutory regulations and regulations at a higher level; second, formal judicial review. On the part of the Constitutional Court, it assesses regarding application procedure Which applies on moment formulate a law (Amsari, 2011:79).

Regarding with testing Constitution Number 11 Year 2020 concerning Job Creation, the applicant considers that in its formation it has been hit principle formation regulation Which Good Wrong the only one principle of openness. One indication is that the drafting process only involves certain elements of society, namely the labor element. However, there are still many organizational elements of labor associations that exist feel No involved. Besides That happen changes _

The text of the Job Creation Bill which concerns the content of paragraphs and articles or part of the article in Law Number 11 of 2020 on Job Creation after mutual approval. Formally, Law Number 11 of the Year 2020 about Create Work No fulfil provision formation of laws based on Article 22A of the 1945 Constitution which was delegated in law Number 12 of 2011 concerning the Formation of Legislative Regulations.

Community participation is used as part of the formal testing assessment standards, thereby strengthening the formal testing assessment requirements. Community participation is a right guaranteed by constitution based on Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution. Involving the community cannot be separated from the principle of popular sovereignty as an embodiment of the fulfillment of constitutional rights. If the law formation process is not carried out openly, it will close down public participation to discuss, provide input and exercise control (Arief & Ramadani, 2021: 111).

For the Constitutional Court, participation is not just a formal legal requirement in the process of forming Law Number 11 of 2020 concerning Create Work. Participation in formation Law Number 11 of 2020 Job Creation must be carried out meaningfully, namely involvement public in a way truly (*meaningful participation*). At least, there is three precondition Which must fulfilled for can considered participation meaningful, namely: First, every person has the right to express his opinion; secondly, every opinion has the right to be considered; third, the right to get a response from above opinion Which be delivered. Participation is intended primarily for parties who experience the direct impact of the legislation being processed. Apart from that, parties who have concerns about Law Number 11 of 2020 concerning Job Creation must also be treated the same.

Community participation can be developed in at least 5 (five) models, namely: first, in the working group for drafting legislation involve member public Which deemed to have capacity And skill as well as independent; second, open room discussion, especially for interested parties; third, carrying out validity tests on certain parties to strengthen arguments; fourthly, holding deliberations before being formally discussed in competent institutions; expand publications to get input society (Riskiyono, 2015:168).

More meaningful community participation (meaningful participation) will be used to assess the validity of the formalities of forming laws that are attached or linked to the principles formation regulation legislation. Revealed fact

in the formal review of the formation of Law Number 11 of 2020 concerning Job Creation that the drafting process did not provide optimal space for participation in the community.

Validity participation public Which meaningful (*meaningful participation*) started with information disclosure measures. Information transparency shows that there is nothing to hide. However, it turns out that draft Law Number 11 of 2020 on Job Creation cannot be easily accessed by the public. Even the community groups involved do not know for certain the material discussed in draft Law Number 11 of 2020 concerning Job Creation. Apart from that, changes that did not involve the community appeared after the approval, adding to the suspicion that something hidden was happening. Even though based on Article 96 paragraph (4) Article 96 of Law no. 12 of 2011 concerning the Formation of Legislative Regulations must facilitate access to important laws in an effort to provide oral and/or written input.

In Decision Number 91/PUU-XVIII/2020 Court Constitution states that the Act Number 11 2020 regarding Job Creation is conditional and unconstitutional and needs improvement because the process does not facilitate access to information and does not maximize community participation. In this decision, the Constitutional Court does not only see community participation as a mere formality requirement for the fulfillment of a process legislation but goes much deeper into the essence of participation.

CONCLUSION

Based on the discussion above, it can be concluded that the Constitutional Court can cancel a law because it conflicts with the principles of law formation, as mandated by Law Number 12 of 2011 concerning the Formation of Legislative Regulations. Which is embodiment order constitution in Article 22A of the 1945 Constitution in particular regarding must include community participation. The principle of openness in the legislative process is not just to fulfill the requirements for the formation of statutory regulations. However, it is mandatory to fulfill the essence of the principle of openness, namely maximum and meaningful participation.

BIBLIOGRAPHY _

- Amsari, F. (2011). *Amendments to the 1945 Constitution Amendments to the Constitution of the Unitary State Republic Indonesia Through Decision Court Constitution* . Rajawali Press.
- Arief, A., & Ramadani, R. (2021). *Omnibus Law Create Work And*

- Implications for the Basic Concept of Limited Liability Companies. *Al-Adalah: Journal of Islamic Law and Politics* , 6 (2), 106 - 120.
<https://doi.org/10.35673/ajmpi.v6i2.1550>
- Asshiddiqie, J. (2006). *Regarding Laws in Indonesia* . Jakarta: Secretariat General Court Constitution Republic Indonesia.
- Asshiddiqie, J. (2009). *Introduction to Constitutional Law* . Jakarta: PT. Rajagrafindo Persada.
- Asshiddiqie, J. (2010). *Introduction to Science Constitutional Law* . Jakarta: Raja Grafindo Persada.
- Budiarjo, M. (2002). *Fundamentals of Political Science* . Jakarta: PT. Gramedia Library.
- Fudin, H. (2022). Actualization Checks And Balances Institution Country: Antara Assembly Deliberation People And Court Constitution. *Journal of Constitutions* , 19 (1), 202. <https://doi.org/10.31078/jk1919>
- Teak, R. (2012). Community Participation in the Process of Forming Responsive Laws. *Rechts Vinding Journal: Media National Legal Development* , 1 (3), 329.
<https://doi.org/10.33331/rechtsvinding.v1i3.88>
- Kurniawati, I., & Liany, L. (2019). Authority Court Constitution As Negative Legislator In Testing Law Against the 1945 Constitution. *ADIL: Law Journal* , 10 (1). <https://doi.org/10.33476/ajl.v10i1.1068>
- Rajab, A. (2017). The Important Role of the DPR RI Expertise Body in the Legal System for the Formation of Supporting Legislation (Important Roles of the Expertise of the Parliament of the Republic of Indonesia in the Legal Systems Formation of Regulations of the Invitations Q. *Journal Legislation Indonesia* , 14 , 233 - 244.
- Rishan, I. (2021). The Concept of Formal Review of Laws in the Constitutional Court. The Concept of Judicial Review of the Legislative Process in. *Journal Constitution* , 18 , 1 - 21. Retrieved from
<https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1811/pdf>
- Riskiyono, J. (2015). Community Participation in the Formation of Legislation For Realize Well-being. *Aspirations* , 6 (2), 159 - 176.
- Sarifuddin Sudding. (2014). *Legal and Political Infidelity in a Democratic State* . Yogyakarta: Rangkang Education.
- Solihah, R., & Witianti, S. (2016). Implementation of the Council's Legislative Functions People's Representatives After the 2014 Election: Problems and Efforts Get over it. *CosmoGov* , 2 (2), 291.
<https://doi.org/10.24198/cosmogov.v2i2.10010>
- Shahmardan. (2012). Community participation: a form of transparency in formation regulation legislation Which democratic.

