

[Home](#) / [Archives](#) / Vol 4 (2024): The 7th International Conference on Law, Technology, Spirituality and Society (ICOLESS)

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ISSN (Online) : [2828-111X](#)

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Published: 2024-09-08

Articles

Ensuring the Safeguarding of Individuals Affected by Unauthorized Use of Personal Information: A Comparative Analysis of General Criminal Law and Islamic Legal Frameworks

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Abstract:

The rapid advancement of technology has led to the massive collection and storage of personal data. This data can be misused for various purposes, causing significant harm to individuals. Therefore, protecting personal data is crucial. This study aims to examine the protection of victims of personal data misuse from the perspectives of Indonesian Criminal Law and Islam. The study begins by exploring the significance of personal data protection. Personal data is essential for individuals' identity, privacy, and financial security. Its misuse can lead to identity theft, financial fraud, and reputational damage. Next, the study delves into the formulation of personal data protection under Indonesian Criminal Law. The Indonesian Criminal Code does not explicitly address personal data protection. However, several provisions can be interpreted to protect personal data, such as the prohibition against unauthorized data collection and dissemination. The study further examines personal data protection in Islam. Islamic law emphasizes the protection of individuals' rights and privacy. Several Islamic principles, such as the right to privacy (haqq al-khususiyah) and the prohibition against harming others (la tadharrur), support the protection of personal data. The study concludes by highlighting the importance of a comprehensive legal framework for personal data protection in Indonesia. This framework should encompass both civil and criminal law provisions, drawing upon both Indonesian Criminal Law and Islamic principles. By strengthening legal protections, individuals can be better safeguarded from the misuse of their personal data.

Keywords: personal data protection; criminal law; victims' rights

Introduction

The rapid and substantial evolution of information technology has profoundly altered global behaviour and lifestyles. In a borderless world, societies are deeply influenced by social, cultural, economic, and legal ramifications stemming from

technological innovations. Throughout history, each successive wave of technological advancement has necessitated the establishment of a suitable legal framework. Yet, it must be acknowledged that while information technology serves as the foundation for human advancement and prosperity, it also harbours the potential to be exploited for illicit purposes. In the realm of safeguarding personal data, there exists a range of pertinent human rights, among which is the right to privacy, enabling individuals to uphold confidentiality and exercise control over the utilization of their personal information. It is within every person's entitlement to dictate the circumstances, manner, and recipients of the disclosure of their data. The primary objective of personal data protection lies in thwarting unauthorized or unwarranted access, utilization, and dissemination of individual personal information.¹

The notion of privacy is notably intricate, initially articulated as the "Right to Privacy" by Samuel Warren and Louis Brandeis, delineating it as a fundamental entitlement encompassing the ability to relish life and dwell in tranquility. Its legal progression is inexorable, underscored by the imperative for acknowledgment and safeguarding. The imperative for legislative frameworks safeguarding privacy is imperative, with legal safeguards constituting the underlying equilibrium. The interconnectedness of the right to privacy and the safeguarding of personal data underscores the imperative of shielding personal data as an integral component of universally recognized human rights, as enshrined in international and regional legal frameworks such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Law Commission Convention.²

In the contemporary digital landscape, the advancement of information and communication technology has ushered in profound changes in human existence. Consequently, the significance and sensitivity surrounding personal data have escalated, given the proliferation of online activities. Personal data encompasses particulars such as one's name, address, identification numbers, financial records, medical histories, and other intimate information pertaining to an individual. Amidst the rapid march of technological progress, the threat of personal data misuse and privacy breaches looms large. Thus, safeguarding personal data emerges as an imperative human right that warrants preservation and enforcement. Indonesia, as a developing nation embracing technological innovation at pace, bears a duty to safeguard personal data as an integral facet of the right to privacy. Within this framework, the preservation of privacy rights assumes paramount importance and demands urgent attention. The right to privacy epitomizes the entitlement of every individual to uphold the confidentiality and security of their personal data. Given the escalating occurrences of privacy infringements and misuse of personal data, it becomes imperative for each nation to institute robust laws and regulations to shield the privacy rights of its populace.

In recent years, Indonesia has witnessed a succession of data security breach

¹ Andy Usmina Wijaya Sekaring Ayumeida Kusnadi, 'Perlindungan Hukum Data Pribadi Sebagai Hak Privasi', *JA: Jurnal Al-Wasath* 2 (2021): 19–32.

² R. Haganta, 'Legal Protection of Personal Data as Privacy Rights of E-Commerce Consumers Amid the Covid-19 Pandemic', *Lex Scientia Law Review*, 4 (2020): 77–90, <https://doi.org/10.15294/lesrev.v4i2.40904>.

incidents. Notably, on April 17, 2020, there occurred a personal data leak encompassing 12,115,583 Tokopedia user accounts.³ Following the incident, it was disclosed that the e-commerce entity Bhineka.com experienced a data breach, wherein a group of hackers identifying as Shining Hunters asserted possession of 1.2 million user records. The compromised data purportedly fetched a sum of USD 12,000, equivalent to Rp. 17,800,000, upon sale.⁴ The recent incident involving the leakage of 380,000 Biznet user data underscores the vulnerability of Indonesians' right to privacy to potentially harmful exploitation. It's essential to recognize that personal data breaches stem not only from leaks but also from irresponsible management of personal information, such as indiscriminate data sharing without proper justification. In light of the growing reliance on digital platforms, safeguarding personal data is of paramount importance to uphold the security of individuals' information.

The study of personal data protection has become the subject of study by academics, including : Erna Priliasari's research posits that Ministerial Regulation Number 20 of 2016 regarding Personal Data Protection falls short in adequately safeguarding consumers. Consequently, she contends that it is imperative for the government to promptly enact measures to ensure the protection of personal data from misuse.⁵ Research Nela Mardiana show that the current implementation of personal data protection in Indonesia fails to adequately safeguard individuals' privacy rights. This inadequacy is evidenced by numerous instances of data misuse due to the proliferation of digital devices and platforms lacking sufficient legal protections.⁶ Kadek Rima Anggen Suari and I Made Bachelor say that the Personal Data Protection (PDP) Law exhibits deficiencies, particularly in its treatment of the privacy of children and individuals with disabilities. They highlight a concerning trend of potential misuse of all information pertaining to these groups, despite the PDP Law's stipulation of a 'special' process. However, this specialized process lacks precise regulation within the law, and notably, there is an absence of an age threshold for the classification of children, among other identified shortcomings.⁷

Research Ni Putu Noni Suharyani and Ni Komang Sutrisnishow that the effectiveness of personal data protection in safeguarding individuals' privacy rights remains suboptimal due to the proliferation of online platforms without commensurate preventative legal safeguards, resulting in numerous instances of

³ 'Marak Data Bocor, Butuh Taji UU Data Pribadi', CNN Indonesia, 2020, <https://www.cnnindonesia.com/teknologi/20200707230022-185-522059/marak-data-bocor-butuh-taji-uu-data-pribadi>.

⁴ Susetyo Dwi Prihadi, 'Peretas Jual 1,2 Juta Data Pengguna Bhinneka.Com Di Dark Web', CNN Indonesia, 2020, <https://www.cnnindonesia.com/teknologi/20200511000424-185-501867/peretas-jual-12-juta-data-pengguna-bhinnekacom-di-dark-web>.

⁵ Erna Priliasari, 'Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman Online', *Majalah Hukum Nasional* 49, no. 2 (28 November 2019): 1–27, <https://doi.org/10.33331/mhn.v49i2.44>.

⁶ Nela Mardiana Parihin, 'Urgensi Perlindungan Data Pribadi Dalam Prespektif Hak Asasi Manusia', *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 5, no. 1 (13 May 2023): 16–23, <https://doi.org/10.52005/rechten.v5i1.108>.

⁷ Kadek Rima Anggen Suari and I. Made Sarjana, 'Menjaga Privasi Di Era Digital: Perlindungan Data Pribadi Di Indonesia', *Jurnal Analisis Hukum* 6, no. 1 (25 April 2023): 132–42, <https://doi.org/10.38043/jah.v6i1.4484>.

personal data breaches.⁸ The research conducted by Hari Sutra Disemadi say that personal data protection regulations in Indonesia remain fragmented across various laws and regulations. This fragmentation indicates a lack of serious commitment by the government towards ensuring robust personal data protection. Consequently, the absence of comprehensive regulations governing personal data protection has led to several issues, including inadequate protection afforded to the public due to the weakness of existing legal frameworks.⁹

Erlina Maria Christin Sinaga and Mery Christian Putri contended that prevailing data protection regulations lack efficacy due to their dispersion across multiple sectoral regulations, thereby failing to furnish optimal protection.¹⁰ Sangojoyo et al contend that Indonesia's personal data protection measures significantly lag behind those established in several ASEAN nations such as Malaysia and Singapore. Notably, Malaysia and Singapore have enacted specialized and comprehensive regulations, namely the Malaysian and Singaporean Personal Data Protection (PDP) Laws, which align with the EU's General Data Protection Regulation (GDPR). These laws aim to bolster the security of data managed by private entities and impose stringent penalties for unauthorized or unlawful access, collection, and transfer of data.¹¹

Handryas Prasetyo Utomo et al contend that stringent and comprehensive regulations are imperative to ensure the security of information technology users and enhance technology-based health services. They advocate for the establishment of an independent regulatory body or a personal data protection commission tasked with regulating, supervising, and controlling these endeavors. Although governmental entities are responsible for oversight within their respective sectors, coordination with the Minister of Communication and Information is essential.¹² Winnie Stevanil and Lu Sudirman examined the Imperative of Safeguarding Financial Technology User Data against Online Crimes in Indonesia, positing that a robust legal framework achieves efficacy through five key elements: the existence of the law, law enforcement personnel, sufficient resources and infrastructure, societal engagement, and cultural alignment. They aspire that incorporating indicators concerning legal effectiveness will ensure justice and safeguard personal data for all individuals inadvertently implicated in online criminal activities.¹³ Muhammad Firman Al Ghani's research

⁸ Ni Putu Noni Suharyanti and Ni Komang Sutrisni, 'Urgensi Perlindungan Data Pribadi Dalam Menjamin Hak Privasi Masyarakat', *Prosiding Seminar Nasional Fakultas Hukum Universitas Mahasaraswati Denpasar 2020* 1, no. 1 (2021): 119–34.

⁹ Hari Sutra Disemadi, 'Urgensi Regulasi Khusus dan Pemanfaatan Artificial Intelligence dalam Mewujudkan Perlindungan Data Pribadi di Indonesia', *Jurnal Wawasan Yuridika* 5, no. 2 (28 September 2021): 177–99, <https://doi.org/10.25072/jwy.v5i2.460>.

¹⁰ Erlina Maria Christin Sinaga and Mery Christian Putri, 'Formulasi Legislasi Perlindungan Data Pribadi Dalam Revolusi Industri 4.0', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (27 August 2020): 237, <https://doi.org/10.33331/rechtsvinding.v9i2.428>.

¹¹ Bram Freedrik Sangojoyo, Aurelius Kevin, and David Brilian Sunlaydi, 'Urgensi Pembaharuan Hukum Mengenai Perlindungan Data Pribadi E-Commerce Di Indonesia', *Kosmik Hukum* 22, no. 1 (10 February 2022): 27, <https://doi.org/10.30595/kosmikhukum.v22i1.12154>.

¹² Handryas Prasetyo Utomo, Elisatris Gultom, and Anita Afriana, 'Urgensi Perlindungan Hukum Data Pribadi Pasien Dalam Pelayanan Kesehatan Berbasis Teknologi Di Indonesia', *Jurnal Ilmiah Galuh Justisi* 8, no. 2 (13 September 2020): 168–85, <https://doi.org/10.25157/justisi.v8i2.3479>.

¹³ Winnie Stevani and Lu Sudirman, 'Urgensi Perlindungan Data Pengguna Financial Technology

emphasizes the critical necessity for governmental involvement and collaboration with diverse agencies to ensure the safeguarding of personal data in the execution of online loan services. It underscores the imperative for decisive measures against unregistered and unauthorized online loan providers. Based on the above issues, this article aims to describe the importance of personal data protection. This article also describes to develop protocols for the protection of personal data in accordance with both general criminal law and Islamic principles

Method

This study employs a normative juridical research methodology, focusing on the analysis of legal norms governing behavior and the examination of existing laws. It adopts a statutory approach, scrutinizing regulations pertaining to the legal protection of personal data. Additionally, a comparative method is utilized to contrast legal provisions concerning personal data protection within both general criminal law and Islamic law frameworks. Normative juridical research involves the examination of secondary data, such as library materials, and is often referred to as theoretical or dogmatic legal research. In this study, secondary data primarily consists of prior research discussing the significance of personal data protection and the formulation of relevant legal principles according to both general and Islamic criminal law.

Result and Discussion

The fundamental tenets governing the protection of personal data privacy

Personal data pertains to information concerning an individual that enables their identification, directly or indirectly, whether through electronic or non-electronic means. This includes data that can be linked to an individual through identifiers such as identification numbers or specific factors related to their physical, physiological, mental, economic, cultural, or social identity. In essence, data qualifies as personal if it is associated with an identifiable person, namely the data subject.¹⁴

The principle of the right to privacy concerning personal data stands as a critical facet amidst the swift evolution of the contemporary digital landscape. In our daily interactions, we find ourselves engaging with diverse technologies necessitating the provision of personal information online. Personal data encompasses any details capable of directly or indirectly discerning an individual, encompassing elements such as name, address, telephone number, email address, date of birth, identification number, financial particulars, and medical records.¹⁵ The concept of data protection is often regarded as an essential component of initiatives aimed at safeguarding privacy. Essentially, data protection is closely intertwined with privacy, as elucidated

Terhadap Aksi Kejahatan Online Di Indonesia', *Journal of Judicial Review* 23, no. 2 (23 December 2021): 197–216, <https://doi.org/10.37253/jjr.v23i2.5028>.

¹⁴ *European Union Agency for Fundamental Rights and Council of Europe Handbook on European Data Protection Law*, (Belgium, 2014).

¹⁵ Emilda Y Lisa NA Mahira, DF, 'Consumer Protection System (CPS): Siste, Perlindungan Data Pribadi Konsumen Melalui Collaboration Concept', *Legislatif* 3 (n.d.): 287–302.

by Allan Westin, who defines privacy as the entitlement of individuals, groups, or institutions to exercise control over the information they disclose, regardless of whether such information will be shared with other parties. Termed as information privacy, Westin's definition pertains to the management of personal data. Additionally, data protection is upheld as a fundamental human right; in numerous nations, it is enshrined either as a constitutional provision or in the form of "data habeas," which entails an individual's entitlement to seek protection for their information and rights in cases of mishandling of data. The collection and dissemination of personal data are viewed as infringements upon an individual's privacy rights, as the right to privacy encompasses the freedom to decide whether to furnish personal data or not. Furthermore, personal data is perceived as a valuable asset or economic commodity of considerable worth.

The principle of the right to privacy concerning personal data encompasses various fundamental rights. These include an individual's entitlement to be informed about any occurrences involving their personal data, disclosure of the parties accessing it, clarification of the purposes for which the data is utilized, and details regarding its processing and storage methods. Additionally, this principle underscores the right to provide consent for the use of personal data, alongside the prerogative to request the deletion or rectification of inaccurate data (commonly known as the right to be forgotten). Primarily, the objective of this principle is to safeguard human rights and uphold individual dignity, while also ensuring the ethical and transparent handling of personal data. These principles extend not only to corporations engaged in data collection but also encompass governmental bodies and other entities involved in the collection, processing, and utilization of personal data.¹⁶ Warren and Brandeis posit that alongside the swift progression of technology, there is a growing consciousness among the public, acknowledging the inherent entitlement of every individual to derive satisfaction from their own life. They contend that privacy constitutes an essential entitlement for individuals to lead their lives privately, and this evolution within the realm of law becomes an imperative inevitability necessitating suitable legal acknowledgment. Consequently, every person holds the prerogative to safeguard their privacy, demanding commensurate protection.¹⁷

Maintaining relationships with others often necessitates individuals concealing certain aspects of their personal lives to preserve their standing within a given social sphere. Privacy is considered an inherent entitlement, distinct from other rights, yet its preservation can be compromised when individuals disclose private matters to the public. In the course of existence, every individual requires moments of solitude, thereby rendering privacy a fundamental necessity. The right to privacy encompasses

¹⁶ RE Latumahina, 'Aspek Hukum Perlindungan Data Pribadi Di Dunia Maya', *GEMA AKTUALITA* 3 (2014): 14–25.

¹⁷ SD Rosadi, *Cyber Law Aspek Data Privasi Menurut Hukum Internasional, Regional Dan Nasional* (Jakarta: Refika Aditama, 2015).

one's capacity to nurture intimate connections within familial settings, thereby upholding the institution of marriage and fostering familial care. Warren refers to this as the right to be free from interference. Furthermore, the challenge of quantifying harm underscores the significance of affording legal protection to privacy. Intrusions into an individual's private sphere can yield consequences far exceeding tangible damages, warranting compensation for victims of privacy breaches.¹⁸

Each person is entitled, according to the provisions outlined in the 1945 Constitution of the Republic of Indonesia, to safeguard oneself, one's family members, one's integrity, dignity, and property within one's jurisdiction. Furthermore, every individual has the entitlement to experience a sense of safety and security free from all forms of peril and apprehension. Article 28, Letter G, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia expressly affirms the right of every individual to protection for oneself, one's family, integrity, dignity, and property within one's jurisdiction, as well as the entitlement to feel secure and shielded from the threat of crime or human rights violations.¹⁹ The principle of data protection is designed to uphold individuals' autonomy in deciding whether they want to reveal or share their personal information. Furthermore, individuals possess the prerogative to specify the conditions under which their personal data is transferred. As privacy rights evolve, there is a growing emphasis on endeavors to safeguard personal data.

Individuals in Indonesia are entitled to the freedom to decide whether to maintain the confidentiality of their personal data or disclose it, a right safeguarded by relevant legal provisions.²⁰ According to existing legal provisions, Indonesian citizens possess a constitutional entitlement to safeguard their privacy, encompassing the protection of personal information. It is incumbent upon the state, pursuant to these constitutional rights, to furnish legal safeguards for various facets of Indonesian citizens' lives. The legal aims pertaining to constitutional rights ought to encompass benefits, equity, and lucidity.

The Significance of Safeguarding Personal Data

The term "urgency," stemming from the Latin "urgere," denotes a pressing need for prompt resolution. In English, it signifies the immediate necessity for action. Similarly, in Indonesian, "urgency" carries the same weight, indicating a crucial requirement or significant matter. This term underscores the imperative for swift and efficient addressing of a problem or critical circumstance.²¹ Personal data pertains to details concerning an individual's identity, encompassing aspects such as name, age,

¹⁸ S Dewi, 'Prinsip – Prinsip Perlindungan Data Pribadi Nasabah Kartu Kredit Menurut Ketentuan Nasional Dan Implementasinya', *Sosiohumaniora* 19 (2017): 206–12.

¹⁹ SF Anggraeni, 'Polemik Pengaturan Kepemilikan Data Pribadi: Urgensi Untuk Harmonisasi Dan Reformasi Hukum Di Indonesia', *Jurnal Hukum & Pembangunan* 48 (2018): 814–25.

²⁰ P Erna, "'Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman Online (The Urgency of Personal Protection in Peer to Peer Lending)'", *Majalah Hukum Nasional*, 2019.

²¹ 'Kamus Besar Bahasa Indonesia (KBBI)', accessed 21 March 2024, <https://kbbi.web.id/urgensi>.

gender, education, occupation, address, and familial role. Such data is capable of pinpointing a specific person, hence it is denoted as the owner's data. The delineation of personal data is further outlined in Article 1 Number 29 of the Government Regulation of the Republic of Indonesia Number 71 of 2019 pertaining to the Implementation of Electronic Transaction Systems, wherein personal data is defined as "any information regarding an individual, whether explicitly identified and/or identifiable either singularly or in conjunction with other data, whether directly or indirectly, through electronic and/or non-electronic systems."²²

The initial provision of Section 1 in Minister of Communication and Information Technology Regulation Number 20 of 2016, about the safeguarding of Personal Data in Electronic Systems, stipulates that "Personal Data refers to specific individual information that is preserved, upheld, and safeguarded as accurate and confidential." Additionally, Article 2 elucidates that safeguarding activities concerning the acquisition, compilation, processing, analysis, storage, presentation, disclosure, transmission, dissemination, and elimination of personal data within electronic systems are deemed as measures for ensuring privacy protection.

The escalation of personal data breaches in Indonesia highlights a growing awareness regarding the significance of safeguarding personal information in tandem with the proliferation of internet usage and technology-driven applications. While the Constitution of 1945 delineates the right to self-defence under Article 28G Paragraph (1), stipulating the entitlement of every citizen to the protection of their person, family, honour, dignity, and property, it is imperative to acknowledge that in the realm of evolving information and communication technology, the notion of personal rights extends beyond mere ownership rights as articulated in the aforementioned article. Specifically, the right to privacy ought to be recognized as a fundamental entitlement. Given its direct correlation to an individual's personal information and identity, the right to privacy assumes heightened significance and is rightfully construed as a personal entitlement. Nonetheless, recent instances of personal data breaches underscore a pressing and concerning issue.

Leakage of personal information poses a grave threat, potentially resulting in financial repercussions, identity theft, and further exploitation of data. Thus, governments, corporations, and individuals must heighten awareness of data security and undertake appropriate preventive measures to safeguard such sensitive information. In the contemporary digital landscape, where virtually all devices are interconnected and equipped with internet accessibility, allowing for remote management, the reliance on digital technology for enhancing work efficiency, expanding social and economic networks, and facilitating various activities has become ubiquitous. Consequently, the associated risks have grown increasingly

²² Ni Putu Noni. Ni Komang Sutrisni Suharyanti, 'Urgensi Perlindungan Data Pribadi Dalam Menjamin Hak Privasi Masyarakat' 1 (2021): 120–34.

pronounced. Therefore, it is essential to remain abreast of the latest developments concerning data security, both within Indonesia and across the globe.²³ The advancement of computer technology in the realm of information and communication has undergone substantial progress within society, thereby making a significant contribution to fulfilling the needs of the community.²⁴

The entitlement to privacy stands as a cornerstone in safeguarding human dignity and serves as the bedrock of human rights. This entitlement finds recognition in Article 12 of the Universal Declaration of Human Rights (UDHR), which stipulates that 'No individual shall suffer arbitrary interference with their privacy, family, home, or correspondence, nor shall such privacy be subject to unlawful attacks upon their honour or reputation.' Additionally, the right to privacy encompasses an individual's authority to dictate the entities granted access to their personal information and how said information is utilized. Core to data protection principles is the assertion that every person possesses the prerogative to determine whether to disclose or exchange their data. In essence, safeguarding personal data entails two fundamental aspects: protecting both the visible and invisible physical data. Furthermore, data protection encompasses regulating against unauthorized usage, misuse of data for specific purposes, and ensuring proper data deletion.

The rise in incidents involving the unauthorized disclosure of individuals' data, coupled with the absence of effective resolution mechanisms for violations, underscores the suboptimal state of legal protection for personal data. Addressing this issue has become an urgent imperative following the enactment of the Personal Data Protection Bill. In addition, our constitution unequivocally affirms in Article 28G that safeguarding personal data is a fundamental entitlement for all Indonesian citizens. The imperative of legal safeguards to uphold the privacy of individuals' personal information within Indonesia is undeniable. Consequently, the matter of privacy and personal data has assumed paramount significance in the contemporary age. The proliferation of information technology and the surge in internet usage, particularly within Indonesia, underscores the necessity for tailored measures to ensure the protection of privacy and personal data²⁵

The protection of personal data is of paramount importance due to the potential violation of an individual's rights to privacy if mishandled by data providers or third parties. Regrettably, despite the pressing need for robust regulations safeguarding personal data, public consciousness regarding its protection remains inadequate. Generally, society has yet to fully grasp the significance of safeguarding

²³ Cynthia H, 'Registrasi Data Pribadi Melalui Kartu Prabayar Dalam Perspektif Hak Asasi Manusia', *Jurnal HAM* 9 (2018): 191–204.

²⁴ Syaifudin A, 'Perlindungan Hukum Terhadap Para Pihak Di Dalam Layanan Financial Technology Berbasis Peer to Peer (P2P) Lending (Studi Kasus Di PT. Pasar Dana Pinjaman Jakarta)', *Dinamika*, 26 (2020): 408–21.

²⁵ Meilan Arsanti Nela Mardiana, 'Urgensi Perlindungan Data Pribadi Dalam Prespektif Hak Asasi Manusia', *JURNAL RECHTEN: RISET HUKUM DAN HAK ASASI MANUSIA* 5 (2023).

personal data as an inherent component of property rights deserving protection. This lack of awareness is evidenced by the widespread dissemination of posts containing personal information across various social media platforms and networks. Furthermore, users often exhibit a lack of comprehension regarding the privacy policies and terms and conditions of electronic platforms such as e-commerce, online transportation, fintech, and others, particularly those about the utilization of personal data.

The e-commerce sector's expansion in Indonesia has brought about an increasing risk of personal data breaches. Safeguarding society against such threats is a fundamental duty of the state, as articulated in our constitution, particularly in Article 28 G paragraph (1) and Article 28 H paragraph (4). In pursuit of fulfilling this constitutional obligation, the government, through the Ministry of Communication and Information (Kemenkominfo), has taken steps to address this issue. This includes the enactment of Regulation of the Minister of Communication and Information Number 20 of 2016 on the Protection of Personal Data in Electronic Systems, which was officially established on November 7, 2016, and became effective on December 1, 2016. The regulatory scope outlined in Article 2 paragraph (1) encompasses safeguarding personal data throughout its lifecycle, including acquisition, collection, processing, analysis, storage, display, announcement, transmission, dissemination, and destruction.

The issuance of the Ministerial Regulation on Personal Data Protection is grounded in the principle of respecting personal data as a facet of individual privacy. This notion of privacy encompasses the right of individuals to dictate whether their data is permissible for access and disclosure by relevant parties, within the bounds set forth by statutory regulations. The overarching objective is to furnish comfort and instill trust in personal data owners in the event of data breaches. However, the author observes that the current regulation leaves several aspects of personal data protection unaddressed, particularly concerning types of personal data not explicitly mentioned. Consequently, there is apprehension that the efficacy of implementing this regulation may be compromised due to the presence of numerous unregulated issues.

Amidst the escalating risks of cybercrime, information breaches, and the misuse of personal data, safeguarding individual data in Indonesia has emerged as a pressing necessity. This imperative extends beyond the realm of individual privacy rights; it represents a critical element in fostering public confidence within the digital landscape. A robust level of trust in the protection of personal data is poised to foster the acceptance of technology, fortify business security, and underpin the sustainable growth of the digital economy.²⁶ It is imperative to acknowledge that safeguarding personal data goes beyond mere legal compliance; it encompasses ethical

²⁶ Shaquila Dania, Muhammad Irfan, Mairisa Elvia, 'Ancaman Cybercrime Dan Peran Cybersecurity Pada E-Commerce: Systematic Literature Review.', *JURSIMA* 11 (2023).

considerations, principles of justice, and social responsibility. The active participation of all stakeholders, including governmental bodies, private enterprises, and civil society, is indispensable in fostering awareness regarding the significance of preserving personal data privacy. Moreover, effective enforcement of laws against breaches of data privacy, coupled with educational initiatives, will serve as catalysts for the adoption of improved data protection measures across all sectors. Hence, enhancing awareness about the criticality of personal data protection in Indonesia necessitates a comprehensive approach, encompassing robust legal frameworks, educational endeavours, awareness campaigns, and collaborative efforts among diverse stakeholders. These measures will lay the foundation for a secure, trustworthy, and ethically sound digital environment conducive to future technological advancements and economic prosperity.²⁷

Development of Regulations for the Protection of Personal Data in Accordance with Islamic Legal Principles

Islamic teachings establish fundamental principles governing human conduct, encompassing the safeguarding of individual privacy, reverence for property rights, and the promotion of honesty and integrity. Islamic jurisprudence, known as fiqh, offers specific directives on legal and ethical matters, yet the direct adaptation of these principles to the digital sphere remains an evolving area. Scholars have commenced inquiries into the integration of basic Islamic ethics within contexts such as data privacy and cybersecurity. For instance, recent research has proposed guiding principles of Islamic work and business ethics for multinational corporations operating in Muslim-majority nations. This endeavour aims to ensure that business practices align with Islamic tenets, including the rights and duties of employees in Islam, prevention of worker discrimination, treatment of labour associations, prohibition of child and forced labour, as well as equitable distribution of income and wages.²⁸

Additional research delves into the growing issue of consumer data theft and evaluates the importance of consumer data privacy within the framework of digital ethics informed by Islamic principles. The findings indicate that employing robust cybersecurity measures and ethical conduct rooted in Islamic values can mitigate the risk of criminal activities and data breaches targeting consumers.²⁹ Islamic principles can be utilized within the realm of cyber security to safeguard personal information and reputation. The Islamic concept of "aura," which underscores the importance of personal space and privacy, can be effectively adapted to the digital age. Moreover, Islamic finance principles, such as the prohibition against "gharar" (excessive

²⁷ Nasri LinraAtan Darham Daeng, Yusuf, 'Perlindungan Data Pribadi Dalam Era Digital: Tinjauan Terhadap Kerangka Hukum Perlindungan Privasi', *INNOVATIVE: Journal Of Social Science Research*, 2023.

²⁸ Mushaddad Hasbullah Mohamad Zaharuddin Zakaria, Nisar Mohammad Ahmad, Ahmad Zaki Salleh, 'Guiding Principles for Islamic Labor Code and Business Ethics', *International Journal of Academic Research in Business and Social Sciences* 7 (2017): 336–45.

²⁹ Diana Ambarwati Afriyan Arya Saputra, Muhammad Iqbal Fasa, 'Islamic-Based Digital Ethics: The Phenomenon Of Online Consumer Data Security', *Jurnal Ekonomi Dan Keuangan Islam* 11 (2021).

uncertainty) and "riba" (usury), offer valuable frameworks for assessing risks associated with digital transactions and data management. Additionally, the application of Islamic legal methodologies like "masalah mursalah" (public interest) and "sadd al-dhara'i" (blocking the means to harm) is considered pertinent in endeavours aimed at protecting personal data.³⁰ The significance of meticulously assessing the legal framework within Islamic nations and its alignment with international cybersecurity norms and standards cannot be overstated.³¹

Research has advocated for the advancement of Islamic financial structures, particularly in Saudi Arabia, promoting the integration of pluralistic legal frameworks and the harmonization of diverse legal traditions, encompassing both Western and non-Western perspectives.³² The engagement of governmental authorities and relevant stakeholders holds paramount importance in formulating regulations that definitively establish the imposition of criminal or civil penalties and guarantee the unequivocal enforcement of the law.³³ The principles of Islamic law can be applied to address crimes occurring in cyberspace, including ensuring the security of digital platforms, through the identification of various forms of cybercrime and the establishment of suitable punishments for transgressions.³⁴

In Islam, there exist legal principles which function as guiding frameworks and primary sources of regulations, namely the Quran and the Sunnah of the Prophet Muhammad. These two sources serve as fundamental references for governing the lives of Muslims.³⁵ In the Islamic perspective, upholding privacy is deemed obligatory as it pertains to individual confidentiality. Personal information should be safeguarded due to its connection to identity, interactions, whereabouts, images, documents, and other personal aspects. Even in the Qur'an, the significance of privacy is underscored as part of Allah's commands, as stated in Surah An-Nur, verse 27, It menas:

"Believers, refrain from entering a household that does not belong to you without prior permission and extending greetings to its inhabitants. This conduct is more appropriate for you, fostering mindfulness."

³⁰ Arif Gozali Warso Saputro Dimas Kuku Nur Rachim, Ahmad Firdaus, 'Analysis of the Impact of Population Growth in DKI Jakarta Using Logistic Model', *Jurnal Pendidikan Matematika Kudus* 5 (2022).

³¹ Mohamed Gamal Abdelmonem Azhar Althahab, Sabah Mushatat, 'Between Tradition and Modernity: Determining Spatial Systems of Privacy in the Domestic Architecture of Contemporary Iraq', *International Journal of Architectural Research Archnet-IJAR* 8 (2014), <https://doi.org/10.26687/archnet-ijar.v8i3.396>.

³² Roger Strange Bruce Allen Hearn, Jenifer Piesse, 'Overcoming Financing Constraints to Corporate Expansion: Evidence from a Company in an Emerging Islamic Market', *Transnatl Corp* 18 (2009), <https://doi.org/10.18356/729df526-en>.

³³ Zongyu Song FangBing Zhu, 'Systematic Regulation of Personal Information Rights in the Era of Big Data', *SAGE Open* 12 (2022), <https://doi.org/10.1177/21582440211067529>.

³⁴ Muhammad Asyraf Ahmad Termimi Khairul Azhar Meerangani, Ahmad Faqih Ibrahim, Muhammad Yasin Omar Mukhtar, Muhammad Hilmi Mat Johar, Adam Badhrulhisham, 'Cybercrime and Its Violation of Digital Platform Security: An Islamic Law Perspective', *International Journal of Academic Research in Progressive Education and Development* 11, no. 3 (2022): 503–15, <https://doi.org/10.6007/IJARPED/v11-i3/14564>.

³⁵ Abdul Wahhab Khalaf, *Ilmu Ushul Fikih, Terjmh. Halimuddin*, 2012.

Ibn Asyur, a prominent commentator hailing from Tunisia, offered an interpretation of this verse which outlines guidelines pertaining to seeking permission to enter a dwelling. He elucidated that a home transcends being merely a shelter or sanctuary from the elements; it is also a sanctuary of privacy. According to his analysis, this verse underscores the importance of Islamic teachings in advocating for the respect and preservation of individual privacy. The home is regarded as a highly personal space wherein individuals may possess items or engage in activities they prefer to keep private, out of concern for their dignity.

Ibn Asyur also observed that during the pre-Islamic era known as Jahiliyah, there was a laxity in regulating entry into homes, particularly for those in positions of authority. Consequently, the verse underscores the importance of respecting others' privacy irrespective of social standing. Interestingly, in contemporary times, parallels can be drawn to the notion of a firewall, which serves to safeguard against unauthorized access to private networks. This draws a parallel to the narrative of Dzulqarnain in Surah al-Kahf, verse 96, wherein he was tasked with erecting a barrier of iron, enveloped in fire and copper, to shield the community from assaults by Gog and Magog.

The significance of safeguarding personal information is underscored not only in the Quran but also in numerous hadiths of the Prophet. An example of this can be found in the narration by Anas, which exemplifies the crucial nature of maintaining the confidentiality of others and highlights the importance of honouring individual privacy.

عَنْ أَنَسٍ قَالَ أَتَى عَلِيَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا أَلْعَبُ مَعَ الْعُلَمَانِ قَالَ فَسَلَّمَ عَلَيْنَا فَبِعْتَنِي إِلَى حَاجَةٍ فَأَبْطَأْتُ عَلَى أُمِّي فَلَمَّا جِئْتُ قَالَتْ مَا حَبَسَكَ فُلْتُ بَعْتَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِحَاجَةٍ قَالَتْ مَا حَاجَتُهُ فُلْتُ إِنَّهَا سِرٌّ قَالَتْ لَا تُحَدِّثَنَّ بِسِرِّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَحَدًا قَالَ أَنَسٌ وَاللَّهِ لَوْ حَدَّثْتُ بِهِ أَحَدًا لَحَدَّثْتُكَ يَا نَابِثُ

Anas recounted, "On one occasion, the Prophet Muhammad (peace be upon him) came to visit while I was engaged in play with my peers. He greeted us and assigned me a task, which caused me to return home later than usual."

Examining the context of these verses and hadiths, it is evident that they can be closely associated with safeguarding personal data in the contemporary digital age. The preservation of personal data stands as a significant facet of the objectives of Islamic law, integral to the protection of an individual's dignity, life, and possessions. The Indonesian Ulema Council, in its role as the custodian of the Ummah's interests, has diligently advocated for the enactment of the Personal Data Protection Law (UU PDP) as an essential component of Islamic jurisprudence. Following a protracted endeavour since its inception in 2016, the PDP Law was ultimately ratified on Wednesday, September 20, 2022.³⁶

Allah (SWT) has meticulously outlined guidelines for positive social

³⁶ Muamalah, 'Pentingnya Perlindungan Pribadi Menurut Perspektif Islam', 2022, <https://mirror.mui.or.id/tanya-jawab-keislaman/muamalah/42340/pentingnya-perlindungan-pribadi-menurut-perspektif-islam/>.

interactions to uphold harmonious relationships among individuals, one of which includes the prohibition of entering another person's residence without their explicit consent. This prohibition aims to encourage believers to exercise caution, refraining from behaviours that entail making judgments about others or participating in inappropriate gatherings. The explanation found in Surah An-Nuur verse 27 underscores the significance of respecting individual privacy, albeit not explicitly addressing the safeguarding of personal data. Nevertheless, the divine injunction in this verse underscores the importance of seeking permission before entering someone's home, thereby establishing clear boundaries in social interactions

This aligns with the principles of personal data protection regulations, which underscore that access to personal information should only be granted with consent from the data owner. This principle mirrors the teachings of the Prophet Muhammad, peace be upon him, as recorded in the Sahih Bukhari hadith, wherein it is stated that if someone looks into a house without permission and is met with a response that blinds their eyes, they bear no guilt for their action. This underscores the significance of respecting individual privacy and adhering to the boundaries established in social interactions, reflecting Islamic teachings that prioritize peace and justice.