- Legislation Indonesia* , 9 (1), 135 - 150. Retrieved from <http://e-jurnal.peraturan.go.id/index.php/jli/article/download/381/262>
- Triningsih, A. (2016). Legal Politics of Reviewing Legislative Regulations in State Administration Legal Policy of Judicial Review Administration. *Journal Constitution, Jakarta: Constitutional Court* , 13 (1), 125 - 144.
- Yani, A. (2018). Analysis of Structural Construction and Authority of the DPR in Function Legislation Based on Constitution Base 1945. *Constitutional Journal* , 15 (2), 348. <https://doi.org/10.31078/jk1526>

SEXUAL CRIMES AGAINST CHILDREN: BETWEEN CRIMINALITY AND THE NATION'S MORAL DEGRADATION IN THE ERA OF DIGITAL TRANSFORMATION

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Abstract

Lately, we often hear news about various kinds of criminal cases of sexual crimes, especially children who are the victims whose quantity is increasing. There are several categories of violence against children, including violence in the family, educational institutions and pornography as well as cybercrime. The perpetrators of the crime of sexual violence are unmitigated are the closest people to children such as parents, family, friends, and even teachers who incidentally are confidants of the child. child. The depraved attitude of the perpetrators is a threat to the state, especially in today's sophisticated era, especially in the all-digital era, the ease of internet access touched by perpetrators such as negative content makes the perpetrator violate the law and morals as a civilized human being so that he vents it in the form of violent crime. sexual intercourse with children. The purpose of this study is to find out how the development of sexual crimes against children in the current digital transformation era and how the correlation between law and morals in criminal cases in the digital transformation era. This study uses empirical normative legal research methods. By using a literature review or document study. The results of this study are that the crime rate of sexual crimes against children is at the highest peak based on data from the PPA Symphony (Online Information System for the Protection of Women and Children) with the age of the victims between 13-17 years. This high number is proof that the nation's morale is not doing well, especially in the era of digital transformation. Instilling ethical values in using digital (digital ethics) and inculcating divinity can step in handling sexual crimes against children.

Keywords: *Moral Degradation, Sexual Crime Against Children, Digital Transformation*

Abstrak

Berbagai macam kasus tindak pidana kejahatan seksual, khususnya anak-anak yang menjadi korban yang jumlahnya semakin meningkat. Ada beberapa kategori kekerasan terhadap anak, antara lain kekerasan dalam keluarga, institusi pendidikan dan pornografi serta cybercrime. Pelaku tindak pidana kekerasan seksual tidak tanggung-tanggung adalah orang-orang terdekat anak seperti orang tua, keluarga, teman, bahkan guru yang notabene adalah orang kepercayaan anak. anak. Sikap bejat para pelaku menjadi ancaman bagi negara, apalagi di era serba canggih saat ini, apalagi di era yang serba digital, kemudahan akses internet yang dijamah pelaku seperti konten-konten negatif membuat pelaku melanggar hukum dan moral sebagai seorang yang beradab. manusia sehingga ia melampiaskannya dalam bentuk kejahatan kekerasan. hubungan seksual dengan anak-anak. Tujuan dari penelitian ini adalah untuk mengetahui bagaimana perkembangan kejahatan seksual terhadap anak di era transformasi digital

saat ini dan bagaimana korelasi antara hukum dan moral dalam kasus pidana di era transformasi digital. Penelitian ini menggunakan metode penelitian hukum normatif empiris. Dengan menggunakan literature review atau studi dokumen. Hasil penelitian ini adalah tingkat kejahatan seksual terhadap anak berada pada puncak tertinggi berdasarkan data PPA Symphony (Sistem Informasi Online Perlindungan Perempuan dan Anak) dengan usia korban antara 13-17 tahun. . Angka yang tinggi ini menjadi bukti bahwa moral bangsa kurang baik, terutama di era transformasi digital. Penanaman nilai-nilai etika dalam penggunaan digital (etika digital) dan penanaman ketuhanan dapat menjadi langkah penanganan kejahatan seksual terhadap anak.

Kata Kunci: Degradasi Moral, Kejahatan Seksual Terhadap Anak, Transformasi Digital

INTRODUCTION

Sexual predators are now everywhere, they are present in familiar and unfamiliar faces, and the victims are children, both boys and girls. Children are weak and vulnerable creatures that need protection and care from the people around them. The future of the Indonesian nation lies on the shoulders of Indonesian children today, but there are still many children whose rights as children have not been fulfilled. Children's rights that have not been fulfilled include the basic rights of children. The basic rights in question are the right to obtain survival, the right to grow and develop optimally, as well as the right to receive protection. Children never ask to be born or when he is born then some of these children become lust for irresponsible persons. The number of victims is so fantastic with all the victims being children who are a vulnerable group. Sexual violence that afflicts Indonesian children does not only occur in areas prone to violence but also occurs in areas that should protect children such as the family environment, children's educational environment such as schools, and health environments such as patient examination rooms. Perpetrators of sexual violence against children are also not only perpetrated by other people who are not recognized, but also by people who are recognized, close, and trusted by the child, such as family, teachers, doctors, friends, and even by the government officials such as the police (Cahyo, 2017 in the journal Ma'rufah et al., 2020).