Development of Personal Data Protection by Criminal Law Principles

In addressing the issue of crime or criminality, it is imperative to consider several key aspects as outlined by Professor Sudarto. Firstly, the utilization of criminal law should align with the national development direction, aimed at fostering a just and equitable society in both material and spiritual aspects, grounded in the principles of Pancasila. Thus, the application of criminal law should focus on diminishing crime rates and enhancing crime prevention strategies to ensure the safety and well-being of the entire community. Secondly, efforts to tackle or prevent criminal activities through legal processes must target "unintentional actions" that pose potential harm, both materially and spiritually, to society members. Thirdly, the application of criminal law should factor in the principle of "costs and benefits" to ensure an efficient allocation of resources. Lastly, considerations regarding the use of criminal law should take into account the capabilities and operational capacities of law enforcement agencies to prevent excessive workload accumulation and avoid overburdening.³⁷

According to Prof. Dr. Wirjono Prodjodikoro, SH, the fundamental purpose of criminal law is to uphold justice. He also emphasized that within legal discourse, the primary objective of criminal law is articulated as the prevention of criminal behaviour. This can be achieved through various means, such as instilling widespread fear in society (general prevention) or instilling fear in individuals who have committed crimes previously (specific prevention). It is advisable to refrain from violating the law or to educate and rehabilitate individuals demonstrating tendencies towards criminal behaviour. The goal is to steer them towards positive and constructive actions, enabling them to contribute positively to society.

³⁷ Abd. Rahman Saleh, 'Perlindungan Data Pribadi Dalam Perspektif Kebijakan Hukum Pidana', *HUKMY: Jurnal Hukum* 1, no. 1 (2021): 91–108, <https://doi.org/10.35316/hukmy.2021.v1i1.91-108>.

This viewpoint may be acknowledged as a secondary or ancillary objective; however, this objective, albeit supplementary, can wield significant influence in redressing societal conditions, which are still deemed the primary objective of the penal system, akin to administrative and civil punitive frameworks. Barda Nawawi Arief posits that the term "Criminal Law Policy" originates from the English "policy" and the Dutch "politiek", thus it can also be denoted as "Criminal Law Politics" or more commonly referred to as "penal policy", "criminal law policy", or "strafrechtspolitik".

Concrete and efficacious legal safeguards for personal data are imperative to guarantee the complete protection of individual privacy. The significance of safeguarding personal data is undeniable, given its inherent value in protecting one's interests. Vigorous efforts to offer robust protection for personal data are highly significant in thwarting any potential misuse and exploitation by unauthorized entities. The existence of robust legal protections provided by the state is an absolute necessity for ensuring the security and integrity of personal data.

Currently, we are facing an urgent situation regarding the protection of personal data. The existing legal safeguards are notably inadequate. Merely regulating personal data protection through governmental measures falls short; it necessitates legislative backing to ensure comprehensive legal protection that comforts both society and the state. The state's criminal law policy must be robust to safeguard the rights of individuals regarding their data. Clear and decisive punishment for perpetrators who compromise personal data integrity is imperative. Ambiguity in legal sanctions and a lax approach toward personal data breaches will inevitably be exploited by hackers. Without firm legal repercussions, the state fails to shield its citizens' data adequately, resulting in substantial losses. The rise of cross-border digital crimes underscores the urgency for stringent legal frameworks to counteract the increasingly complex landscape of data theft and global economic crime.

The legal system must assume a commanding role in addressing the menace of data breaches and hacking incidents, ensuring that perpetrators of such crimes are apprehended and brought to justice. In cases where the law is inadequate in addressing crimes with global reach, particularly those within the multifaceted economic domain, society and the nation stand to suffer significant losses. Vulnerabilities in legal frameworks concerning hacking activities pose a threat to national stability and integrity, thereby undermining the very fabric of civilization. One viable approach involves intensifying law enforcement efforts to thwart illicit data transactions and the harmful trade of personal information.

Conclusions

Based on the research findings, it has been determined that safeguarding personal data is crucial for upholding individual rights and freedoms, as well as preventing potential misuse of data that could lead to harm. Both General Criminal Law and Islamic law contain regulations aimed at preserving the privacy of personal data, albeit with differing approaches and emphases. Therefore, there is a need for a comprehensive and cohesive framework for personal data protection that integrates

elements from both general and Islamic criminal law. Furthermore, it is recommended that empirical studies be conducted to examine the practical implementation of personal data protection rules and provisions. Comparative analysis of personal data protection regulations across different countries is also necessary. Additionally, research should delve into the ethical and philosophical considerations surrounding personal data protection.

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Does Regulations of in Peer to Peer Lending has Legitimated Hidden Cyber Extortion? a legal review

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Abstract:

The purpose of this article is to present the results of an analysis of whether P2P lending practices contain elements of covert cyber extortion when viewed from an integrative legal perspective between regulations and Islamic law. Covert cyber extortion that hides behind contracts is more dangerous than extortion in general because many victims do not feel exploited. The findings of this study conclude that the practice of P2P lending which charges multiple interest rates and fines due to late installment payments which is calculated per day contains elements of hidden cyber extortion legitimated by regulations. Therefore, the concept and regulating for P2P landing in Indonesia should be reviewed immediately so that there are no victims of exploitation. If in research, Islamic banks are considered loan sharks, then the practice of P2P lending, which is based on daily interest and fines, is more than just a loan shark.

Keywords: regulations; P2P lending; hidden cyber extortion; legal review.

Introduction

P2P lending has the opportunity to be used as a medium for financial inclusion for people who need financing. However, if P2P lending is not properly conceptualized and regulated, it could very well be used as a means of exploitation and extortion. The properly concept is a concept that is good according to economic interests, but is also in line with religious values in society. A law that is said to be appropriate is a law that not only regulates procedural aspects but also *halal/ haram* and *maslahat/ mudharat* aspects from a religious perspective. To ensure feasibility, the concept and regulations of P2P lending in Indonesia need to be reviewed through a perspective of legal philosophy to ensure whether the regulations are in accordance with the principles of truth and justice or not. Through this perspective, the author will look at law not only from the aspect of norms, but also from the aspects of the values behind a norm. To gain legitimacy, the values of a norm must be in line with the truth values believed by society.

P2P lending which is more inclusive opens up opportunities to get many customers from various groups. Therefore, before being legitimized by law, the P2P lending concept must be ensured to bring benefits to all parties. Don't let P2P lending become a hidden instrument of exploitation or extortion for the community and only provide abundant profits for capital owners. Covert extortion wrapped in a contract is more dangerous than open extortion. Covert extortion can be carried out via the internet network which is called cyber extortion. In a netizen survey, one of sharia sharia banks were considered to have committed extortion. Negative stigma of sharia banks after the viral customer extortion issue and taking usury (*riba*). Netizens term high profit making by Islamic banks with term loan shark. A loan shark is a term to describe a person or entity who lends money at very high-interest rates. The word

loan shark appears in the top ten trending in extortion cases, which is the study's objective.¹ If Islamic banks as they are called loan shark are considered to be committing extortion, what about P2P lending? This article aims to examine whether P2P lending in Indonesia is synonymous with hidden cyber extortion when viewed from legal philosophy perspective. The reason for using this perspective because it carries out a not superficial but in-depth analysis of every legal problem that arises in society and through that perspective we can develop legal science itself. In this case the author uses a legal philosophy theory in general and Islamic perspective.

Legal Philosophy Review

Philosophical thinking is thinking to understand the nature of reality in order to find the true truth. Thinking deeply about meaning means finding the most profound sense of something in the content of that thing. In philosophy, a person seeks and needs answers not only by showing appearances alone but tracing them far behind the appearance to determine something called the value of reality.² Even the philosophical way of thinking not only reveals the values behind the facts, but how the truth of these values becomes ideal. In the perspective of natural law, the highest value comes from God. Mankind's search for justice found the idea of natural law as something higher than positive law. Law must conform to the right reason, i.e. must be governed by natural law. True law is right reason in agreement with nature; it is of universal application, unchanging and ever-lasting; it summons to duty by its commands and averts from wrongdoing by its prohibitions.³ Therefore, the function of legal philosophy is to explore the values of truth from God to be applied in positive law.

Legal philosophy is a branch of legal science that investigates what measures can be used to assess the content of law in order to fulfill good laws. Legal philosophy in the system of legal teachings functions as a rounder (core) of the legal teachings themselves and has the goal of achieving legal objectives, including: justice, peace and prosperity. Legal philosophy seeks to find problem points so that it can then create more perfect laws for the future.⁴ According to Roscoe Pound, philosophies of law historically have rationally adjusted legal developments to the circumstantial needs of society. Philosophers of law may have appeared to be preoccupied with abstract questions of justice, seeking to conform the mundane to the universal, but in the course of legal developments the perceived social interests of the respective societies eventually prevailed.⁵

The function of legal philosophy is to rationally formulate a general theory of law which conforms to the interests, the general security first and for most of society. Legal philosophy requires the law to apply perfectly so that it is relevant to be

¹ Rosana Eri Puspita and Mohamed Asmy bin Mohd Thas Thaker, "Netnography on Finance Research: The Case of Customer Blackmail in a Sharia Bank," *Journal of Accounting and Strategic Finance* 5, no. 1 (2022): 179–92, <https://doi.org/10.33005/jasf.v5i1.299>.

² Ervina Dwi Indriati, Sary Ana, and Nunung Nugroho, "Philosophy Of Law And The Development Of Law As A Normative Legal Science," *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 425–32, <https://doi.org/10.51601/ijersc.v3i1.293>.

³ Justice K N Saikia, "Philosophy of Natural Law," n.d.

⁴ Tri Madya Wianto, "The Role of Legal Philosophy in Building the Moral of the Nation ' S Children," *Journal of Law and Natiin (JOLN)* 2, no. 1 (2023): 49–53.

⁵ Marshall L. Derosa, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1998), <https://doi.org/10.4324/9781351288880>.

implemented in all places and times.⁶ The thought of legal philosophy has a positive impact because it carries out a not superficial but in-depth analysis of every legal problem that arises in society or the theoretical development of legal science itself, its horizons are broad and comprehensive.⁷ Law must be integrated with moral values. A proper law is a law that contains high moral values to realize justice, benefit, legal certainty and order. Helmi (2015) said that through the philosophy of law asking questions which are fundamental about law. These issues are related to the position, nature, function and objectives of law and others. The objectives of law in the form of certainty, justice, benefit and others are a study of legal philosophy. With a philosophical approach, justice becomes an inseparable part of the purpose of law, in addition to certainty and benefits.⁸

Legal Review of Cyber Extortion In P2P Lending

Linguistically, extortion (blackmail) is to obtain money or benefit from someone under coerce and threat to expose a secret or to reveal information harmful to reputation. It is defined as a crime committed against a person to force him to hand over money or to sign a document due to being threatened with the disclosure of a particular matter or to charge him with a crime.⁹ Extortion is “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.”¹⁰ Cyber extortion involves the added element of a threat of committing a wrongful act involving computers or information systems. Cyber-extortions often consist of three distinct illegal acts: the threat, the act (if committed), and often a preliminary criminal act to make the threatened act credible. Cyber extortion and threats are specific intent crimes, allowing defendants to bring up defenses involving their mental or emotional conditions.¹¹ Threats do not always mean threats of physical violence, but also financial exploitation.

According Putten, the extortion bears three specific characteristics: (a) The involvement of multiple perpetrators; (b) A gradual development or unfolding of the extortion process; and (c) The use of deceit and manipulation as coercive tools in the first phases of the extortion process, prior to the use of violence or the threats with violence. These three aspects tend to make the crime of extortion invisible for a long period of time, primarily because of the way the crime is normally looked upon. Stages leading to extortion practices:¹²

⁶ Derosa.

⁷ Muhammad Iqbal, “Legal Philosophy In Establishing Justice,” *The 1th Proceeding International Conference And Call Paper XIV*, no. 2 (2021): 330–41.

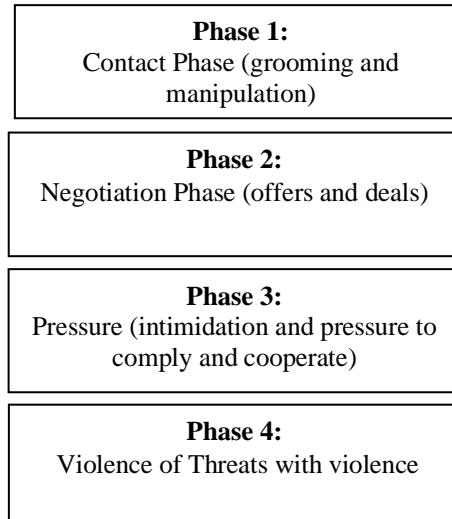
⁸ Iqbal.

⁹ Hiba Abdul Mohsin Abdul Kareem, “The Social Risks Of Electronic Extortion,” *Palarch’s Journal Of Archaeology Of Egypt/Egyptology* 18, no. 4 (2021): 8263–73.

¹⁰ Ezenwobodo and Somkene Samuel, “International Journal of Research Publication and Reviews,” *International Journal of Research Publication and Reviews* 04, no. 01 (2022): 1806–12, <https://doi.org/10.55248/gengpi.2023.4149>.

¹¹ Ioana VasIU and Lucian VasIU, “Cyber Extortion and Threats: Analysis of the United States Case Law,” *Masaryk University Journal of Law and Technology* 14, no. 1 (2020): 3–28, <https://doi.org/10.5817/MUJLT2020-1-1>.

¹² Cornelis van Putten, “The Process of Extortion: Problems and Qualifications,” *GLODERS Conference on Extortion Racket Systems*, 2012, 3–12.



The chart above illustrates that extortion can start from the existence of a contractual agreement. Even though there is a negotiation stage, the parties are often in an unbalanced position. In the context of P2P lending, debtors are often positioned as weak parties. The pressure on debtors is through charging multiple loan interest rates. Meanwhile, the threat is realized in the form of paying fines for those who are late in paying installments or have bad credit. P2P lending is one of financial technologies that provides excess financial inclusion for people who need the financing both for fulfilment of consumptive need and business capital.¹³ P2P lending practices in Indonesia are regulated specifically in the law on Fintech Lending Operators under the Financial Services Authority Regulation (POJK) 77/POJK.01/2016.

The fact is that in Indonesia there are many loan provider companies (LPC) that offer P2P lending, whether registered with the OJK or not. On the one hand, P2P lending can support financial inclusion, but on the other hand, it is prone to being misused as a medium for extortion or exploitation. Extortion can occur due to high loan interest or fines for late payment of installments. The debtor is responsible for returning the principal along with interest calculated per day. If a customer experiences delays in installment payments, they will also be subject to a fine calculated per day. Provisions related to limits on loan interest amounts and late fines are regulated in OJK Circular Letter (SE) No. 19/SEOJK.06/ 2023. On the one hand, this regulation provides limits on debt interest rates and late fines, but on the other hand it actually legitimizes it. Accumulation of fines for late installments calculated per day and loan interest rate will certainly add to the burden on debtors. This is what in our terms is called extortion.

The practice of extorting customers can be carried out by legal or illegal P2P lending. Illegal online loan business actors in their implementation lack transparency in providing information on the benefits and risks of the products offered so that consumers often do not understand the mechanism for calculating service fees and

¹³ S Burhanuddin, A Akbar, and M M Tajuddin, "Law Review on Fintech P2P Lending, Regulations and Its Institutions in Indonesia," *International Conference on Engineering, Technology, and Social Sciences (ICONETOS)* 3, no. 1 (2022), <http://repository.uin-malang.ac.id/15295/%0Ahttp://repository.uin-malang.ac.id/15295/1/15295.pdf>.

interest which impact on the nominal loan disbursed and the amount that must be returned. Consumers also do not know that providers charge fees for repayment of loans before maturity or for cancellation of loan applications. The impacts that arise on consumers of online loans, especially illegal online loans are interest is too high and interest continues to rise while the application changes name without notification to the borrower, and etc.¹⁴

Basically, a contract agreed to by both parties is like law for those who make it. This provision refers to the consensual principles and freedom of contract. In Indonesia, freedom of contract is one of the axioms of contract law which is based on Article 1338 paragraph (1) of Indonesian Civil Law (KUH Perdata). This principle has regulated that essentially the parties can make an agreement which can create any obligation as long as such compulsory duty is not prohibited. According the stipulation of Article 1337, cause is prohibited if it is prohibited by law or if it violates morality or public order. Such stipulation gives a description that basically all agreements can be concluded and performed by every person. An agreement which is prohibited is an agreement that contains obligation or duty on one of the parties which violates the law or morality.¹⁵ Forcing profits from multiple loan interest rates and fines for late installments calculated per day are contrary to the principles of morality.

Through P2P lending, creditors can make agreements with debtors because they are guaranteed by law. However, if creditors take advantage of loan interest, especially to an unreasonable amount, it is against the law and morality. Therefore, if this aspect does not meet the objective requirements of the agreement as contained in Article 1320, then the implication is that it is void. Because the agreement is void, the parties must immediately return the money that is due to the creditor. In several incidents, there were creditors who forced the debt to be returned along with multiple interest rates until the creditor was unable to pay (bankrupt). Debtors who do not pay debts from a reasonable agreement can be said to be in default (*wanprestasi*), so that person can be sued civilly. However, if the debtor is unable to pay the debt because he is charged multiple interest rates, then he is not in default but is a victim of extortion. Therefore, perpetrators of extortion should be subject to criminal sanctions.

The word "extortion" can mean asking for money or goods by threat or coercion. Extortion as regulated in Chapter XXIII of the Criminal Code actually consists of two types of criminal acts, namely extortion (*affersing*) and criminal acts of threat (*afdreiging*). Both types of crime have the same nature, namely an act that aims to extort other people.¹⁶ Extortion can be carried out by companies that offer P2P lending services by asking for multiple loan interest rates and fines for late installments calculated per day. However, unfortunately many law enforcement

¹⁴ Sri Wahyu Ningsih, "Implementasi Peer To Peer Lending Di Indonesia, Layanan Pembiayaan Berbasis Financial Technology," 2016.