The development of technology in the digital era will also affect the increase in cases of crimes of sexual violence against children which have an impact on the moral decline of a country's nation or moral degradation. Some of the factors that influence moral degradation are the proliferation of porn sites that are easily accessible to all people, both adults, teenagers and children, in addition to social media that displays adult content or inappropriate photos, as well as factors of inappropriate promiscuity. direction obtained from television shows that are not educationally oriented, as well as a lack of understanding of religious values. In this section, the results of previous studies will be explained which can be used as a reference for this research topic. Previous research was selected according to the problems that exist in this study so it is

expected to be able to explain and provide references for researchers in completing this research. The following are some similar studies studied by researchers, namely:

First, research by I Putu Agus Setiawan and I Wayan Novy Purwanto from the Criminal Law Specialization Program, Faculty of Law, Udayana University with the title of the research Factors Causes and Efforts to Overcome Sexual Violence against Children in the Family (Incest) (Study at the Bali Police). The purpose of this study is to understand the factors that cause sexual violence against children in the family scope and to understand the efforts to overcome the crime of sexual violence against children in the family scope. The method used is empirical law. The results showed that to understand the factors causing sexual violence against children within the family scope (incest), two factors were motivated, namely internal factors and external factors. Internal factors include psychological factors, biological factors, and moral factors of the perpetrator. While external factors include economic factors, social media factors, and environmental factors. Then efforts to overcome the crime of sexual violence against children within the family (incest) are carried out through preventive efforts, repressive efforts, and the last resort penal efforts (I. P. A. Setiawan & Purwanto, 2019)

Second, research by Irvan Rizqian from the National Police (Polres Bandung-Soreang) with the title of the research, namely Efforts to Protect Children as Victims of Sexual Violence Under Indonesian Criminal Law. The purpose of this study is to find out what are the legal protection efforts for children as victims of criminal acts of sexual violence that are studied according to Indonesian criminal law. The approach taken in this study is a juridical approach, which is an approach that uses the rules and legislation relating to the problem under study, using primary data with secondary data support. The results of this study are as follows: efforts to tackle criminal acts of sexual violence against children are studied according to Indonesian criminal law: the role of parents, playing an important role in protecting children from the threat of sexual violence, parental involvement in the process of handling sexual violence experienced by their children. both legal treatment and psychological recovery handling psychological services for children and parents. The role of the community, in handling sexual violence against children is necessary to have the participation of the community, by paying attention to the prevention aspect that involves citizens and also involves children, which aims to protect children at the grassroots level. Role of the state, medical rehabilitation is a process of integrated treatment activities by restoring the physical condition of the child, child victim and or child witness. Social rehabilitation is a process of integrated recovery activities, both physical, mental and social, so that child victims and/or child witnesses can return to carrying out social functions in life in society (Rizqian, 2021).

Third, Ida Bagus Subrahmaniam Saitya from IHDN Denpasar with the research title Factors Causing Sexual Violence Against Children. The purpose of this study is to find out what factors are the causes of criminal acts of sexual violence against children.

The results of this study are that the crime of sexual violence against children is a crime that uses violence or threats of violence against children so that the child can be controlled to have sexual relations. In general, 2 factors cause sexual violence crimes, namely internal factors and external factors. Internal factors such as the proximity of the perpetrator to the victim, the role of the perpetrator, and the position of the victim. External factors, namely environmental influences, such as being away from crowds, and quiet, or closed places allow perpetrators to commit sexual violence (Subrahmaniam Saitya, 2019).

Fourth, research from Dody Suryandi, Nike Hutabarat and Hartono Pamungkas from Darma Agung University Medan with the title of the research, namely Application of Criminal Sanctions Against Perpetrators of Sexual Violence Against Children. The purpose of this study is to find out how the legal arrangements for criminal acts of sexual violence against children in Indonesia are reviewed from Law No. 35 of 2014 concerning Child Protection, then to find out how to apply criminal sanctions against criminal acts of sexual violence against children according to the Act. Law No. 35 of 2014 concerning Child Protection, as well as how the judge's legal considerations regarding the decision of 3551/Pid.Sus/2018/PN.Mdn. The approach method used in this research is the normative juridical method. The results of this study are 1). Regulations regarding sexual intercourse with children are regulated in the Child Protection Law Number 35 of 2014 Articles 81 and 82 paragraphs (1), (2), and (3) of the Child Protection Law Number 35 of 2014. Regarding the crime of sexual violence against children in Articles 76D, 76E and the KHUP several articles protect children against sexual violence, protection of children is indicated by the provision of criminal penalties, for perpetrators, namely: Articles 287, 288, 291 which regulate sexual intercourse. While obscene acts/sexual violence against children are regulated in articles 289, 292, 293, 294, 295, and 298. 2).

The application of material criminal law sanctions against perpetrators of criminal acts of sexual violence against children Number.3551/Pid.Sus/2018/PN.MDN is based on legal facts through witness statements, defendants' statements, and evidence. In addition, it is also based on juridical considerations, namely the indictment and demands of the prosecutor. In this case, the prosecutor used the third indictment, namely the public prosecutor charged with violating Article 82 paragraph (1) in conjunction with Article 76E of Law No. 35 of 2014 concerning child protection. Sentencing the defendant in prison for 10 years and a fine of Rp. 600,000,000,- (Six Hundred Thousand Rupiah) provided that if the fine is not paid, it must be replaced with imprisonment for 3 months. 3).

The judge's consideration in the decision is accompanied by considerations, both considerations that burden the defendant and considerations that relieve the defendant. This is regulated in article 197 paragraph (1) letter F of the Criminal Procedure Code. The judge's basic considerations in imposing a crime against

perpetrators of sexual violence against children in Decision Number 3551/Pid.Sus/2018/PN.MDN has paid attention to the basis for judging, the basis for deciding, and the values that live in society, then have taken into account juridical considerations. Juridically based on the indictment of the public prosecutor, witness statements, letters and statements of the defendant and non-juridical based on aggravating and mitigating matters, have taken into account the elements in article 82 paragraph (1) in conjunction with article 76E of Law no. 35 of 2014 concerning child protection. Sentencing the defendant in prison for 10 years and a fine of Rp. 600,000,000,- (Six Hundred Thousand Rupiah) provided that if the fine is not paid, it must be replaced with imprisonment for 3 months. A judge in making a decision must consider the existing law in the community by following the law of judicial power (Suryandi et al., 2020).