¹⁵ Muhammad Natsir Asnawi and Edi Hudiata, "Delimitation of Freedom of Contract Principle and Judge'S Corrective Function in Assessing the Parties' Positions on an Agreement," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 29, no. 1 (2017): 150, <https://doi.org/10.22146/jmh.16889>.

¹⁶ Heri Susanto, Ramlani Lina Sinaulan, and Mohamad Ismed, "Legal Certainty Regarding the Imposition of Criminal Extortion Sanctions Involving Community Organizations (Ormas)," *Policy, Law, Notary and Regulatory Issues (Polri)* 1, no. 2 (2022): 37–54, <https://doi.org/10.55047/polri.v1i2.152>.

officials see these cases as extortion because the perpetrators are hiding behind civil agreements and the operational permits of company from the financial services authority (OJK).

Excessive interest withdrawal is often referred to as "**loan sharks**." A loan shark is a term to describe a person or entity who lends money at very high-interest rates. The word loan shark appears in the top ten trending in extortion cases. If withdrawing profits by Islamic banks is considered extortion,¹⁷ of course collecting loan interest of conventional bank or P2P lending can also be considered extortion. Apart from being charged loan interest, debtors from P2P lending are also charged fines for late installments which are calculated per day. In the Indonesian criminal law system regulated in Article 368 of the Criminal Code and Article 482 Law 1/2023, extortion that can be subject to criminal sanctions is accompanied by threats of violence. In legal philosophy perspective, creditors who exploit debtors with multiple loan interest rates and fines for late installments calculated per day can be called extortion although it arises from an agreement. This perspective looks at legal or agreements norms not only at the level of formality, but also at moral values that originate from belief. Taking advantage of loan agreements can bring benefits, but goes against religious values. In a religious moral perspective, the advantage must be built through commercial agreements, not through loan agreements. Therefore, extortion that hides behind an agreement is more dangerous than extortion itself because it is difficult to be touched by the law. If the meaning of threat in the crime of extortion is extended to not only the physical aspect but also the threat of financial fines, then perpetrators of cyber extortion through P2P lending can be punished.

In Islamic law, based on (QS.Al-Baqarah[2]:279), burdening debtors through loan interest is a form of injustice (extortion). To avoid extortion in P2P lending, debt agreements must be converted into non-commercial form. In the Islamic financial system, term P2P lending can only be used for disbursement of funds based on a debt agreement (*aqd al-qardh*) which is actually part of the non-commercial contracts (*'uqud al-tabarru'at*).¹⁸ Taking advantage of debt interest in P2P lending is part of usury (*riba*) which is prohibited in Islamic law. If financial service providers want to make a profit, the concept of P2P lending based on debt agreements must be converted into P2P financing based on commercial agreements.

Conclusion

The fact that there is a regulation that has legitimized the practice of cyber extortion through P2P lending. From a legal philosophy perspective, the charging loan interest and fines for late installments calculated daily to gain profits and avoid risks are not only unfair but also contrary to moral values originating from religion. Profits must be achieved through business agreements, not by commercializing loan. In civil law, agreements that conflict with objective requirements are null and void. The consequences of a void agreement require the parties to return their respective rights.

Loan agreements via P2P lending with interest compensation accompanied by fines are synonymous with hidden cyber extortion. It is said that, because the

¹⁷ Puspita and Thaker, "Netnography on Finance Research: The Case of Customer Blackmail in a Sharia Bank."

¹⁸ Burhanuddin, Akbar, and Tajuddin, "Law Review on Fintech P2P Lending, Regulations and Its Institutions in Indonesia."

extortion is hidden behind the agreement and regulation. Perpetrators of cyber extortion in P2P lending can be charged with the crime of extortion, if the meaning of the threat is expanded from physical threats to financial treats.

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E-Spionage: Unraveling the Realm of Cyber Espionage Law in Indonesia

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Abstract:

Cyber espionage, as one of the increasingly frequent forms of cybercrime, utilizes information technology, particularly the internet, as its primary means. In this digital era, where cybercrime has a serious impact on individuals, organizations, national security, and privacy as a whole, it is important to understand how the law regulates this phenomenon. The research method used is normative legal research method by examining legislation in Indonesia and internationally. The results show that the regulation of cyber espionage in Indonesia has been regulated in the Telecommunications Law and the ITE Law, with the threat of serious criminal sanctions for violators. The Constitutional Court has strengthened the protection of citizens' privacy against wiretapping. However, in international law, the discussion on cyber espionage is still minimal. International cooperation is important in the development of international law, but there is no specific regulation governing cyber espionage in the context of peacetime and wartime.

Keywords: cyber espionage; cybercrime; ITE Law.

Introduction

Cybercrime, which emerged along with the rapid development of information technology, has become a significant challenge in this digital era. One form of cyber crime that is increasingly occurring is *cyber espionage*, which utilizes information technology¹, especially the internet, as the main means. Crimes that occur on the internet or computers often require careful investigation to gather the necessary evidence.² The concept of *cyber espionage* itself combines two terms, namely "cyber" which refers to the internet or cyberspace, and "espionage" which refers to *espionage* or spying activities. Thus, *cyber espionage* can be interpreted as an act of spying carried out on electronic data or other criminal activities that use the internet network as a means of infiltrating or spying on other parties, by entering computer network systems³ or in other words, it is a form of crime that using the internet network by entering the computer network system of the party who will be targeted as a target

¹Barda Nawawi Arief, *Mayantara Crime, Development of Cyber Crime Studies in Indonesia*, (Jakarta: Rajawali Pers, 2005), p. 12

²Imam Riadi, Sunardi, and Panggah Widiandana, "Investigation of Cyberbullying on WhatsApp Using Digital Forensics Research Workshop", *RESTI Journal (Information Systems Engineering and Technology)*, Vol. 4, no. 4, (2020), p. 730.

³Joko Triyanto, Sunardi, and Imam Riadi, "Analysis of Cyber Espionage Investigations on Facebook Using the Digital Forensics Research Workshop (DFRWS)", *TECHNO Journal*, Vol. 23, no. 1, (2022), p. 40

for spying.⁴

This kind of cybercrime has a serious impact, not only on the individual or organization that is the victim, but also on national security and privacy as a whole. Therefore, handling *cyber espionage* requires cooperation between countries, technology companies, as well as strengthening information security systems to deal with this threat effectively. One type of *cyber crime* that is considered very dangerous is cyber espionage, which is often referred to as spying or reconnaissance on other parties' data. ⁵Because the internet is a medium that crosses information boundaries, access to data involving other parties is a major concern and can be a serious crime. Before the advancement of information technology and the internet, surveillance was usually carried out conventionally, including wiretapping using voice recording devices. However, with advances in internet networks and widely available software, eavesdropping can now be done digitally, including intercepting voices, images and data as targets, which is known as *cyber espionage*. ⁶

Regulation of *cyber espionage*, or wiretapping in the context of digital technology, has become a major concern in Indonesian positive law and international law. In an era where information technology is developing rapidly, *cyber espionage practices* can have a significant impact on individual privacy, national security, and global stability. In Indonesia, regulations regarding *cyber espionage* are reflected in various laws, such as Law Number 36 of 1999 concerning Telecommunications and Law Number 11 of 2008 concerning Information and Electronic Transactions. This regulation regulates various aspects of wiretapping in the context of modern technology, including prohibitions, criminal sanctions, and law enforcement powers. However, the implementation and enforcement of laws related to *cyber espionage* often pose challenges, especially in the face of continually changing technological developments.

On the other hand, at the international level, the issue of cyber espionage has become a complex topic of debate. Various countries and international institutions have tried to develop legal frameworks that regulate *cyber espionage activities* at the global level. However, the challenges faced in achieving consensus and implementing effective rules remain complex. In this article, we will analyze further the regulation of cyber espionage in Indonesian positive law and at the international level.

Research Method

The research method used is normative juridical, and takes the form of a data study conducted by examining library studies (*librarian study*).⁷ While the core research data only serves as complementary data. This study uses various methodologies, including a *statute approach*, namely reviewing all laws and regulations

⁴Miftakhur Rokhman Habibi and Isnatul Liviani, "Information Technology Crime (Cyber Crime) and its Management in the Indonesian Legal System", *Al-Q ā n ū n: Journal of Islamic Legal Thought and Reform*, Vol. 23, no. 2, (2020), p. 405

⁵Sutarman, *Cyber Crime, Modus Operandi and Management*. (Yogyakarta: LaksBang PRESSindo, 2007), p. 3.

⁶Shelly Nicko, *Cyber Espionage Crime*. (Surabaya: Airlangga University Press, 2010), p. 16

⁷ Rony Hanitiyo Soemitro, *Legal and Jury Research Methods*. (Jakarta: Ghalia Indonesia, 1994), pp. 5.

related to the legal issues being investigated.⁸ In addition, it also uses a *Conceptual Approach*, namely by combining practical concepts that can be implemented into a particular point of view and become a solution to the problems that have occurred.⁹ Study findings include analytical, descriptive, and prescriptive information. Prescriptive is a solution to the legal problems raised and etymologically means what should be,¹⁰ while analytical descriptive research is limited to efforts to reveal a problem and situation as it is,¹¹ so that it only reveals or describes an event or fact that exists in detail, systematically, and thoroughly.¹²

Results and Discussion

Regulation of *Cyber Espionage* in Indonesian Positive Law

The rapid development of technology has had a significant impact on the way we communicate and interact. While telecommunications technology makes it easier to exchange information, it also opens up gaps for the emergence of various new forms of crime that require criminal law provisions to be overcome. Sudarto explained that criminal law is part of criminal politics which aims to rationally overcome crime.¹³ Currently, there are various regulations governing wiretapping which are scattered in law. Two laws that specifically regulate wiretapping are Law no. 36 of 1999 concerning Telecommunications and Law no. 11 of 2008 concerning Information and Electronic Transactions. This law is the legal basis for regulating and anticipating wiretapping practices in the context of modern communications technology.

Espionage comes from the French word *espionnage*, which is a practice of collecting information about an organization or institution that is considered secret without obtaining legal permission from the owner of the information. *Cyber Espionage* consists of the words *Cyber* and *Espionage*. *Cyber* is defined as cyberspace or the internet, while *Espionage* is the criminal act of spying or espionage. *Cyber Espionage* is a crime that uses the internet network to carry out spying activities against other parties. by entering the target party's computer network (*computer network system*). This crime is usually directed against business rivals whose important documents and data are stored in a *computerized system*. Actions of *cyber espionage* over electronic data and/or information by several telematics experts are classified into 2 (two), namely:

1. *Cyber espionage* as a pure crime is an act of spying carried out with the aim of

⁸ Peter Mahmud Marzuki, *Legal Research*. (Jakarta: Kencana, 2010), p. 93.

⁹ Johni Ibrahim, *Theory & Methodology of Normative Legal Research*, cet. III. (Malang: Bayumedia Publishing, 2007), pp. 302

¹⁰ Abraham Ethan Martupa Sahat Marune, "Metamorphosis of legal research methods: navigating dynamic exploration", *Civilia: Journal of Legal Studies and Civic Education*, Vol. 2, No. 4, (2023), pp. 73-81.

¹¹ Abraham Ethan Martupa Sahat Marune, "Relevance of Legal Research Methodology in Addressing Modern Legal Challenges", *Pena Justisia: Media for Communication and Legal Studies*, Vol. 21, No. 2, (2022), pp. 1-15.

¹² Titon Slamet Kurnia et al, *Legal Education, Legal Science and Legal Research in Indonesia: A Reorientation*. (Yogyakarta: Student Library, 2013), p. 129.

¹³ Sudarto, *Criminal Law and Community Development: A Study of Criminal Law Reform*. (Bandung: Switch Baru, 1983), p. 31.

exploiting data or information for criminal acts, for example using the data or information obtained and then processing it so that it can be used to steal data, sabotage and falsify data.

2. *Cyber espionage* as a gray crime, is an act of spying carried out only to gain pleasure for the perpetrator due to the satisfaction of being able to access another party's computer.

The basic basis for imposing criminal penalties on perpetrators of *cyber espionage* in Indonesia is that they must meet the qualifications of a criminal act. Considering that *cyber espionage* is one of the *cyber crime activities* against personal and confidential information of a person, agency or institution, the application of criminal articles must be appropriate, both based on those in the Criminal Code and outside the Criminal Code because this spying activity goes through a coherent process. When it comes to state security, the Criminal Code only regulates espionage against the state which tends to be carried out conventionally during war, namely in Articles 124 paragraph (2) and 126 of the Criminal Code. In Article 124 paragraph (2) it is formulated that:

"It is punishable by life imprisonment or a maximum period of twenty years if the author:

1st: Tell or hand over to the enemy maps, plans, drawings, or writings regarding army buildings;

2nd: Become a spy for the enemy or give him accommodation."

Other provisions relating to the criminal act of *Cyber Espionage*, if a person's actions involve the leaking of data, especially regarding data that must be kept confidential (*data leakage*), then the provisions that can be applied are provisions relating to the act of leaking a secret.

Provisions related to leaking state secrets (including actions using internet facilities) are regulated in Articles 112, 113 of the Criminal Code and Article 114 of the Criminal Code as well as acts that leak company secrets are regulated in Article 322 of the Criminal Code and Article 323 of the Criminal Code. Act no. 36 of 1999 concerning Telecommunications strictly prohibits wiretapping in all its forms, including the use of additional tools or equipment on telecommunications networks to obtain information illegally. Article 40 of the Law emphasizes that individual privacy rights must be protected, so that wiretapping is prohibited because it violates this right. Violation of this rule can be subject to a maximum criminal sanction of 15 years in prison in accordance with Article 56 of Law no. 36 of 1999. In principle, the Law emphasizes strict protection of consumer information and confidentiality, although there are very limited exceptions because it involves violations of other people's personal rights. In addition, this law has a jurisdictional reach that covers actions within and outside the jurisdiction of Indonesia, considering that information technology is cross-territorial.

Act no. 36 of 1999 concerning Telecommunications and Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) is the legal basis for the use of Information Technology. The ITE Law, even though it has undergone

several judicial reviews at the Constitutional Court, is very important because it regulates electronic transactions and measures to protect service users. The Constitutional Court's decision emphasized that wiretapping, as a limitation of human rights, must be regulated appropriately in accordance with the 1945 Constitution of the Republic of Indonesia. Regulations regarding the legality of wiretapping must be in the form of law. The ruling strengthens the protection of citizens' privacy against wiretapping. The Court also emphasized that every interception must be carried out lawfully, especially in the context of law enforcement. Amendments to Article 5 of the ITE Law aim to provide legal certainty regarding the use of Electronic Information and Electronic Documents as evidence. The ITE Law strictly prohibits detrimental actions in the context of electronic transactions.

Act no. 11 of 2008 regulates wiretapping in Article 31, prohibiting wiretapping on documents and electronic transmission of information. This coincides with Article 32 of the ITE Law which specifically regulates the criminal act of wiretapping on the transmission of electronic information/electronic documents. Electronic Information and Electronic Documents are considered as valid evidence in electronic transactions. Amendments to the 2016 Law confirm criminal provisions. Criminal acts in Information Technology are often difficult to detect and overcome because of their virtual nature. Law enforcers experience difficulties in dealing with misuse of Information Technology. Investigation of criminal acts in the field of Information Technology is regulated in Article 42 of the ITE Law, complying with the provisions of the Criminal Procedure Law and the ITE Law.

Article 43 of the ITE Law, which was revised in 2016, gives special authority to Civil Servant Officials in the field of Information Technology and Electronic Transactions as investigators. They are responsible for carrying out criminal investigations in this field by paying attention to protecting privacy and data integrity. Searches and seizures are carried out in accordance with criminal procedural law by safeguarding the interests of public services. This official has powers such as receiving reports, examining witnesses, checking the veracity of reports, inspecting business entities, and sealing and confiscating tools or facilities used for unlawful Information Technology activities. They can also make electronic data inaccessible, request information from electronic system operators, terminate investigations, and notify and convey the results of investigations to the Public Prosecutor through State Police Officials. They can also work with investigators from other countries to share information and evidence.

From the formulation above, there are several important elements in the act of wiretapping that can be emphasized, such as the "intentional" element and the "without right or against the law" element in carrying out the interception. What is interesting about this formulation is the emphasis on the subjective element, namely intentionality as the intention in carrying out the action. This means that the perpetrator deliberately carried out the act and was able to predict the results of his action, so that the requirements for awareness and knowledge were met. Faisal Thayib, as quoted by Go Lisanawati, categorized wiretapping in Article 31 of the ITE Law as a computer-related crime in the form of illegal wiretapping. This is a prohibited criminal act because it is carried out without permission and harms the

interests of other people. The act of wiretapping as regulated in Article 31 of the ITE Law is an act that is strictly prohibited because it has the potential to harm computer system users.¹⁴

Wiretapping is also clearly regulated in Law no. 1 of 2023 concerning the Criminal Code, especially in Article 322 paragraphs 1 to paragraph 3. This article clearly states that wiretapping in any form is a criminal act that will be subject to criminal sanctions. Wiretapping, although considered a criminal offense, is also permitted in certain contexts by law enforcement officials to uncover certain crimes. Some laws that regulate this include:¹⁵

- a. Dutch Criminal Code Articles 430-434 regulate the prohibition against officials authorized to conduct wiretapping and share the information obtained.¹⁶
- b. Law Number 5 of 1997 concerning Psychotropic Substances: Gives wiretapping authority to the police in the context of criminal investigations related to psychotropic substances.
- c. Law Number 31 of 1999 concerning Eradication of Corruption: Places wiretapping authority on investigators to examine corruption cases.
- d. Law Number 36 of 1999 concerning Telecommunications: Apart from regulating wiretapping, it gives technology service owners the power to provide communication data as evidence in court.
- e. Perppu Number 1 of 2002 concerning Terrorism: Establishes the power of wiretapping in investigations of terrorism crimes with permission from the court.
- f. Law Number 18 of 2003 concerning Advocates: Protects communications between advocates and their clients from eavesdropping.
- g. Law Number 21 of 2003 concerning Human Trafficking: Grants wiretapping authority to investigators for human trafficking cases with permission from the court.
- h. Law Number 11 of 2008 concerning Information and Electronic Transactions: Allows wiretapping in law enforcement with certain permits.
- i. Law Number 35 of 2009 concerning Narcotics: Gives authority to the National Narcotics Agency to carry out wiretapping related to narcotics.
- j. Law Number 8 of 2019 concerning Money Laundering: PPAATK can recommend wiretapping to investigators to prevent money laundering.
- k. Law Number 46 of 2009 concerning Corruption Crime Courts: Establishes that wiretapping results can be used as evidence in court if carried out in accordance with specified procedures.