Fifth, research from Dedy Setiawan with the research title namely Crimes Related to Sexual Violence Against Children in the Perspective of Protection of Children Under the Age of 5 years. The purpose of this research is to find out and analyze the legal protection of children as victims of sexual violence and to find out and analyze the policy formulation of criminal acts against the perpetrators who have been able to protect the developmental interests of children (victims). The theory used in this research is the theory of legal protection. The research method in this study uses a normative juridical research type. And the result of this research is that the concept of legal protection for child victims of sexual crimes according to positive law must be based on Pancasila. Therefore, the protection of the law and its enforcement will give birth to the recognition and protection of human rights in their form as individual beings and social beings, in a unitary state that upholds the spirit of kinship to achieve community welfare, especially law enforcement against child victims of criminal acts of sexual violence. -the principle of protection of children in formal law. Children get preventive protection from the state and society, but the principles of child protection have not been implemented properly, in fact, there are still many children who are not protected from various forms of violence and exploitation and are still living neglected and do not get the opportunity to get a proper education, let alone adequate. The obstacles in the implementation of Law No. 35 of 2014 are positive laws in Indonesia that have tried to include various rules to protect the interests of children either based on vulnerability or maintenance of fundamental rights to protect children, various international conventions and rules have been adopted, but their implementation has not been maximized (D. Setiawan, 2021).

The similarities of this study with some of the previous studies that the researchers mentioned above are both research cases of sexual crimes experienced by children which are currently increasing and rampant, sexual violence is carried out by the closest people experienced by good children who are carried out by their families, parents, friends, teachers and even government officials. While the difference between

this study with several previous studies is that this research focuses more on knowing how the development of criminal sexual crimes against children in the current digital transformation era and how the correlation between law and morals in criminal cases in the digital transformation era. This study uses empirical normative legal research methods, with the legal material used being library research and juxtaposed with collections, various legal events or actual news cases regarding crimes of sexual violence against children that occur in Indonesia today. The theory used is the theory of law as social morals from the character Emile Durkheim.

To make it easier to understand between this study and several previous studies, the researchers made the table as follows:

Table 1
Mapping of Previous Research Results

No	Name, research title, year	Research methods	Research Theory of	Research Results
1	I Putu Agus Setiawan and I Wayan Novy Purwanto, Factors Causes and Efforts to Overcome Sexual Violence against Children in the Family (Incest) (Study at the Bali Police), 2019	Empires	Concept of overcoming sexual violence	The factors that cause sexual violence against children within the family (incest) are motivated by two factors, namely internal factors and external factors.
2	Irvan Rizqian, Legal Protection Efforts Against Children as Victims of Sexual Violence Under Review under Indonesian Criminal Law, 2021	Juridical	Legal protection concept	Efforts to tackle the crime of sexual violence against children studied according to Indonesian criminal law are the role of parents, the role of society, and the role of the state
3	Ida Bagus Subrahmaniam Saitya, Factors Causing Sexual Violence Against Children, 2019	Qualitative Description	The concept of the cause of violence	The crime of sexual violence against children is a crime that uses violence or threats of

				violence against children so that the child can be controlled to have sexual relations. In general, 2 factors cause the occurrence of criminal acts of sexual violence, namely internal factors and external factors
4	Dody Suryandi, Nike Hutabarat and Hartono Pamungkas, Application of Criminal Sanctions Against Perpetrators of Sexual Violence Against Children, 2020	Normative juridical	The concept of applying legal sanctions	Regulations regarding sexual intercourse with children are regulated in Child Protection Law No. 35 of 2014. Regarding the crime of sexual violence against children in articles 76D, 76E and in the KHUP
5	Dedy Setiawan, Crimes related to sexual violence against children in the perspective of protecting children under the age of 5 years, 2021	Normative juridical	Legal protection theory	Legal protection for child victims of sexual crimes according to positive law must be based on Pancasila

RESEARCH METHODS

The research used in this study is using empirical normative legal research methods which are a combination of normative legal approaches and the addition of empirical elements. Normative legal research can also be called doctrinal legal research

or library research or document study because this research is carried out or aimed at written regulations or other legal materials. Soerjono Soekanto in his discussion of normative legal research is from the nature and scope of the legal discipline, where discipline is defined as a teaching system about reality, which usually includes analytical discipline and prescriptive discipline (Soerjono Soekanto in the journal Mukhti Fajar & Achmad, 2015). Empirical normative research method regarding the implementation of normative law as it acts in every particular legal event that occurs in society. By using an approach, namely a live case study approach, which is an approach to a legal event whose process is still ongoing or has not ended (Dr Munir Fuady, SH, MH, 2018). The legal material used in this research is a collection of various legal events or actual news cases regarding crimes of sexual violence against children that are currently occurring in Indonesia.

RESULTS AND DISCUSSION

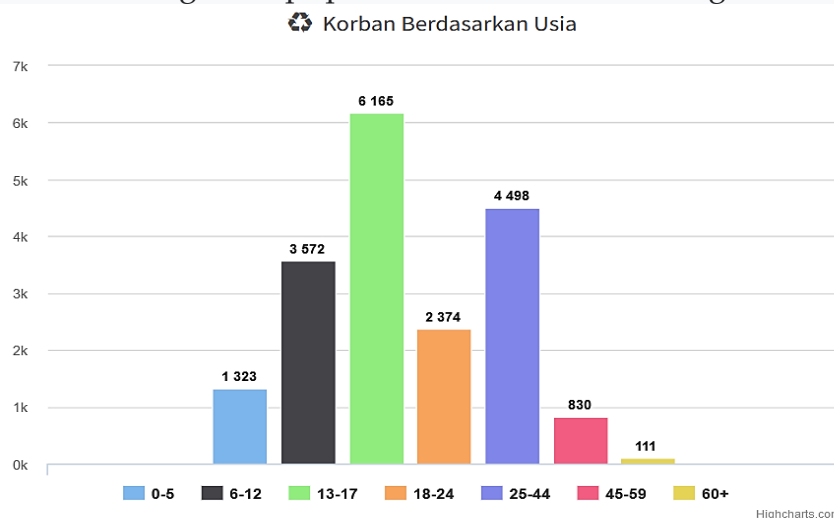
The Development of Sexual Crimes Against Children in the Era of Digital Transformation

We have known for a long time that cases of sexual crimes against children are difficult to stop, the phenomenon of sexual violence crimes is an iceberg, recently more cases of sexual crimes against children have been heard, and researchers believe that only a small part of the cases that are blown up by the media are still many cases that occur outside the media coverage. The international legal framework that protects children is the United Nations Convention on the Rights of the Child (CRC). The elimination of violence against children is mentioned in several targets of the 2030 sustainable development agenda, including "end abuse, exploitation, human trafficking and all forms of violence against and torture of children".

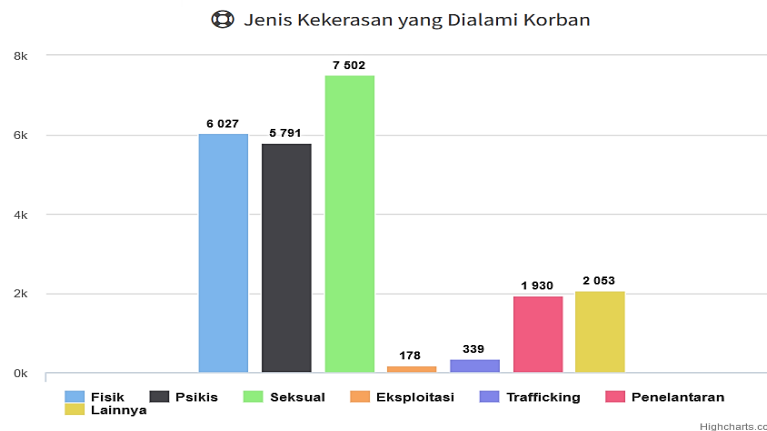
In Indonesia, there are several national legal frameworks for protecting children from violence, including Law Number 35 of 2014 which is a change from Law Number 23 of 2002 concerning Child Protection, there is also Law Number 23 of 2004 concerning the elimination of Domestic Violence. Ladder. Various efforts have been made by the government and the community to reduce the incidence of violence against children (utomo et al., 2021). There are 15 forms of sexual crime in Indonesia, namely: Rape, Sexual intimidation including threats or attempted rape, Sexual harassment, Sexual exploitation, Trafficking of women for sexual purposes, Forced prostitution, Sexual slavery, Forced marriage, Forced pregnancy, Forced abortion, Forced contraception and sterilization, Sexual torture, Inhuman and sexual punishment, Traditional sexual practices that harm or discriminate against women, and Sexual control, including through discriminatory rules based on morality and religion.

Article 1 of the Child Protection Law reads "Violence is any act against a child that results in physical, psychological, sexual misery or suffering, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty". Then in the Act on the Crime of Sexual Violence Number 12 of 2022 Article 4 paragraph 1 reads: Criminal acts of sexual violence consist of: non-physical sexual harassment; Physical sexual harassment; forced contraception; forced sterilization; forced marriage; sexual abuse; sexual exploitation; sexual slavery; and electronic based sexual violence. While the crime of sexual violence against children is contained in the TPKS Law Number 12 of 2022 Article 4 paragraph 2, namely sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children, pornography involving children or pornography that explicitly contains violence. and sexual exploitation".

Sexual violence against children gets the attention of many people because sexual violence against children is the highest level of violence compared to physical and psychological violence. This is reinforced by data from the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia which states that sexual violence against children is the highest level of violence compared to physical and psychological violence. Violence against children in Indonesia as of June 1 2022, has occurred in 6,165 cases, with an age range of 13-17 years with cases of sexual violence taking the top spot. Can be seen in the image below :



Data source: PPA SYMPHONY 2022



Data source: PPA SYMPHONY 2022

Indonesia is highlighted as a country that has very weak protection for children. Sexual violence against children does not see the victim as a boy or a girl. Girls and boys who are victims of sexual violence experience a number of the same problems, including prolonged physical and psychological trauma, loss of enthusiasm for life, hatred of the opposite sex and a desire for revenge. Sexual crimes against children are growing in recent times along with the digital transformation. This event does not only occur but also in cyberspace. Sexual crimes in cyberspace are because children use the internet more to access the digital world. Nowadays both children, teenagers and adults are forced by circumstances to be able to understand and use digital technology. The interesting features and content available on social media practically make children feel at home to linger in the digital world. However, this condition is vulnerable to being exploited by a handful of irresponsible people, the digital world becomes the entrance for perpetrators of sexual crimes.

Forms Of Sexual Crime Online

1. Grooming Online

Online grooming for sexual purposes is a process of establishing or building a relationship with a child through the use of the internet or other digital technologies to facilitate online or offline sexual contact with the child. The act of grooming is not limited to the act of physical meetings but also applies to actions that are carried out online. For example sending praise messages such as "You look so beautiful", giving gifts, inviting sexual connotations, pressuring to threatening. Anyone in this case can be a groomer. It doesn't matter how old it is or what gender it is. Even a groomer can emerge from within the family itself. The types of relationships built can vary. Can be a lover, mentor, or that the child idolizes.

2. Sexting

Sexting is a sex conversation via a messaging app. The exchange of messages carried out also varied, ranging from exchanging messages referring to the satisfaction of sexual desires to sending naked or almost naked photos. At first, the child may think, his photos or videos will only be consumed by the partner or recipient. However, keep in mind that the recipient will experience emotional conditions because there is always the possibility that nude photos that are sent will be distributed without consent.