Testing the readiness of Indonesian law enforcement and international law against Cyber Espionage can be done through organizational management principles

¹⁴Go Lisnawati, "Underlining Law Number 11 of 2008 concerning Information and Electronic Transactions in the Dimensions of Cyber Law Development", *Mika Journal*, Vol. 12, no. 1, (2009), p. 96

¹⁵Nurazizah, Amirudin, and Ufran, "Criminal Acts of Wiretapping (Cyber Espionage) According to Positive Law in Indonesia", *Wahana Pendidikan Scientific Journal*, Vol. 9, no. 13, (2023), p. 483-485.

¹⁶R. Soesilo, *The Criminal Code (KUHP) and its Complete Commentary Article by Article*, (Bogor: Politea, 1994), p. 290-293.

using a three legal subsystem approach. Organizations, in this case the Indonesian government, are in an effort to face the threat of Cyber Espionage. One of the principles of organizational management is Planning, Organizing, Actuating, and Controlling (POAC) which was introduced by George R. Terry. The POAC principle contains stages in carrying out organizational functions which consist of planning, organizing, directing and monitoring.

1. Planning

Planning is a stage for a manager to decide on a vision and mission, determine implementation to achieve goals by dividing responsibility for implementing the plan to someone and measuring indicators of success by comparing goals. The application of planning principles in law enforcement can take the form of searching for and reviewing national legal arrangements, including the results of ratification of international agreements relating to Cyber Espionage and developing plans for law enforcement. In the Criminal Code (KUHP) in Indonesia, there are regulations regarding crimes that utilize computer networks or cybercrime. The provisions in the Criminal Code relating to cyber crime are still conventional. However, cyber crime can be classified based on the level of intensity of the case, namely:

- a) Provisions regarding theft offenses.
- b) Provisions regarding the act of entering or crossing another person's territory.
- c) Provisions regarding disclosure of secrets.

The rules in the Criminal Code that regulate the classification of these cases can be found in articles 362 of the Criminal Code, 167 of the Criminal Code, 112-113 of the Criminal Code. In using this article, a legal approach or interpretation must be taken. An example of the application of legal interpretation is the case of electricity theft. What is at issue in this case is whether the flow of electricity can be interpreted as "goods" and whether the action can be said to be "taking". The Dutch Judicial Council has decided that electrical circuits are included in the goods and thus taking action has occurred as regulated in Article 362 of the Criminal Code. The thing that was taken into consideration by the judicial panel was that the purpose of Article 362 was an effort to protect other people's property (Hoge Raad dated 23 May 1921, W 10726, NJ 1921. 564). Then, regarding the provisions regarding entering or crossing other people's territory. In article 167 of the Criminal Code it is stated that attempts to enter a house.

a closed room or yard, in a way that is not justified by normative values and which poses a threat to the home owner, is punishable by a maximum penalty of nine months and can be increased if it is followed by a threat or there is cooperation in carrying out the action. When related to Cyber Espionage, the place where this crime occurs is cyberspace. Therefore, if you carry out a legal interpretation of this article, what will be recorded is the act or act which is against the law. Another provision related to the act of Cyber Espionage is that this act results in the leaking of data, especially data that must be confidential, so the provisions that can be applied are Article 112, Article 113 and Article 114 of the Criminal Code. Starting from a maximum criminal

threat of one year, namely when a person is negligent in carrying out his duties so that confidential letters or objects can be known by parties who do not have the right to know, up to the most serious criminal threat, namely when someone deliberately provides state secret information to another country, he is threatened with a maximum prison sentence. seven years long. Apart from the Criminal Code, there are other provisions relating to Cyber Espionage, namely Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and Law Number 36 of 1999 concerning Telecommunications (UU Telkom). This law was formed to provide a legal umbrella for law enforcement officials to arrest and ensnare perpetrators of this crime rather than relying solely on the Criminal Code as a source of law in resolving these criminal offenses. In the ITE Law there is Article 30 Paragraph (2) which regulates Cyber Espionage provisions which state that a person who deliberately accesses a computer or electronic system in an unauthorized way to obtain electronic information or electronic documents is subject to a maximum prison sentence of 7 (seven) years and / or a maximum fine of IDR 700,000,000.00 (seven hundred million rupiah). Subject provisions in Cyber Espionage actions are also specified in this law, which consists of individuals and corporations. Regarding acts of Cyber Espionage carried out by corporations, this will result in a penalty being imposed, this is stated in Article 52 Paragraph (4) which can be understood when a corporation commits an act of Cyber Espionage, it will be punished with the principal penalty plus two-thirds. Regarding evidence in cyber crimes, evidence is added in the form of information or electronic documents. The provisions governing criminal acts in the telecommunications sector are regulated in the Telkom Law. In Article 22 and Article 50, it can be interpreted that every person is prohibited from accessing or manipulating computer or telecommunication networks and service providers. This article does not expressly state that Cyber Espionage is included in the formulation of the article, but regulates the actions of hackers who carry out espionage to spy on or intercept data. To strengthen law enforcement against acts of Cyber Espionage, Indonesia participated in the UN Anti-Espionage Resolution dated November 5 2013 .

2. Organizing

Organizing is the entire process of grouping people, tools, tasks, as well as authority and responsibility to create an organization that can be moved as a unit in order to achieve predetermined goals. The implementation of this stage is to ensure resources to carry out specific plans and division of tasks to agencies and law enforcement officers. Indonesia has several institutions related to the threat of Cyber Espionage, one of which is the Indonesian National Police (Polri). The National Police is a component of the state whose role is to maintain security and public order, enforce the law, and provide protection, guidance and services to the community in order to maintain domestic security. Military forces, namely the Indonesian National Army (TNI) and intelligence institutions, namely the State Intelligence Agency

(BIN), can face the threat of Cyber Espionage. The State Intelligence Agency (BIN) as a state intelligence agency is tasked with early detection of threats that could disrupt the stability of the country's defense and security and in this case coordinates with the TNI as an effort to defend the country through strictly guarding geographical boundaries from state attacks using its military force. Apart from that, Indonesia has been a member of the International Telecommunication Union (ITU) since 1949. This is based on Presidential Decree Number 10 of 1969 regarding the International Telecommunication Union Convention in Montreux in 1965. ITU is an international organization that operates in the telecommunications sector and is related to the United Nations. Nation (UN).

3. Actuating

Actuating in organizational management principles is an effort to realize plans by directing and motivating each employee according to their roles, duties and responsibilities. The application of the actuating principle in law enforcement can be that the government directs law enforcement agencies and officers to carry out enforcement in accordance with applicable law. The basis on which the National Police is expected to be able to provide guidance and protection to the community regarding Cyber Espionage is Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. The military's presence in the defense and security components in Indonesia is based on Article 3 of Law Number 34 of 2004 concerning the Indonesian National Army (TNI) which states that the TNI is under the president's orders in the deployment of military force. BIN has a legal basis in the form of Law Number 17 of 2011 concerning State Intelligence. In article 4, it is stated that BIN plays a role in carrying out early detection and warning efforts to prevent, ward off and overcome the nature of threats that may arise and endanger national interests and security. Regarding the TNI which also coordinates with BIN to maximize the country's defense and security, it is mentioned in Article 9. Then, ITU can collaborate with the National Police, TNI or BIN as a facilitator in developing security to face cyber threats, this is based on the results at the WSIS (World Summit of Information Society) in 2013. (International Telecommunication Union (ITU), 2015)

4. Controlling

Controlling is the final stage of every plan implementation which ensures that each task has gone according to plan and determines the next plan after seeing the results of the implementation. The efforts of the National Police, TNI, BIN, and ITU in enforcing the law against Cyber Espionage need to be supervised by each supervisory function unit from each institution such as the National Police General Supervision Inspectorate, the TNI Inspectorate General, the BIN Main Inspectorate, and for the ITU Institution, supervision can be carried out by the UN. or any member country. In this way, Indonesia can carry out law enforcement against Cyber Espionage by using laws that are still in force and running the institutions of the National Police, TNI, BIN and inviting ITU cooperation.

Cyber Espionage Regulations in International Law

In the realm of international law, *cyber espionage* is still a topic that is rarely discussed because there are no specific regulations governing this matter. ¹⁷The term "international law" itself was first introduced by Jeremy Bentham, a philosopher who is also a scholar from England, who introduced the concept of utilitarianism. ¹⁸JL Brierly, an international law expert, defines International Law as the legal framework and principles that bind countries in their relationships with each other. ¹⁹John Perkins has observed that international law developed based on the inexorable logic of international cooperation, applied in the context of foreign policy. The roots of law and its legitimacy lie in the dynamics experienced by these countries.

The Statute of the International Court of Justice, regulated in Article 38 paragraph (1), stipulates that the court will consider four sources to decide a case, including:²⁰

- a. International treaties, both general and specific, which establish rules that are expressly recognized by the countries participating in the treaty;
- b. International customs, including opinions juris and general customs, which have become legal norms due to recognition by the international community;
- c. General principles of Law recognized by civilized nations;
- d. Court decisions and views of leading legal experts from various countries, as additional sources for establishing legal rules.

With various legal sources mentioned in Article 38 paragraph (1), *cyber espionage activities* will be assessed based on several sources of international law. This involves a review of international treaties and conventions that may regulate the issue of *cyber espionage*, as well as an examination of the substance of international court decisions that may impact *cyber espionage* and various relevant principles. ²¹However, currently there are still no specific regulations that directly regulate *cyber espionage*, and there are even inconsistencies in the perception of traditional *espionage or Human Intelligence*. ²²Due to the legal vacuum regarding peacetime *espionage* in international law, individual countries have long criminalized acts of espionage through their domestic laws.

Several multilateral conventions indirectly touch on the issue of *espionage* in peacetime. For example, Article 7(3) of the 1959 *Antarctic Treaty* gives representative observers the right to carry out "inspections" of stations, installations, equipment and

¹⁷David Wallace, "Peeling Back the Onion of Cyber Espionage after Tallin 2.0", *Maryland Review*, Vol. 78, no. 2, (2019), p. 17.

¹⁸Gerald Postema, *Utilitarian International Order: Bentham on International Law and International Order*, (United Kingdom: Oxford University Press, 2019), p. 1.

¹⁹JL Brierly, *The Law of Nations: An Introduction to International Law*. (Jakarta: Bhartara 1963), p. 56

²⁰JG Starke, *Introduction to International Law*. (Jakarta: Sinar Graphics 2008), p. 78.

²¹Michael N. Schmitt, *Tallin Manual on the International Law Applicable to Cyber Warfare*. (London: Cambridge University Press, 2013), p. 45.

²²Veronika Prochko, "The International Legal View of Espionage", *E-International Relations*, available at <https://www.e-ir.info/2018/03/30/the-international-legal-view-of-espionage/>, accessed on April 27, 2024.

aircraft of countries that have ratified the convention. Acts of surveillance, investigation, or review may be considered espionage activities. Article 19 paragraph (2) c UNCLOS (*United Nations Conventions on the Law of the Sea*) states that actions aimed at collecting information that is detrimental to the defense or security of coastal states are prohibited. However, this article only applies to ships that wish to cross or sail in the territorial waters of a country, so it does not cover *cyber espionage* carried out remotely.²³

Espionage is often discussed in several articles in *the Vienna Convention on Diplomatic Relations* , *the Vienna Convention on Consular Relations* , and *the Convention on Special Missions* , such as Article 41 VCDR, Article 55 VCCR, and Articles 47(1) and (2) CSM. These conventions emphasize that diplomatic officials must comply with the laws of the receiving country and must not use diplomatic facilities for activities that violate their duties as diplomatic officials. Regulations regarding espionage in the context of wartime are often mentioned in *Convention (IV) Respecting the Laws and Customs of War on Land* , especially in Articles 29, 30 and 31. ²⁴In these treaties, it is not mentioned that acts of espionage and sending intelligence to countries enemy is considered an international offense. Espionage activities between countries, both in times of peace and war, have become common activities and are accepted by the international community. Although not explicitly declared war crimes, they are still generally considered criminal acts by states.²⁵

However, *cyber espionage*, as an evolutionary form of conventional espionage, has not been specifically regulated in international agreements as a violation of international law. There are exceptions if the activity violates existing norms and principles of International Law. Although there is no international agreement that specifically regulates *cyber espionage* , various countries have regulated this issue in their national legislation. For example, Indonesia has regulated it in Article 7 of Law no. 3 of 2002 concerning National Defense and Article 30 of Law No. 11 of 2008 concerning Electronic Transaction Information. Other countries, such as the United States, have had *cyber security* laws since 2012. The European Union, as a supranational organization, has a *Convention on Cybercrime* which regulates various obligations for member states to prohibit acts of *cybercrime* , including *cyber espionage* in their territory. ²⁶

The implications of international customs and opinions juris in the context of the legality of *cyber espionage* have not yet been fully established. There is no legal view that firmly supports that *cyber espionage acts* are in accordance with International Law. ²⁷ Article 38 of the Statute of the International Court of Justice explains that

²³Katharina Ziolkowski, *Peacetime Regime for State Activities in Cyberspace: International Law, International Relations and Diplomacy* . (Tallin: NATO CCD OE, 2013), p. 228

²⁴Vienna Convention on Diplomatic Relations 1963.

²⁵Christopher D. Baker, "Tolerance of International Espionage: A Functional Approach", *American University International Law Review* , Vol. 19, no. 5, (2003), p. 1092.

²⁶Aldo Rahmandana, "Judicial Review of Cyber Espionage Based on International Law", *Jurist-Diction* , Vol. 4, no. 6, (2021), p. 2149

²⁷Aaron Shull, *Cyber Espionage and International Law* , GigaNet: Global Internet Governance Academic Network, Annual Symposium 2013, p. 2.

international custom is one of the sources of International Law, which includes two main elements: State Practice and *Opinio Juris Necessitatis*.²⁸ Even though there have been many *cyber espionage incidents* that meet the first element, namely state practice, there is not yet clear enough evidence to justify these actions as applicable law. Therefore, *opinions juris* cannot be a justification for *cyber espionage activities* between countries.

Furthermore, after reviewing the two sources of international law on *cyber espionage*, it is also necessary to consider the implications of the principles and various related decisions to support arguments regarding the legality of *cyber espionage*. One of the guidelines published by an organization under NATO, namely CCDCOE (*Cooperative Cyber Defense Center of Excellence*), is *the Tallin Manual*. This guide was prepared by 20 international experts and practitioners with the aim of explaining how international law is applied in cyberspace. This guide discusses *cyber operations* carried out by countries and individuals. The contents of this guide try to reflect *international customs international law* or custom, as well as its consistency with other sources of international law, such as "the teachings of the most qualified publicists". Some of the statements in the guide, such as the views of the US government, may be considered a basis for the formation of *an opinions juris* relating to *cyber espionage*.²⁹

Conclusion

Based on the research results and discussion above, the author concludes that: Regulations regarding *cyber espionage* in Indonesia, especially regarding the practice of wiretapping, are regulated in several laws, such as the Telecommunications Law and the ITE Law. Violation of this rule can result in serious criminal sanctions, up to 15 years in prison. Wiretapping in the context of modern communication technology is strictly regulated and has a broad jurisdictional reach. The ITE Law has an important role in regulating electronic transactions and protecting the privacy of service users. The Constitutional Court's ruling strengthens the protection of citizens' privacy against wiretapping, emphasizing that every interception must be carried out legally and in accordance with the law. In addition, there are other laws that regulate wiretapping in the context of investigating certain crimes, such as human trafficking, corruption, terrorism, narcotics, money laundering, and others. Although considered a criminal offense, wiretapping is also permitted in certain contexts to uncover crimes.

The regulation of cyber espionage in international law remains underexplored, as there are currently no specific regulations directly governing it. International law, which binds states in their interactions, has evolved based on the necessity of international cooperation, reflected in state foreign policies. However, there continues to be a lack of explicit regulations addressing cyber espionage, whether in peacetime or wartime contexts. Given the increasing frequency and sophistication of cyber threats, it is crucial for international stakeholders to consider drafting

²⁸Tamas Hoffmann, "Dr. Opinion Juris and Mr. State Practice: The Strange Case of Customary International Humanitarian Law", *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae Sectio Iuridica*, Vol. 46, no. 1, (2006), p. 374

²⁹Michael N. Schmitt, "International Law in Cyberspace: The Koh Speech and Tallin Manual Juxtaposed", *Harvard International Law Journal*, Vol. 54, no. 1, (2012), p. 16.

comprehensive legislation, such as cyber laws, to establish clear norms and guidelines. Such laws could provide much-needed clarity on permissible and impermissible activities in cyberspace, enhance global cybersecurity, and deter malicious state-sponsored cyber operations.

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The Urgency of Establishing Child Protection Regulations from Online Games

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Abstract:

Online games that are increasingly accessible to every age group, especially children, still seem to contain many inappropriate actions such as violence, pornography, gambling, and the like, which hurt the quality of the nation's future generations. Moreover, there have been many criminal cases of children and adolescents influenced by online games containing violence, pornography, gambling, and the like. The Indonesian Child Protection Commission responded to this problem by urging the government to issue regulations regarding child protection immediately. However, there have been several regulations that have similar substance, so this paper examines to provide solutions to the urgency of establishing child protection regulations using two analytical knives in the form of responsive legal theory and Sadd Al-Dzari'ah which results in a discussion from both perspectives both found a good purpose to protect children from online games containing violence, pornography, gambling and the like so it is very important and necessary to immediately establish child protection regulations from online games. This research is specialized in the form of solutions that are made to overcome and deal with the impact of online games that contain violence and the like.

Keywords: online games; child protection; regulation.

Introduction

Over time, social change in Indonesia entered a new phase called modernization and development. Modernization as a process involves changes in society as well, centered on the use of modern technology.¹ The development of technology and information that is growing quite rapidly also affects almost all aspects of people's lives, both in the social, economic, educational, cultural, and even entertainment realms. Technology comes as a very real factor in the relationship with social change.² Before the emergence of the internet, our society,

¹ Satjipto Rahardjo, *Hukum dan Perubahan Sosial " Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia"*, Genta Publishing, Yogyakarta, 2009. Hlm. 10

² Satjipto Rahardjo, *Hukum dan Perubahan Sosial "Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia"*, Genta Publishing, Yogyakarta, 2009. Hlm. 42

especially children, still filled their free time with entertainment activities such as playing traditional games such as marbles, spinning tops, or team games that were popular such as soccer, volleyball, selodor, and the like. However, as time goes by, technological developments seem to drown out traditional games that require physical contact and direct communication. The development of technology brings a new chapter in the world of entertainment by serving online games or games that can be very easily accessed without being limited by space and time and can collaborate with friends in other areas by utilizing technology and internet access. This change is reflected in the increase in entertainment activities, especially online games that use the internet in daily activities of various ages.