3. Broadcast Live on the Internet

Live broadcasting of sexual violence against children is the coercion of a child to another person who is far away. Oftentimes, the people watching from afar are the ones who have requested and/or ordered violence against the child, which dictates how it happens. If you experience this, immediately report it through the chat application. If there are a lot of the same complaints, usually the social media site will immediately deactivate the account. This digital sexual violence has been regulated in the ITE Law. In addition to legal sanctions, there are social sanctions, namely getting malicious comments from the perpetrators. However, this sexual violence has an impact on the mental health condition of the victim. Among them can increase depression, trauma, packaging disorders, personality disorders and so on (<https://www.Industry.Co.Id/Read/89142/Ketahuilah-Ada-6-Pelecehan-Seksual-Di-Ruang-Digital-Dan-Cara-Mencegahnya>, n.d.)

Law and Morality in the Age of Digital Transformation

The relationship between law and morals, K. Bertens argues: Just as there is a close relationship between morals and religion, so there is also a relationship between morality and law. The law requires morals, in the Roman empire there was a saying *Quid leges sine moribus?* "What is the meaning of the law, if it is not accompanied by morality? Law does not mean it is not imbued with morality. Without morality, the law will be empty. The quality of the law is largely determined by its moral quality. Therefore the law must always be measured by morals (Bertens, 2011).

Society in the current era of digital transformation has experienced social changes, caused by various things, including the movement of people from villages to cities, increasingly diverse employment opportunities, and the development of science and technology that is increasingly rapid. Most of today's society has become individualistic so the cultural roots that were once respected and upheld have faded, eventually bringing an influence on behaviour. In addition, community settlements have changed, from living next door to living in multi-storey houses and so on. Such changes in society affect the level of legal awareness of the community. For this reason, a broad insight

is needed from the legal apparatus and stakeholders to understand the legal values that live in a society so that practising law can achieve its goals (Subiharta, 2015).

Degradation can be interpreted as a decrease in degree, rank, and position. Degradation can also be interpreted as a change that leads to damage on earth. According to Daryanto (in Maisari, 2013 in the journal (Ma'rufah et al., 2020), degradation is a decrease in quality or a decline in position. Meanwhile, degradation is intended as a decrease in quality or moral destruction. According to Widjaja (in Jahroh & Nana, 2016 in the journal (Ma'rufah et al., 2020)) states that morals are good and bad teachings about actions and behaviour (morals). According to Muthohar (in the journal Ma'rufah, Rahmat and Widana, 2020), there is a threat of moral degradation to the millennial generation in the digital era, which is strongly supported by various factors, namely: With the spread of materialistic views without spirituality, the measure of success is more measured on material success and ignores morality. The concept of decency morality becomes loose because it is influenced by western culture as a result of the ease of finding information through ICT. Global culture offers pseudo-enjoyment through the 3Fs, namely food, fashion, and fun. The level of competition is getting higher because of the opening of local barriers and most of them are online. Society is more individualistic and less concerned with the environment so moral control, especially in the millennial generation, is low. Families are less able to provide direction, because each parent already has their own busy life, even from a broken home. Most schools do not fully control student behaviour due to limited time, resources, and financial resources, or do not emphasize the importance of morality. There are some cases of sexual violence against children that occurred in Indonesia :

1. 80-year-old grandfather abuses 2 neighbours' children.

An 80-year-old grandfather with the initials UB in Empat Lawang Regency, South Sumatra, was arrested by the police after harassing 2 children who were his neighbour's children. At that time, the two victims with the initials IA and DR were playing with the perpetrator's grandson, "he said, Sunday. UB then called the two victims in. At home, the unsuspecting DR approached. That's when the grandfather molested the victim until the incident was told by DR to his parents (<https://News.Okezone.Com/Read/2022/09/18/610/2670037/Bejat-Kakek-80-Tahun-Lecehkan-2-Bocah-Anak-Tetangga>, 21046)

2. Student from Yogyakarta City Fucked His Young Cousin

Students from Mergangsan, Yogyakarta City. This young man had the heart to have sex with his cousin, TN (17), a resident of Caturharjo, Sleman

Regency. Not just once, even twice in two different hotels. suspect AA took the TN victim for a walk, but while on the road, suspect AA immediately took the TN victim to a hotel in the Kraton area, Yogyakarta. After arriving there, the suspect AA immediately ordered the TN victim to enter the hotel room, then the suspect pushed the TN victim into the bathroom and had intercourse with the TN victim in the bathroom. Then the second incident occurred on Friday around June 2021. At that time the suspect AA and the victim TN met in Malioboro. Furthermore, suspect AA took the victim of TN for a walk, but suspect AA did not say where he was going. Then Suspect AA again took the TN victim to the same hotel as the first incident. Arriving there, the suspect AA immediately took the TN victim to his room. Furthermore, Suspect AA pulled victim TN into the bathroom. The suspect again had intercourse with the victim of TN in the bathroom (<https://News.Okezone.Com/Read/2022/09/15/510/2667996/Bejat-Mahasiswa-Asal-Kota-Yogyakarta-Setubuhi-Sepupunya-Sendiri-Yang-Masih-Belia>, 2022)

3. Father Abuses Stepdaughter, Wife Police Husband

The revelation of DS's lecherous behaviour began with the victim's confession when urged by N (the biological mother), who had long been suspicious, because it was not the first time that the mother found the perpetrator touching sensitive parts of the victim's body, such as the chest. After receiving a confession from the victim, N immediately asked her husband the same thing, and DS finally confessed, that he had repeatedly raped his stepdaughter, apologized, and promised not to repeat his depraved act. Not accepting the despicable behaviour of the person who should be a role model for his family, regardless of the apology, finally accompanied by the victim's uncle N immediately reported DS to the police (<https://News.Okezone.Com/Read/2022/09/12/525/2665470/Ayah-Lecehkan-Anak-Tiri-Sang-Istri-Polisikan-Suami>, 2022)

4. Elementary school students in Medan were raped in turns, one of which was by the Principal, Administration Leader and Sweeper

The rape of a 10-year-old elementary school student was in the spotlight, starting with limited face-to-face learning in early September 2022, when her child was given white powder suspected of being an anaesthetic by a janitor, then the victim was taken to the warehouse with her mouth taped and her feet tied when she arrived at the warehouse. warehouse, the victim was placed on a table, and then raped in turns. (accessed on September 19, 2022, via social media Instagram)

5. Sexual Violence of Candidates for Pastors in Alor

A prospective pastor in Alor was named a suspect in a sexual violence case, this was revealed after the victim reported it to the police on

September 1, 2022. From the previous six victims, this increased to 12 people. As of September 10, the victims consisted of 10 children aged 13-16 years, and two others aged 19. The suspect used the modus operandi by threatening the victims to comply with their depravity from May 2021 to March 2022. There is an allegation that the suspect recorded videos and took nude photos of the victims. This was used by the suspect to threaten the victims if they refused to have sex. (accessed on September 19, 2022, via social media Instagram).

6. Confessing Loneliness, The Reason HS Abused His Biological Child in Balikpapan: This Month Twice

Balikpapan Police arrested HS (38) who sexually abused his biological child. HS was arrested on Wednesday (19/1/2021) night. The Head of The Criminal Investigation Unit of the Balikpapan Police said that the perpetrator intended to escape from Balikpapan after learning that the victim's mother, RA, had reported the sexual abuse case. After we conducted an investigation, we also counselling the victim as well, we from the investigators determined the suspect, and the post-mortem results also have a tear in the genitals. From the results of the investigation including the confessions of the victim and the suspect, it is known that the obscenity case was carried out twice, namely in December 2021 and January 2022. The victim was threatened by his biological father and could not report it to anyone. It happened from December to January, so it's about once a month twice (<https://Kaltim.Suara.Com/Read/2022/01/20/201109/Mengaku-Kesepian-Alasan-Hs-Cabuli-Anak-Kandungnya-Di-Balikpapan-Satu-Bulanan-Ini-Sebanyak-Dua-Kali>, 2022)

7. Disabled girl in South Kalimantan raped until pregnant, Perpetrator Czech victim with Porn Video

A middle-aged man in South Kalimantan, Tabalong Regency was arrested for molesting a disabled girl until she became pregnant, the 12-year-old victim was always forced by the perpetrators to watch pornographic videos before asking for sex. The perpetrator molested the victim five times until she became pregnant. The perpetrator studied the situation of the victim's house, when he saw the victim's parents go to the garden, the perpetrator entered from the back door of the victim's house. The case was finally revealed after the victim's parents found out that the victim was five months pregnant (accessed on September 21, 2022, at 09.52 through social media Instagram)

8. 15-year-old girl fucked by 3 men, her friends even laughed

A 15-year-old girl was subjected to sexual harassment by three youths in Tanah Laut District, South Kalimantan. Where the victim was taken for a

walk by a friend before being raped by three men in Muara Asam-Asam Village. Ironically, other friends who knew the depraved act laughed. The case was disclosed by Muhammad Zaki as a representative of the victim's family, Friday (12/8/2022). According to M Zaki, the incident that will remain in US memory (15 years) took place on Saturday, July 23, 2022, at around 15.00 WITA in a house in Jalan Ujung Gosong, Muara Asam-Asam Village, Jorong District. The US victim accepted NL's because the distance between Muara Kintap and Muara Asam-Asam Villages was quite far about 35 kilometres, NL then asked SY to pick up the US according to the location provided by the US via WhatsApp message. After being picked up by motorbike, the victim was taken to Asmara Beach, which is in Muara Asam-Asam Village. At the tourist attraction, NL, AS and IQ are waiting. They also chatted together until finally, NL invited the US to US's house to continue chatting. Unsuspectingly US followed NL's invitation. After a while at AS's house, SY suddenly dragged the US into the room, the young woman could not rebel when she was dragged. Meanwhile, NL, AS and IQ kept talking regardless of US shouting

9. Obscene Elementary School Student, Grandfather in West Aceh Threatened with 90 Times Whips

The police arrested a grandfather with the initials RCA (70), an alleged perpetrator of molestation against an elementary school student (SD) in West Aceh. The suspect is strongly suspected of being the perpetrator, and the determination of the suspect's status has fulfilled the criminal element of sexually abusing minors. Riski explained that the alleged perpetrators of RCA were charged with Article 47 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law with a threat of 90 lashes or a fine of 900 grams of gold or 90 months imprisonment.

10. Unscrupulous Police Engage His 16-Year-Old Nephew

A police officer in Kotamobagu, North Sulawesi, with the initials AR with the rank of Aida is in danger of being fired for allegedly having sex with his 16-year-old nephew. The allegation of sexual intercourse was revealed after the victim refused to participate in the 2020 policewoman selection because she was no longer a virgin. However, the victim's mother was only reported on September 6, 2022. Based on the information we received, the victim was the nephew of the perpetrator. We have arrested the perpetrator and are currently processing the case reported by the victim's parents and will undergo a code of ethics trial with the threat of dismissal. In addition to examining the reporting witnesses, the police also continue to examine the police officers who are in danger of being fired as members of the Indonesian National Police and charged with

Article 81 Paragraphs 1, 2 and 3, Law Number 17 of 2016 concerning protection with a threat of 15 years in prison. However, if the perpetrator still has a family relationship with the victim, the sentence is added to a third of the sentence

From some of the cases of sexual crimes above in this modern era, the more sophisticated technology is, the more people lack ethics or morals, so it can be said that as this era goes on, more and more morals of the nation's next generation are starting to fade among the people now that the development of morals, ethics and morals be eroded due to the influence of developments and technological advances that are not used properly. The crisis of public mentality at this time is part of a multidimensional crisis, namely a problem experienced by the country where there are many problems in various aspects of life, which are faced especially among the community. The cultivation of moral values in society has so that to have good and right morals, it is not enough for a person to just take actions that he thinks are good, but every action taken is accompanied by belief and understanding of the goodness embedded in these actions. The development of morality itself is characterized by a person's ability to understand the rules, norms and ethics that apply in society. Moral development can be seen from his moral behaviour in society which shows conformity with the values and norms of society. (Kanesa & Eko Maryana, 2022).