Online games are games that are connected to a network or server to be played anytime and anywhere either individually or in groups.³ A few years ago, online gameplay had to require several tools such as computers, sticks, and the like to support the game. However, since the spread of gadgets, online game applications are easier to play and access by all groups. The ease of access and the rapid development of the times have also influenced many companies to improve the quality and quality of online games. Today, social problems due to the development of technology including online games have begun to manifest themselves in Indonesia. ranging from cases of violence by children, bullying, pornography, and ethical violations began to be rampant and very frequent, especially among children and adolescents. KPAI Commissioner Kawiyan pointed out that there have been many cases due to the impact of online games on children. Starting from the case of child pornography in Soetta, which in its development was suspected of being a crime of trafficking in persons. Where it happened started with online games. In addition to the Soetta case, there are also cases of children killing their parents which also started from online games. And there are many more criminal cases due to the impact of online games.⁴

In addition to the impact on the emergence of criminal cases, online games also have an impact on the mental development and behavior of children and adolescents as well as the emergence of moral and ethical degradation such as the habits of children and adolescents who often swear (say harsh words) and even have difficulty controlling emotions. Social changes that lead to the deterioration of the nation's next generation will certainly not leave the law untouched. Even Friedman says that "in an atmosphere of social change, it is the law that will be most quickly affected". (Friedman, 1953: 437)⁵. This situation is certainly related to the function of law that gives shape to social relations. Law can also be said to be an element that determines the procedures that must be taken to achieve the social goals desired by society in the social changes that occur.

Today, the Indonesian Child Protection Commission, hereinafter referred to as KPAI, urges the Government through the Ministry of Communication and Information Technology (Kominfo) to immediately act by issuing regulations and

³ Chairunisa, *Mengenal Game Online: Pengertian, Industri, Sejarah hingga Jenisnya*, Daily Social, 2002. [Mengenal Game Online: Pengertian, Industri, Sejarah hingga Jenisnya | DailySocial.id](https://dailysocial.id/mengenal-game-online-pengertian-industri-sejarah-hingga-jenisnya/)

⁴ Kadek Melda Luxiana, *Respon KPAI, Menkominfo Siap Blokir Game Online Mengandung Kekerasan*, Detiknews, 2024. [Respons KPAI, Menkominfo Siap Blokir Game Online Mengandung Kekerasan \(detik.com\)](https://www.detik.com/indonesia/kriminal/detiknews/kadek-melda-luxiana-respon-kpai-menkominfo-siap-blokir-game-online-mengandung-kekerasan)

⁵ Satjipto Rahardjo, *Hukum dan Perubahan Sosial "Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia"*, Genta Publishing, Yogyakarta, 2009. Hlm. 10

blocking online games that contain violence and the like to limit children's access to these things. In line with the discussion above, the government has been working on regulations in the form of Government Regulations on child protection governance in the implementation of electronic systems to overcome the problems of social changes that have occurred recently.

As we know, the Government has established several regulations to overcome this problem in the form of Regulation of the Minister of Communication and Information Technology Number 11 of 2016 concerning Classification of Electronic Interactive Games, then Regulation of the Minister of Communication and Information Technology Number 19 of 2014 concerning Handling Negatively Charged Internet Sites, there is also a Circular Letter of the Minister of Communication and Information Technology Number 3 of 2016 concerning Provision of Application Services and/or Content via the Internet, and the latest is the Regulation of the Minister of Communication and Information Technology Number 2 of 2024 concerning GIM Classification.

Some of the regulations mentioned above are certainly part of legal changes to respond to social changes that occur, especially in the world of entertainment in the form of online games. On the other hand, KPAI urges the government to make rules regarding the protection of children from the dangers of online games. Of course, this adds to the list of regulations regarding the regulation of online games, giving rise to indications of over-regulation, which is a problem of legislation in Indonesia. In the viewpoint of responsive legal theory which emphasizes law as a facilitator of various responses to social needs and aspirations. Where responsive legal theory contains a critical view that law is a means to an end. Responsiveness can be interpreted as serving social needs and interests that are experienced and found.⁶ Therefore, the relevance of responsive legal theory to the context of the discussion of the formation of regulations on child protection from online games is the need to examine more deeply to find out the objectives to be achieved in the formation of regulations.

While in the context of Islamic law, there is the *Sadd Al-Dzariah* method, which is used to analyze the feasibility of a process to achieve a goal.⁷ The formation of regulations on child protection from online games also needs to be studied for its process and purpose using the *Sadd Al-Dzari'ah* method to find the harm or shortcomings contained in the formation of these regulations.⁸ As in previous research discussed by Ryan Prianggih, H.E. Rakhmat Jazuli, and Ahmad Lanang Citrawan entitled "The Authority of the Classification Committee in the Test of Suitability of Online Games "Grand Theft Auto V". Based on the Regulation of the Minister of Communication and Information Technology Number 11 of 2016 concerning the Classification of Electronic Interactive Games" in 2023⁹, but the shortcomings of

⁶ Henry Arianto, *Hukum Responsif dan Penegakan Hukum di Indonesia*, Faculty of Law, Esa Unggul University, Jakarta, 2010 . 119

⁷ Amir Syarifuddin, *Ushul Fiqh II*, (Jakarta: Prenada Media, 2014), hlm. 449

⁸ Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2*. (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986), hlm. 873.

⁹ Ryan Prianggih, H.E. Rakhmat Jazuli dan Ahmad Lanang Citrawan, *Kewenangan Komite Klasifikasi Dalam Uji Kesesuaian Game Online "Grand Theft Auto V" Berdasarkan Peraturan Menteri Komunikasi dan Informatika Nomor 11 Tahun 2016 Tentang Klasifikasi Permainan Interaktif Elektronik*, Journal of Administrative Law and Public Policy, Volume 1 Nomor 2, Fakultas Hukum Universitas Sultan Ageng Tirtayasa, 2023.

this research only focus on classifying online game games that only focus on one game, namely “Grand Thief Auto” even though the game is currently starting to be abandoned. On the other hand, the research only examines the position of the Organization and Work Procedure of the Ministry of Communication and Information and examines and explains the obstacles to the supervision of game classification, but does not provide a definite solution to one of the obstacles, namely the legal vacuum. Then the journal by Abd. Rafi Ahsandhia entitled “The Authority of the Indonesian Child Protection Commission in Efforts to Prevent Online Violence in Children from the Perspective of Maqashid Syariah” in 2021. Where the research has results and discussions in the form of KPAI’s authority in protecting Indonesian children from online violence which is reviewed from the Maqashid Sharia perspective¹⁰. The research examines the overall protection of children from online violence, while the research we write focuses more on the protection of children from online games with two perspectives, namely responsive legal theory and Sadd Al-Dzari’ah which then offers solutions to the formation of child protection regulations from online games.

There is also previous research from Luthfi Hafidz Rafsanjani et al which explains “Formulation of Age Restriction Quiet Rules in Online Transactions of Virtual Property Games in Self-Service Stores as a Suggestion for Child Protection” the Year 2022.¹¹ This research examines child protection from online transactions in online games and does not focus on child protection from criminal acts in online games. The solution provided by this research is the establishment of regulations governing age restrictions in online game transactions in convenience stores. Meanwhile, this research focuses more on child protection from online games that contain crimes and are not good for consumption by children and adolescents. The next Literature Review which is in line with this research is from Reza Fahlevi with the title “Aspek Hukum Perlindungan Anak Dalam Perspektif Hukum Nasional.”¹² 2015. The research examines child protection from a broad national legal perspective, while this research focuses on the urgency of establishing child protection from online games that contain crimes. Then similar previous research from Laurensius Arliman S with the title “Local Government Participation in Sustainable Child Protection in Indonesia” in 2016.¹³ The journal focuses on discussing the participation of local governments in child protection, while this journal focuses on the urgency of establishing child protection from online games that contain criminal acts which are not only limited to the participation of local governments, but rather to authorized institutions both KPAI, Menkominfo, and the Central Government.

¹⁰ Abd. Rafi Ahsandhia yang berjudul “Kewenangan Komisi Perlindungan Anak Indonesia Dalam Upaya Mencegah Kekerasan Online Pada Anak Perspektif Maqashid Syariah”, Journal of Family Studies, Volume 5 Issue 2, UIN Malang, 2021. <http://urj.uin-malang.ac.id/index.php/jibl>

¹¹ Luthfi Hafidz Rafsanjani, *Formulasi Peraturan Tentang Pembatasan Usia Dalam Transaksi Online Game Virtual Properti Pada Toko Swalayan Sebagai Saran Perlindungan Anak*, Fakultas Hukum Universitas Diponegoro, Jurnal Crepido, Volume 4, Nomor 2, 2022. <https://ejournal2.undip.ac.id/index.php/crepido/>

¹² Reza Fahlevi, *Aspek Hukum Perlindungan Anak Dalam Perspektif Hukum Nasional*, Lex Jurnalica Volume 12 Nomor 3, STIK PTIK Widya Arya Guna, Jakarta, 2015

¹³ Laurensius Arliman S, *Partisipasi Pemerintah Daerah Di Dalam Perlindungan Anak Yang Berkelanjutan Di Indonesia*, Jurnal Ilmu Hukum, Volume 7, Nomor 2. STIH Padang. 2016

There is also a previous study entitled “Urgensi Profesionalisme Guru Pendidikan Anak Usia Dini dalam Penyelenggaraan Perlindungan Anak” from the writings of Desmawati Roza, Nurhafizah, Yaswinda in 2019.¹⁴ This research focuses on the professionalism of PAUD teachers towards the implementation of child protection which is considered very important. While this research focuses on the urgency of establishing child protection from online games that contain criminal acts. The previous research from Djoko Siswanto Muhartono entitled “Urgensi Regulasi Penyelenggaraan Perlindungan Anak Di Kabupaten Kediri”, 2021.¹⁵ This research focuses on the implementation of child protection in general, which is only focused on Kediri Regency. While this research is more specific to the urgency of establishing child protection regulations from online games but within the national scope.

The next literature review is an article by Djihan Yuniantari and Emmilia Rusdiana in a journal entitled "Kajian Yuridis Pelecehan Seksual Terhadap Anak Melalui Daring" in 2021.¹⁶ That journal only focuses on protecting children from online sexual harassment, while this journal focuses more on the urgency of establishing child protection regulations that focus on online games that contain crime. There is also previous research in the form of “Urgensi Pembentukan Komisi Perlindungan Anak Indonesia Daerah Untuk Meningkatkan Upaya Pencegahan Kejahatan Terhadap Anak di Kabupaten Sambas” written by Hardi Alunaza in 2022.¹⁷ The journal only focuses on the formation of regional Indonesian child protection commissions. Meanwhile, this Kai journal focuses more on the urgency of establishing regulations for protecting children from online games. There is also a literature review from Wiwin Guanti with the title "Urgensi Perlindungan Hak Konstitusi Anak Oleh Pemerintah Daerah Kabupaten Sambas" in 2021.¹⁸ The journal focuses on researching the urgency of protecting children's constitutional rights by the Sambas Regency Regional Government, but does not address the urgency of establishing regulations for protecting children from online games which have recently become increasingly popular containing violence, pornography, gambling and the like.

From the background explanation above, it is clear that there is a need for this problem to be discussed and studied in more depth with two problem formulations as follows: 1) What is the urgency of establishing regulations for child protection from online games from the perspective of responsive legal theory? 2)

¹⁴ Dasmawati Roza, Nurhafizah, Yaswinda, *Urgensi Profesionalisme Guru Pendidikan Anak Usia Dini dalam Penyelenggaraan Perlindungan Anak*, Jurnal Obsesi: Jurnal Pendidikan Anak Usia Dini, Volume 4, Issue 1 Universitas Negeri Padang 2019

¹⁵ Djoko Siswanto Muhartono, *Urgensi Regulasi Penyelenggaraan Perlindungan Anak Di Kabupaten Kediri*, Jurnal Ilmu Sosial Dan Ilmu Politik, Volume 14 Nomor 1, Universitas Pawayatan Daha Kediri, Kediri. 2021

¹⁶ Djihan Yuniantari, Emmilia Rusdiana “*Kajian Yuridis Pelecehan Seksual Terhadap Anak Melalui Daring*”, Fakultas Ilmu Sosial Dan Hukum, Novum, Jurnal Hukum, Volume 8 Nomor 3 Universitas Negeri Surabaya, 2021

¹⁷ Hardi Alunaza, *Urgensi Pembentukan Komisi Perlindungan Anak Indonesia Daerah Untuk Meningkatkan Upaya Pencegahan Kejahatan Terhadap Anak di Kabupaten Sambas*, Jurnal Ilmiah Pendidikan Madrasah Ibtidaiyah, Volume 6, Nomor 1 2022

¹⁸ Wiwin Guanti, *Urgensi Perlindungan Hak Konstitusi Anak Oleh Pemerintah Daerah Kabupaten Sambas*, Al-Sulthaniyah, Volume 10 Nomor 2, Institut Agama Islam Muhammad Syafiuddin Sambas. 2021.

What is the urgency of establishing regulations for child protection from online games in perspective *Sadd Al-Dzari'ah*? Which was formulated into a research entitled "**The Urgency of Establishing Regulations for the Protection of Children from Online Games**"

Method

This research is a type of normative legal research, namely to analyze the extent of the urgency of establishing regulations for child protection from online games in terms of Responsive Law Theory and *Sadd Al-Dzari'ah*. The approach used is a statutory approach and a conceptual approach. Types and legal materials consist of primary, secondary and tertiary legal materials.

Result and Discussion

The Urgency of Establishing Regulations for the Protection of Children from Online Games from the Perspective of Responsive Legal Theory

In the current technological era, developments occur in all aspects of life including entertainment activities such as online games. Online gaming is a social phenomenon in the digital era which has given rise to several legal problems which of course must be immediately responded to by the government in order to fulfill the public interest by forming regulations that regulate legal phenomena and problems as a result of online gaming, especially as Indonesia is a country that wants all national life. and the state is regulated by law.¹⁹ Playing online games has had an impact on increasing criminal acts by children, changes in behavior and words that have begun to deviate from ethics in general. Following the explanation above, KPAI has responded by urging the government to form regulations for protecting children from online games, which is currently being prepared by the government. On the other hand, there are several previous regulations that regulate the classification of games, basically as a response to social changes, namely the emergence of online games. However, recently violent online games have become increasingly popular among children, giving rise to negative impacts, so that previously existing regulations are deemed unable to accommodate these problems, so it is necessary to respond and make changes by forming regulations for the protection of children against online games.

Basically, game makers have been prohibited from providing games with negative content that violates decency and is pornographic, contains hate speech (*hate speech*), as well as containing content that creates conflict or disagreement in accordance with the provisions of the Circular Letter of the Minister of Communication and Information Technology Number 3 of 2016 concerning Provision of Application Services and/or Content Via the Internet (Over The Top). Meanwhile, both the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 11 of 2016 concerning the Classification of Electronic Interactive Games and the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 2 of 2024 Classification of Games only regulate the classification of games based on age groups in accordance with the provisions of Article 8 paragraph (1) of the Minister

¹⁹ Pasal 3 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

of Communication and Information Regulation No. 2/2016²⁰ to meet the criteria based on user age as regulated in the provisions of the following Articles.

Provisions regarding criteria for games that display writing or images related to cigarettes or electronic cigarettes, alcoholic drinks, narcotics, psychotropics and/or other addictive substances, display elements of violence on animated characters that resemble humans, display elements or content of blood, mutilation, and/or cannibalism, contains elements of adult humor with sexual connotations, displays human-like characters but does not show vital organs, breasts and/or buttocks, the content contained in game products does not contain pornography, shows game activities that are based solely on luck or anything else. betting as long as it does not use legal means of payment, foreign currency, electronic money, or intangible commodities in the form of digital assets that can be traded and exchanged for legal means of payment, as well as displaying products containing symbols that try to cause feelings of horror and/or extreme fear. and has network interaction facilities in the form of conversations in accordance with the provisions of Article 13 letters a to i of Permenkominfo No. 2/2024, only classified as users aged 18 (eighteen) years or more. However, in reality, users under the age of 18 can still access online games with the classifications mentioned above very easily.²¹

If studied from a responsive legal perspective, it has two prominent characteristics, namely a shift in emphasis from rules to principles and goals and the importance of democracy both as a legal goal and a way to achieve it.²² Where in essence, responsive legal theory is result-oriented, namely the goals to be achieved outside law.²³ So the formation of child protection regulations from online games is considered necessary to accommodate legal problems and social problems that occur due to the proliferation of online games which contain a lot of violent, pornographic and similar content which is very easy to access by all members of the public even though they have been classified in accordance with the provisions of Permenkominfo No. 2/2024.

The formation of regulations to protect children from online games is a response from the government that is in accordance with the characteristics of the law responsive on. Namely focusing on the goals and principles to be achieved in the form of protecting children from content and features of online games that are not good for them consumed and to suppress criminal acts and disgraceful acts from children and teenagers which recently often occur as a result of the influence of online games that are not good for consumption. On the other hand, related to the context of law enforcement in Indonesia, responsive law implies that law enforcement cannot be done half-heartedly. Executing the law is not just implementing the law, but must have its sensitivity social,²⁴ this means that the emphasis is not only on the need to establish regulations to protect children from

²⁰ Lihat juga ketentuan Pasal 4 ayat (3) dari Peraturan Menteri Komunikasi dan Informatika Republik Indonesia Nomor 11 Tahun 2016

²¹ Lebih lanjut lihat ketentuan dari Peraturan Menteri Komunikasi dan Informatika Republik Indonesia Nomor 2 Tahun 2024

²² Henry Arianto, *Hukum Responsif dan Penegakan Hukum di Indonesia*, Lex Jurnalica Volume 7 Nomor 2, Fakultas Hukum, Universitas Esa Unggul, Jakarta, 2010. Hlm. 119

²³ Philippe Nonet, *Hukum Responsif*, Nusa Media, Bandung. 2019. Hlm 85.

²⁴ Henry Arianto, *Hukum Responsif dan Penegakan Hukum di Indonesia*, Lex Jurnalica Volume 7 Nomor 2, Fakultas Hukum, Universitas Esa Unggul, Jakarta, 2010. Hlm. 119

online games, but also the role of the environment and parents in being able to control and limit children from consuming bad online games. As well as improving moral education in the family and environment which must continue to be encouraged by both the government and parent.