One of the theories popularized by Emile Durkheim states that law is a social moral, in Durkheim's concept, the law as a social moral is essentially an expression of social solidarity that develops in society, law is a reflection of solidarity. As the main pillar of integration, social solidarity moves and changes in tune with social developments in society. As a society bound by the same social awareness and the same emotional bonds (mechanical solidarity), in addition to prioritizing collective morals as the main value, they are also united in the same goal of maintaining social cohesion. Each violation is met with an attack on the community as a unit. Violations are understood as blasphemy against collective conscience, to react to actions that threaten it, action is needed. Because only with such a spontaneous retaliation reaction will social integration be protected and preserved (Dr. Bernard L. Tanya, Sh, MH, Dr. Yoan N Simanjuntak, SH, MH, Dr. Markus Y Hage, Sh, 2019).

The law, besides containing strict regulations, is also a moral determinant of a nation. Although many regulations regulate sexual crimes against children, if it is not accompanied by moral changes, the regulations made are only limited to bringing the perpetrators to accept suffering or the sanctions imposed. Law and Morals are adjectives but when faced with society

they will change their form into a verb, a verb that can affect the order of people's lives in an increasingly sophisticated era.

CONCLUSION

After a deeper study of crime, there is a correlation between the law and the low morale of a nation, especially the crimes committed are sexual crimes against children, the weak are easy targets for paedophiles, both in the real world and in cyberspace, especially in the increasingly diverse digital era. the type of crime and the higher rate of sexual crimes against children in 2022, this is no longer a trivial matter if it is seen more seriously to discuss it more deeply. It's inevitable, after knowing the impact of changing times on people's morals, it is very complex, meaning that it can affect all aspects of people's lives. Little by little the morals of the next generation of the nation are starting to fade among the people, now moral, ethical and moral developments are being eroded due to the influence of technological developments and advances that are not used properly. The regulations made are only limited to providing punishment for the perpetrators but cannot accommodate the morals of a nation.

BIBLIOGRAPHY

- Bertens, K. (2011). *Etika* (cetakan ke). PT Gramedia Pustaka Utama.
- Dr. Bernard L. Tanya, Sh, MH, Dr. Yoan N Simanjuntak, SH, MH, Dr. Markus Y Hage, Sh, M. (2019). *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*. Genta Publishing.
- Dr. Munir Fuady, SH, MH, L. (2018). *Metode Riset Hukum Pendekatan Teori dan Konsep*. PT. Raja Grafindo Persada.
- <https://kaltim.suara.com/read/2022/01/20/201109/mengaku-kesepian-alasan-hs-cabuli-anak-kandungnya-di-balikpapan-satu-bulanan-ini-sebanyak-dua-kali>. (2022).
- <https://news.okezone.com/read/2022/08/12/340/2646432/gadis-15-tahun-disetubuhi-3-lelaki-teman-temannya-malah-tertawa?page=1>. (2022).
- <https://news.okezone.com/read/2022/09/12/340/2665661/bejat-oknum-polisi-stubuhi-ponakannya-yang-masih-16-tahun>. (2022).
- <https://news.okezone.com/read/2022/09/12/525/2665470/ayah-lecehkan-anak-tiri-sang-istri-polisikan-suami>. (2022).
- <https://news.okezone.com/read/2022/09/15/50/2667996/bejat-mahasiswa-asal-kota-yogyakarta-setubuhi-sepupunya-sendiri-yang-masih-belia>. (2022).
- <https://news.okezone.com/read/2022/09/18/610/2670037/bejat-kakek-80-tahun-lecehkan-2-bocah-anak-tetangga>. (21046).

- <https://news.okezone.com/read/2022/09/21/340/2671676/cabuli-siswi-sd-kakek-di-aceh-barat-terancam-hukuman-cambuk-90-kali?page=1>. (2022).
- <https://kekerasan.kemenpppa.go.id/ringkasan> (diakses pada 01 Oktober 2022)
- Ma'rufah, N., Rahmat, H. K., & Widana, I. D. K. K. (2020). Degradasi Moral Sebagai Dampak Kejahatan Siber Pada Generasi Millennial di Indonesia. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 7(1), 191-201.
- Mukhti Fajar, & Achmad, Y. (2015). *Dualisme Penelitian Hukum Normatif dan Empiris*. 8(1), 15-35.
- Rizqian, I. (2021). Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Dikaji Menurut Hukum Pidana Indonesia. *Journal Justiciabelen (Jj)*, 1(1), 51. <https://doi.org/10.35194/jj.v1i1.1115>
- Setiawan, D. (2021). *Tindak Pidana Terkait Kekerasan Seksual Terhadap Anak Dalam Perspektif Perlindungan Anak Di Bawah Umur 5 tahun*.
- Setiawan, I. P. A., & Purwanto, I. W. N. (2019). Kekerasan seksual terhadap anak dalam lingkup keluarga (incest) (Studi di Polda Bali). *Kertha Wicara : Journal Ilmu Hukum*, 8(4), 1-16. <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/51009/>
- Subiharta, S. (2015). Moralitas Hukum Dalam Hukum Praksis Sebagai Suatu Keutamaan. *Jurnal Hukum Dan Peradilan*, 4(3), 385. <https://doi.org/10.25216/jhp.4.3.2015.385-398>
- Subrahmaniam Saitya, I. B. (2019). Faktor-Faktor Penyebab Tindak Pidana Kekerasan Seksual Terhadap Anak. *Vyavahara Duta*, 14(1), 1. <https://doi.org/10.25078/vd.v14i1.1097>
- Suryandi, D., Hutabarat, N., & Pamungkas, H. (2020). Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan Seksual Terhadap Anak. *Jurnal Darma Agung*, 28(1), 84. <https://doi.org/10.46930/ojsuda.v28i1.464>
- utomo, hadi, tanzihah, ikeu, jamilah, arifin, & noegroho, syafina. (2021). a5a0E-Profil-Anak-Indonesia-2021_Revisi11042022. *Profil Anak Indonesia*. <https://www.kemenpppa.go.id>
- Wijaya, Andika, W. P. A. (2016). *Darurat Kejahatan Seksual*. Sinar Grafika.