The Urgency of Establishing Regulations for the Protection of Children from Online Games in Perspective *Sadd Al-Dzari'ah*

In perspective *Sadd Al-Dzari'ah* which is an effort to determine law to achieve benefits and avoid damage by analyzing various possibilities/disadvantages contained in the process/path to achieving a goal.²⁵ In the context of the formation of child protection regulations from online games which have recently had quite a bad impact on the mental condition and behavior of children and teenagers, the formation of child protection regulations from online games to overcome the social and legal problems that occur is a good goal. which should be implemented to protect future generations of the nation. Moreover, online games that contain violence, pornography and so on are very easy to access even though they have been classified according to the user age limit in the provisions of Perkominfo No. 2/2024. So it can be said that the establishment of regulations to protect children from online games has a high level of urgency and is a goal that does not have visible negative aspects.

If we analyze the process of forming regulations for protecting children from online games, then the process of forming these regulations is indeed necessary because there are no regulations that regulate the problems that arise from the ease of access to online games by all members of the public. Good Perkominfo No. 11/206 or Perkominfo No. 2/2024 which has just been issued by the government is only limited to the classification of games, the scope of the regulations only includes procedures for classifying games, community participation and sanctions. administrative in accordance with the provisions of Article 3 letters a to c. However, it does not clearly and specifically provide protection for children and how to handle and prevent games containing themharm still exists.

The drafting process has involved the Indonesian Child Protection Commission, the Ministry of Women's Empowerment and Child Protection, as well as the Minister of Communication and Informatics. Currently the draft Regulation is in the harmonization stage at the Ministry of Law and Human Rights.²⁶ So that the formation process can be said to be correct and appropriate because it was prepared and formulated by institutions that collaborate and actually handle this matter. From the process of forming regulations for protecting children from online games, no harm can be found, so both the process and the objectives of forming regulations for protecting children from online games can be said to be good and indeed have an urgency to be issued immediately.

Then from the explanation above, if the formation of child protection regulations is viewed from the level of damage caused²⁷ then it is

²⁵ Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2*. (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986), hlm. 873.

²⁶ Farih Maulana Sidik, *KPAI Sambut Baik Rencana Pemerintah Terbitkan Aturan Anak Main Game Online*, DetikNews, 2024. [KPAI Sambut Baik Rencana Pemerintah Terbitkan Aturan Anak Main Game Online \(detik.com\)](https://www.detik.com/berita/kpaia-sambut-baik-rencana-pemerintah-terbitkan-aturan-anak-main-game-online)

²⁷ Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2*, Cetakan Pertama, 885.

possiblecategorized As a *Dzari'ah* who rarely leads to harm or damage, this means that if the action is carried out, it will not necessarily cause damage. The biggest risk from the formation of these regulations is the occurrence of over-regulation of online game regulations, because there are already previous regulations in the form of Minister of Communication and Information Regulation Number 2/2024 about Game Classification. But it's possibleimpact This form of over regulation is refuted because Minister of Communication and Information Regulation No. 2/2024 is only limited to classifying games and does not fully regulate the protection of children from online games that contain negative content. Apart from that, the increasing prevalence of criminal acts and the like among children and teenagers due to the influence of online games which have a negative content encourages the importance of the government immediately establishing and issuing regulations regarding the protection of children from online games. Therefore, if these regulations are not immediately issued, there are other bad possibilities that will occur rather than just the badness of over-regulation. This is also in line with the Fiqh rule, namely "rejecting harm is prioritized over taking benefits". This means rejecting the possibility of the nation's generation getting worse and the spread of criminal acts and the like due to the influence of online games which have a negative content by establishing regulations to protect children from online games taking priority over taking benefits by avoiding over-regulation.

Conclusion

Of the two analytical tools used, namely responsive legal theory or method *Sadd Al-Dzari'ah* to analyze the urgent problem of establishing regulations for protecting children from online games, a common thread can be drawn that: Legally responsive, the formation of child protection regulations from online games is an important and necessary response with the aim of overcoming the rise of criminal acts and the like among children and teenagers due to the influence of online games that contain violence, pornography, gambling and the like which are certainly disturbing. society at large. So it can be said that the formation of these regulations is in accordance with the two characteristics and objectives of responsive law. Then in perspective *Sadd Al-Dzariah*, The formation of child protection regulations from online games has found no harm or content of damage that would result from this formation, both in terms of objectives and process. So it can be said to be in accordance with the method *Sadd Al-Dzari'ah*.

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Cyberbullying in Indonesia: Phenomenon, Impact and Legal Anticipation

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Abstract:

This research aims to determine the phenomenon of cyberbullying in Indonesia, as well as analyze its impact and the legal efforts that can be taken to overcome this problem. The phenomenon of cyberbullying has become a serious concern in the current digital era, where individuals use technology and social media to spread content that demeans, intimidates, or harms other people online. This research involves the analysis of qualitative data collected through a study of relevant literature. The results of this research reveal that cyberbullying in Indonesia has spread widely on various online platforms, including social media, instant messaging, forums, and blogs. The impact of cyberbullying on its victims includes emotional distress, depression, anxiety, social isolation, and even in some cases, suicidal thoughts. Apart from that, this research also considers the long-term impacts that may occur on victims such as decreased academic achievement and problems in interpersonal relationships. To overcome this phenomenon, this research proposes several legal measures that can be taken in Indonesia. This includes strengthening existing regulations, such as laws that protect victims of cyberbullying and provide strict sanctions for perpetrators. In addition, preventive measures are also proposed, such as public education and awareness regarding cyberbullying, the development of school policies involving the responsible use of technology, and cooperation between authorities, educational institutions, and the community.

Keywords: cyberbullying; social media; law.

Introduction

In the increasingly advanced digital era, developments in information and communication technology have changed the order of human life. The presence of the Internet of Things (IoT) in recent years has increased the use of social media and other digital platforms, until it has finally become commonplace and has penetrated various aspects of life, such as education, work, and entertainment. However, behind this progress, phenomena have emerged that are detrimental to society, such as cyberbullying or online bullying, which has become one of the serious social problems in Indonesia. Various definitions of cyberbullying have been presented in much literature. For example, Raskaus and Stoltz define cyberbullying as bullying that uses electronic media to degrade, threaten, or intimidate peers. However, a more comprehensive and concise definition is given by Peter and Petermann. They define cyberbullying as “the use of information and communications technology (ICT) to

repeatedly and intentionally hurt, degrade, or embarrass a target”¹.

In cybercrime terminology itself, cyberbullying is included in the category of privacy violations or crimes that involve attacks on someone or someone's personal data. The explanation from the Cyber Bullying Research Center is that the elements of cyberbullying consist of deliberate, repeated harm to computers, cell phones, and other electronic devices². So it is known that the consequences of cyberbullying can damage a person's mental health, so punishment is needed commensurate with the impact³. The phenomenon of bullying has actually been around since the mid-20th century. The proliferation of Information and Communication Technology (ICT) has made bullying increasingly widespread with various aspects such as the impact of embarrassment. The disinhibition effect is a behavioral difference between face-to-face meetings and virtual meetings. Other factors such as anonymity on the Internet, unmonitored electronic media, and increased access to target groups also play a role in cyberbullying. Meanwhile, the phenomenon of cyberbullying in Indonesia is increasing along with increasing internet penetration and the use of social media among the public. Moreover, the digital native generation who grew up with easy access to technology is often the main target of cyberbullying. The anonymity provided by digital platforms provides an opportunity for perpetrators to spread content that demeans and insults others without having to face immediate consequences.

The impact of cyberbullying is very serious and can have a negative impact on the mental and emotional health of the victim. Victims of cyberbullying often experience stress, depression, anxiety, and decreased self-esteem, which in extreme cases can even lead to thoughts of suicide. Apart from that, cyberbullying can also affect the victim's academic performance and social relationships. Therefore, it is very important to understand and take this phenomenon seriously. In a legal context, Indonesia has taken steps to overcome cyberbullying through several articles contained in the Criminal Code, such as insults, threats, and unpleasant acts, they can be used to ensnare perpetrators of cyberbullying. In addition, in 2024, the Indonesian government will update the Electronic Information and Transactions Law (ITE Law) to include provisions regarding misuse of electronic communications. The ITE Law regulates actions related to the use of information technology, such as defamation, dissemination of detrimental information, etc. Apart from that, the Child Protection Law can also be used to protect children from cyberbullying, but the definition and scope of cyberbullying against children have not been regulated in detail. However, implementing and enforcing laws related to cyberbullying is still a challenge. In handling cyberbullying cases in Indonesia, the effectiveness of law enforcement is

¹ Huong Thi Ngoc Ho and Hai Thanh Luong, “Research Trends in Cybercrime Victimization during 2010–2020: A Bibliometric Analysis,” *SN Social Sciences* 2, no. 1 (January 2022): 4, <https://doi.org/10.1007/s43545-021-00305-4>.

² Nadia S. Ansary, “Cyberbullying: Concepts, Theories, and Correlates Informing Evidence-Based Best Practices for Prevention,” *Aggression and Violent Behavior* 50 (January 2020): 101343, <https://doi.org/10.1016/j.avb.2019.101343>.

³ Aiman El Asam and Muthanna Samara, “Cyberbullying and the Law: A Review of Psychological and Legal Challenges,” *Computers in Human Behavior* 65 (December 2016): 127–41, <https://doi.org/10.1016/j.chb.2016.08.012>.

still a challenge. No law specifically regulates cyberbullying in Indonesia. Existing regulations are still spread across various other regulations such as the ITE Law, the Criminal Code, and the Child Protection Law. Apart from that, the definition and scope of cyberbullying in the legislation are unclear, making it difficult to handle cases.

In this article, we discuss the phenomenon of cyberbullying in Indonesia, including the factors that influence it, its impact on victims, and the legal efforts that can be taken to overcome this problem. By understanding this phenomenon in more depth, it is hoped that a safer and more dignified digital environment can be created for all individuals in Indonesia. In criminological studies, there are three approaches that can be used to study crime and punishment, namely descriptive, normative, and causal approaches. The descriptive approach is an approach that involves observing and collecting data related to crime facts and criminals. The normative approach is to discover and express laws of a scientific nature, whose uniformity and tendencies are recognized. Causal approach to find out the reasons why criminals commit these crimes. Efforts to find out crime using this approach are known as crime etiology.

Referring to this opinion, it can be understood that the use of criminal etiology theory in cyberbullying cases is very necessary because it is used as a basis for decision-makers in eradicating cyberbullying so that prevention can be carried out in a targeted and effective manner. Crime prevention strategies need to consider the factors that cause crime. When certain conditions can consistently be associated with crime. Crime prevention requires improving certain conditions so that in the future cases of cyberbullying can be minimized. Based on the background above, the problem formulation in this research is as follows: What is the phenomenon and impact of cyberbullying in Indonesia? How does Indonesian law anticipate cyberbullying crimes?

This research is normative legal research with the research analysis technique used in this research is the IRAC method (Issue, Rule, Application, Conclusion)⁴. Issue, identifying problems that are developing in society. In this research, the problem raised is that cyberbullying crimes continue to increase, so further research is needed regarding the phenomenon and impact of cyberbullying. Rule, identifying the law that applies in regulating a problem. Application, determining how legal rules apply to resolve problems. Conclusion, namely drawing conclusions from the legal analysis that has been carried out.

Result and Discussion

Cyberbullying Trends and Developments

Cyberbullying is a term used to describe bullying behavior that occurs online, such as online aggression, harassment, and attacks against individuals via electronic media⁵. According to Kowalski, cyberbullying occurs through instant messaging,

⁴ Kelley Burton, "Assessment Rubric on IRAC (Issue, Rule, Application," *Journal of Learning Design* 10, no. 2 (2017).

⁵ Robin M. Kowalski et al., "Bullying in the Digital Age: A Critical Review and Meta-Analysis of Cyberbullying Research among Youth.," *Psychological Bulletin* 140, no. 4 (July 2014): 1073–1137, <https://doi.org/10.1037/a0035618>.

email, chat rooms, websites, video games, or attacks via electronic media. Most bullying behavior comes from various complex environmental factors, not just one factor. Olweus defines bullying as a negative action carried out by one or more people which is carried out repeatedly and occurs from time to time⁶.

Currently, cyberbullying has become a global phenomenon that is becoming increasingly worrying from year to year. Various studies, both national and international, show a significant trend in increasing the prevalence of cyberbullying cases. This phenomenon does not only occur in Indonesia but is also experienced by many other countries in the world. Understanding the dynamics of trends and developments in cyberbullying is an important step for designing effective prevention and treatment strategies. In this sub-chapter, we will discuss in more depth how the number of cyberbullying cases continues to increase, the factors that drive this trend, and the implications that arise. It is hoped that a comprehensive understanding of the actual conditions of cyberbullying in various parts of the world can help us anticipate and mitigate this increasingly widespread threat.

Various surveys and research conducted in various countries show that cases of cyberbullying continue to increase significantly from year to year. For example, a global survey conducted in 2021 found that 1 in 4 children and teenagers had been victims of cyberbullying. This data shows a quite drastic increase compared to similar surveys conducted several years earlier. The percentage of cyberbullying in Indonesia based on UNICEF data is 45% of 2,777 or around 1:2 of Indonesian children admit to having been victims of cyberbullying⁷. Meanwhile, the results of research by the Center for Digital Society (CfDS) until August 2021 regarding Cyberbullying Cases carried out on 3,077 students in 34 provinces showed that 1,895 students, or around 45.35% admitted to being victims, and 1,182 students or around 38.41% admitted to being a victim⁸. This is the impact of the high level of Internet penetration in Indonesia because based on reports from the Indonesian Internet Service Providers Association (AAPJII) throughout 2021-2022, the 13-18 year age group has the highest Internet penetration rate in Indonesia, namely around 98.64%. In 2023, the 16-30 year age group will still be the most dominant group in accessing the Internet.

This trend of increasing prevalence of victims of cyberbullying is not only occurring in Indonesia but also in many other countries in the world. This is a serious concern because the negative impact it has, both psychologically, socially, and academically, is very worrying for the growth and development of children and adolescents. By understanding the actual conditions related to the increase in

⁶ Dan Olweus, "Cyberbullying: An Overrated Phenomenon?," *European Journal of Developmental Psychology* 9, no. 5 (September 2012): 520–38, <https://doi.org/10.1080/17405629.2012.682358>.

⁷ "Perundungan Di Indonesia: Fakta-Fakta Kunci, Solusi, Dan Rekomendasi" (UNICEF, 2020), <https://www.unicef.org/indonesia/media/5691/file/Fact%20Sheet%20Perkawinan%20Anak%20di%20Indonesia.pdf>.

⁸ Fahdi Fahlevi, "1.895 Remaja Alami Perundungan Secara Siber, Pelakunya 1.182 Siswa," n.d., <https://www.tribunnews.com/nasional/2023/02/01/1895-remaja-alami-perundungan-secara-siber-pelakunya-1182-siswa>.

cyberbullying cases globally and locally, prevention and handling efforts can be carried out more effectively by various relevant stakeholders.

Characteristics of Cyberbullying Perpetrators

Apart from understanding the general trends in the development of cyberbullying, knowing the characteristics of the perpetrator is also an important aspect of seeking comprehensive treatment. Different from conventional forms of bullying which are usually carried out directly, cyberbullying perpetrators have their characteristics that need to be taken into account. In recent years, there has been a shift in the profile and motivations of cyberbullying perpetrators, both in terms of age, background, and the way they operate. A deeper understanding of who is involved in cyberbullying and the factors that encourage it will be very helpful in developing targeted prevention and intervention strategies. Following are some characteristics of cyberbullying perpetrators:

a. **Varied Age Range**

Cyberbullying perpetrators do not only come from children and teenagers but can also be found among adults. Studies show that the age range of perpetrators ranges from elementary school age to young adults. Various studies and surveys conducted in various countries show that cyberbullying perpetrators do not only come from children and teenagers but can also be found among adults. The age range of cyberbullying perpetrators is quite wide, from elementary school age to young adults. A study conducted in the United States in 2021 found that around 20% of cyberbullying perpetrators came from the 8-12 year age group (primary school age). Meanwhile, the other 35% of perpetrators were in the age range of 13-17 years (teenagers). However, what is interesting is that around 45% of cyberbullying perpetrators come from the 18-29 year age group (young adults). Apart from that, similar research results were also found in several European countries. A 2020 survey in the UK revealed that 30% of cyberbullying perpetrators were under 18 years old, while the other 70% were adults aged 18-35 years. These findings show that cyberbullying is no longer only a problem among children and teenagers, but can also be carried out by adults. This shows the need for prevention and treatment strategies that involve various age groups, not just focusing on children and adolescents.

b. **Lack of Empathy and Self-Control**

Cyberbullying perpetrators generally have low empathy abilities and poor self-control. They tend to have difficulty understanding the impact of their actions on the victim. Many studies have found that one of the common characteristics of cyberbullying perpetrators is low empathy and low self-control. This is the main factor underlying their cyberbullying behavior. The low ability to empathize makes it difficult for cyberbullying perpetrators to understand and feel the impact of their actions on the victim. They tend to be less able to put themselves in the victim's position and think about the feelings and suffering experienced by the victim as a result of their actions. On the other hand, poor self-control makes it difficult for the perpetrator to control negative impulses, emotions and urges. When they face problems or conflicts, they tend to channel them through cyberbullying without thinking about the impact. The combination of a lack of empathy and poor self-control allows perpetrators to easily hurt others through cyberbullying. They tend not to have feelings of guilt or regret for the negative impact they have on their victims.

Understanding these characteristics is important for developing appropriate interventions, such as programs to increase empathy and self-control, to minimize future cyberbullying behavior.

c. Aggressive Tendencies

Many studies have identified that cyberbullying perpetrators also tend to behave aggressively, both verbally and physically, in the real world. In the realm of verbally aggressive behavior, perpetrators often carry out forms of aggression such as mocking, criticizing, or intimidating victims via digital media. Harsh words, insults, and degrading comments are the main weapons of cyberbullying perpetrators to hurt and dominate their victims. This verbally aggressive behavior is often the initial trigger for more serious acts of cyberbullying. Victims can feel afraid, have low self-esteem, and be depressed due to the verbal attacks they receive. Verbal aggression carried out in the digital world is considered more daring and uncontrollable than in the real world. The perpetrator feels freer and protected behind the screen, so he does not hesitate to say harsh words or insults. This behavior can then develop into other acts of cyberbullying, such as sharing personal information, threats, or even complete neglect of the victim. It is important to understand that verbal aggressive behavior is often the gateway to cyberbullying. Efforts to prevent and handle cyberbullying cases need to consider and target these forms of verbal aggression so that they do not lead to more serious actions.

On the other hand, it is not uncommon for cyberbullying perpetrators to also show physically aggressive behavior in real life. They can fight, push, hit, or even commit other acts of violence against the victim. Aggressive tendencies, both verbal and physical, are often associated with psychological factors of the perpetrator, such as low empathy, poor self-control, and personality problems. Many perpetrators also have a history of intimidation or harassment in the past. The tendency for aggressive behavior in cyberbullying perpetrators makes handling cases increasingly complex. Law enforcement must consider other possible aggressive acts the perpetrator may have committed, both verbal and physical. An approach that targets psychological aspects and involves guidance and counseling can be a strategy that needs to be considered to prevent and handle cyberbullying cases holistically.

d. Lack of Parental Supervision

Lack of parental supervision is an important factor that can contribute to the emergence of cyberbullying. This can happen because parents do not have an adequate understanding of their children's use of technology and the internet. Many parents are not fully aware of the dangers and risks that can arise from children's activities in the digital world. They may not care enough or have the ability to monitor and supervise children's use of smartphones, computers, or internet access. As a result, children can freely interact and socialize in cyberspace without adequate supervision from their parents. In this situation, children can easily become involved in cyberbullying, either as perpetrators or as victims. They may not understand or realize the negative impact of their behavior in the digital world. Parents who are less active in supervising and discussing with their children about the use of technology can also give children more freedom to do inappropriate things, including becoming perpetrators of cyberbullying.

Willard further explained that cyberbullying perpetrators cannot see the direct reaction of their victims, so this can contribute to a lack of empathy towards their

victims. Willard also speculates that reduced concern for others and lack of empathy may be related to parental inattention in childhood to controlling appropriate responses to good and bad actions⁹. Therefore, the role of parents is very important in efforts to prevent and handle cyberbullying cases. Parents need to have a better understanding of digital technology and how children use it. They also need to be actively involved in supervision, providing guidance, and having open discussions with children regarding safe and responsible internet use. In this way, the risk of children being involved in cyberbullying can be minimized.

e. A Sense of Security Behind the Scenes

When in cyberspace, cyberbullying perpetrators feel they have greater control and power than when dealing directly with their victims. They may feel invisible, unidentified, or even face no consequences for their actions. This sense of security then becomes a kind of "shield" that allows the perpetrators to do things they would not do in the real world. Apart from that, cyberbullying perpetrators can also feel protected by the anonymity¹⁰ they get in the digital world. They can easily hide their true identity and create fake accounts or profiles to launch attacks. This situation makes the perpetrator more courageous and free to carry out painful acts against the victim. This feeling of safety and protection behind the screen can encourage individuals, especially children and teenagers, to engage in cyberbullying behavior. They may not have enough empathy or understanding of the impact their actions have on others. Therefore, efforts to increase awareness and build a better understanding of the impact of cyberbullying are very important.

f. Adequate Understanding of Technology

Cyberbullying perpetrators generally have a fairly high understanding of technology so they can utilize various digital platforms and features to carry out their attacks. Cyberbullies often have in-depth knowledge of how to use social media, instant messaging apps, and other technologies to spread negative content, intimidate, or threaten their victims. They can easily hide their true identity, create fake accounts, or even hack victims' accounts. Skills and a good understanding of technology give cyber bullies an edge to carry out their actions more effectively and harder to track. This makes preventing and dealing with cyberbullying even more challenging because the parties responsible also need to have sufficient technological understanding to be able to identify and overcome this threat. Therefore, apart from increasing technological understanding among parents, teachers, and the general public, efforts to overcome cyberbullying must also be accompanied by increasing investigative and case-handling capabilities among law enforcement and related parties. Only in this way, we can create a safer digital environment for children and young people.

⁹ Nancy Willard, "Educator's Guide to Cyberbullying Addressing the Harm Caused by Online Social Cruelty," n.d.

¹⁰ Mickie Wong-Lo, Lyndal M. Bullock, and Robert A. Gable, "Cyber Bullying: Practices to Face Digital Aggression," *Emotional and Behavioural Difficulties* 16, no. 3 (September 2011): 317–25, <https://doi.org/10.1080/13632752.2011.595098>.

Common Forms of Cyberbullying

Cyberbullying is an increasingly disturbing phenomenon in the current era of digitalization. Various forms of harassment and attacks via digital media often occur, causing significant negative impacts on the victims. Understanding the common forms of cyberbullying is an important step in preventing and dealing with it effectively. By knowing the modus operandi and characteristics of cyberbullying, we can develop more targeted strategies to protect individuals, especially children and adolescents, from this dangerous threat. Willard categorizes 7 types of cyberbullying, namely¹¹:

- a. Flaming (burning or anger) is bullying in cyberspace which is carried out by sending messages containing angry or lustful words. In cases like this, the victim usually receives messages via chat rooms or groups containing angry, rude, or full content.
- b. Harassment, namely cyberbullying activities in the form of sending disturbing messages repeatedly. In this case, the victim repeatedly received private messages aimed at insulting or harassing him.
- c. Cyberstalking (followed), namely cyberbullying activities by following the victim repeatedly in cyberspace.
- d. Denigration (defamation), namely cyberbullying activities by spreading bad things about someone in cyberspace to damage that person's good name.
- e. Impersonation, namely cyberbullying activities by pretending to be someone else and sending bad messages. Where the victim in this case is made to look bad by the perpetrator who pretends to be the victim.
- f. Outing (spreading personal secrets) and trickery (deception) are cyberbullying activities in the form of persuading or deceiving someone to reveal personal secrets and then spreading them.
- g. Exclusion, namely cyberbullying activities in the form of cruel and deliberate actions of excluding someone from the group. In this case, the victim was deliberately excluded from the discussion group.

Impact of Cyberbullying

Cyberbullying, social media, and teenagers are crucial systems that are interconnected and influence each other. This is in line with Kircaburun's research which states that problematic social media use and cyberbullying behavior are directly related¹². The reason is, adolescence is the age where a person experiences ambivalence regarding the search for identity and the desire to explore the outside world. Social media is part of internet-based social networks and is an

¹¹ Willard, "Educator's Guide to Cyberbullying Addressing the Harm Caused by Online Social Cruelty."

¹² Kagan Kircaburun et al., "Uses and Gratifications of Problematic Social Media Use Among University Students: A Simultaneous Examination of the Big Five of Personality Traits, Social Media Platforms, and Social Media Use Motives," *International Journal of Mental Health and Addiction* 18, no. 3 (June 2020): 525–47, <https://doi.org/10.1007/s11469-018-9940-6>.

example of an open system¹³. Indonesian forms of communication play an important role for teenagers, especially in their social life. However, social media is also inseparable from the large risks it poses, for example, cyberbullying¹⁴.

Cyberbullying has a serious impact on the emotional and social well-being of teenagers. Research conducted by Beran proves that victims of cyberbullying have bad experiences in the form of emotions they receive from other people in the online world which can cause a loss of trust, or they as victims will become cyberbullied or continue to be victims¹⁵. Apart from that, Beran also stated that when cyberbullying occurs, the victim will cry, feel embarrassed, lose friends at school, be depressed, experience insomnia, and state that he wants to commit suicide after cyberbullying¹⁶. Hoff & Mitchell report that when victims do not realize they are being attacked, fear and anger will increase. Yet they may still not report bullying even when the situation becomes very dangerous.¹⁷

Based on research from Kaspersky Lab and iconKids & Youth, it was found that cyberbullying is a much more dangerous threat than many parents think. As many as 30% experienced a decline in their children's learning at school, and 28% of parents even stated that their children experienced depression. Not only that, 25% of parents stated that cyberbullying had disrupted their children's sleep patterns and even caused nightmares (21%). The parents of 26% of victims realized that their children were starting to avoid contact with other children, and 20% knew their children were suffering from anorexia. Also worrying are statistics showing that 20% of children witness other children being bullied online, and in 7% of cases, they even take part in it¹⁸.

The impact of cyberbullying on victims is very worrying, at least 18 impacts have been identified, namely: mental damage due to feeling humiliated, experiencing prolonged stress and depression, losing self-confidence, becoming paranoid, having the potential to become a perpetrator of cyberbullying, experiencing health problems, decreased performance, committing criminal acts, behaving aggressive, easily vulnerable, revealing secrets/losing privacy, disappointed with oneself, easily angered, loss of interest and motivation in life, feeling isolated from the environment, anxious, disturbed sleep patterns, and suicidal¹⁹. Looking at the general impacts that can be experienced by victims of cyberbullying, the following is a classification of some of

¹³ A. M. Hutchison et al., "The Treatment of a Rupture of the Achilles Tendon Using a Dedicated Management Programme," *The Bone & Joint Journal* 97-B, no. 4 (April 2015): 510–15, <https://doi.org/10.1302/0301-620X.97B4.35314>.

¹⁴ Dana Reid and Paul Weigle, "Social Media Use among Adolescents: Benefits and Risks," *Adolescent Psychiatry* 4, no. 2 (July 31, 2014): 73–80, <https://doi.org/10.2174/221067660402140709115810>.

¹⁵ Michael J. Beran et al., "Uncertainty Monitoring by Young Children in a Computerized Task," *Scientifica* 2012 (2012): 1–6, <https://doi.org/10.6064/2012/692890>.

¹⁶ Beran et al.

¹⁷ Dianne L. Hoff and Sidney N. Mitchell, "Cyberbullying: Causes, Effects, and Remedies," *Journal of Educational Administration* 47, no. 5 (August 14, 2009): 652–65, <https://doi.org/10.1108/09578230910981107>.

¹⁸ Accessed February 14, 2024, https://www.kaspersky.com.au/about/press-releases/2016_new-research-from-kaspersky-lab-reveals-kids-are-addicted-to-online-friendships.

¹⁹ Devita Retno, "18 Dampak Cyberbullying Bagi Korban," accessed February 14, 2024, <https://dosenpsikologi.com/dampak-cyber-bullying>.

the long-term impacts that victims of cyberbullying are susceptible to:

- a. **Mental Health Problems:** Victims of cyberbullying often experience stress, anxiety, depression, and sleep disorders. They may also experience decreased self-esteem, shame, and feelings of isolation. Some cases can even lead to suicidal thoughts or suicide attempts²⁰.
- b. **Emotional Disorders:** Cyberbullying can cause significant emotional changes in victims, such as anger, frustration, and hopelessness. They may feel afraid or worried every time they use technology or the internet²¹.
- c. **Impaired Social Relationships:** Victims of cyberbullying often have difficulty building healthy social relationships. They may feel distrustful of others, worry about their self-confidence, or even isolate themselves from social interactions²².
- d. **Decreased Academic Achievement:** Cyberbullying can disrupt the victim's concentration and motivation in studying. This can hurt their academic performance, both in the short and long term²³.
- e. **Physical Impact:** Some victims of cyberbullying experience physical symptoms such as headaches, indigestion, increased heart rate, or sleep problems. They may also be at higher risk of long-term physical health problems, such as obesity or eating disorders.
- f. **Threatened Digital Identity:** Cyberbullying can damage a person's online reputation and threaten their digital identity. Degrading or embarrassing content can spread quickly and is difficult to remove completely. This can hurt the victim's personal and professional life in the future²⁴.

However, it is important to remember that the impact of cyberbullying can vary depending on the individual and the situation. However, we all need to be aware of the serious impact it has and work together to prevent and overcome cyberbullying.

Legal Anticipation of Cyberbullying Crimes In Indonesia

State resilience and support from community authorization are very necessary for the success of a country's development. State resilience means avoiding disturbances and threats, including crime. As science and technology progress and develop, crime also develops. Crimes are now committed by taking advantage of the

²⁰ El Asam and Samara, "Cyberbullying and the Law."

²¹ "Bullies Move Beyond the Schoolyard: A Preliminary Look at Cyberbullying," in *Social Science Research*, by Turner Lomand, 0 ed. (Routledge, 2016), 28–41, <https://doi.org/10.4324/9781315265841-8>.

²² Peter K. Smith et al., "Cyberbullying: Its Nature and Impact in Secondary School Pupils," *Journal of Child Psychology and Psychiatry* 49, no. 4 (April 2008): 376–85, <https://doi.org/10.1111/j.1469-7610.2007.01846.x>.

²³ Peter K. Smith et al., "Cyberbullying: Its Nature and Impact in Secondary School Pupils," *Journal of Child Psychology and Psychiatry* 49, no. 4 (April 2008): 376–85, <https://doi.org/10.1111/j.1469-7610.2007.01846.x>.

²⁴ Robin M. Kowalski et al., "Bullying in the Digital Age: A Critical Review and Meta-Analysis of Cyberbullying Research among Youth," *Psychological Bulletin* 140, no. 4 (July 2014): 1073–1137, <https://doi.org/10.1037/a0035618>.

opportunities provided by modern instruments and sophisticated equipment, including cyberbullying crimes²⁵.

Cyberbullying laws focus on preventing and dealing with acts of harassment, threats, or insults committed online. Von Liszt explained that modern legal policy has an important role in fighting crime (*contre le crime*), along with the role of the state (*etat*) and society (*Societe*). Legal policy is the role of the state in making criminal policies by using penal policies as an effort to eradicate crime. Legislation made by legislators is the state's role in fighting crime²⁶. Criminal law policy is part of legal policy, and according to Barda Nawawi Arief, criminal law policy which aims to prevent and prosecute crime by legal means is known as criminal law policy. This policy is implemented through various steps, including forms, implementation, and enforcement²⁷. Efforts to prevent and control crime are not only the responsibility of law enforcement but are also the responsibility of legislative institutions. According to Barda Nawawi Arief, the development stage is the most strategic in preventing and controlling crime. Legislative policy errors can hinder crime prevention and control at the implementation and implementation stages²⁸.

The Indonesian Criminal Code (KUHP) is the main system of criminal law regulations in Indonesia. The formulation of criminal acts in the Criminal Code is mostly still conventional and has not been directly linked to the development of cyberbullying which is part of cybercrime. Apart from that, it contains various weaknesses and limitations in dealing with very varied technological developments and high-tech crimes. If interpreted in the Criminal Code, cyberbullying behavior falls under the articles of insult, slander, threats, and acts of morality. However, these articles are not suitable for application in the cyber domain because the Criminal Code was created before the development of cyberspace. The drawback is in the words "generally known" and "in public".

According to Constitutional Court Decision Number 50/PUU-VI/2008, it is stated that insults regulated in the Criminal Code do not include insults and defamation committed in cyberspace because there is an element of "in public". Incorporating the meanings of "publicly known", "in public", and "broadcast" is still not enough. There needs to be a broad formulation, namely "distribute" and/or "transmit" and/or "make accessible". If you look at the insult regulations in the Criminal Code, regulate insults in real life, while insults related to cyberbullying are carried out in cyberspace. The Criminal Code also does not provide a detailed explanation of what is meant by insult, so this could be a weakness. In connection

²⁵ Miftakhur Rokhman Habibi and Isnatul Liviani, "Kejahatan Teknologi Informasi (Cyber Crime) dan Penanggulangannya dalam Sistem Hukum Indonesia," *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 23, no. 2 (December 19, 2020): 400–426, <https://doi.org/10.15642/alqanun.2020.23.2.400-426>.

²⁶ Wenggedes Frensh, "KELEMAHAN PELAKSANAAN KEBIJAKAN KRIMINAL TERHADAP CYBERBULLYING ANAK DI INDONESIA" 01, no. 2 (2022).

²⁷ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Jakarta: Kencana, 2010).

²⁸ Arief.

with this problem, based on the Constitutional Court decision Number 50/PUU-VI/2008, has provided a clear explanation that the Criminal Code has shortcomings regarding several elements of criminal acts when related to criminal acts in cyberspace. So, to tackle crimes related to cyberspace, such as cyberbullying, special laws regarding computer crimes must be created so that they can cover crimes in cyberspace.

As time goes by, there is currently legislation outside the Criminal Code relating to crimes in the field of information and communication technology, namely Law Number 1 of 2024, the second amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, which is hereafter called the ITE Law. This law aims to harmonize national legal regulatory instruments with international legal instruments that regulate information technology, including The United Nations Commission on International Trade Law (UNCITRAL), the World Trade Organization (WTO), the European Union (EU), APEC, ASEAN, and OECD. Each organization issues regulations that complement each other. And also this international legal instrument has also been followed by several countries such as Australia (The cyber Crime Act 2001), Malaysia (Computer Crime Act 1997), the United States (Federal legislation: update April 2002 UNITED STATE CODE), 8th UN Congress in Havana, Xth Congress in Vienna, XI Congress 2005 in Bangkok, talking about The Prevention of Crime and the Treatment of Offenders. The United Nations seriously integrates regulations related to national positive law (existing law)²⁹.

The Information and Electronic Transactions Law is a law that regulates technology based crimes (cybercrime), including cyberbullying. And seen from a criminal law political perspective, the ITE Law can be used to tackle types of cyberbullying behavior, as a phenomenon/new form of cybercrime in general. This law emphasizes security regulations for the use of Electronic Information Systems or Electronic Documents and leads to the misuse of Electronic Information for cyberbullying purposes. Law Number 1 of 2024 was passed as legal anticipation for activities that utilize the Internet as a medium for both transactions and the use of information. In Law Number 1 of 2024 some articles are more suitable for ensnaring perpetrators of cyberbullying, namely:

Article 27A with elements of a criminal act: "attacking the honor or good name of another person by accusing him of doing something, to make this known to the public in the form of Electronic Information and/or Electronic Documents carried out through an Electronic System." (Related to cyberbullying in the form of cyberharrassment).

Article 27B with elements of a criminal offense: "disseminating and/ or transmitting and/ or making accessible Electronic Information and/ or Electronic Documents that contain elements of extortion and/ or threats." (Related to cyberbullying in the form of cyberstalking).

²⁹ Subaidah Ratna Juita and Amri Panahatan Sihotang, "CYBER BULLYING PADA ANAK DALAM PERSPEKTIF POLITIK HUKUM PIDANA ." 20, no. 2 (2018).

Article 28 paragraph 2 with elements of a criminal offense: "disseminating and/ or transmitting Electronic Information and/ or Electronic Documents that are inciting, inviting, or influencing other people to give rise to feelings of hatred or hostility towards certain people and/ or groups of society." (Related cyberbullying in the form of cyberharrassment).

Article 29 with elements of a criminal offense: "sending electronic information and/ or electronic documents containing threats of violence or intimidation directed at individuals." (Related to cyberbullying in the form of cyberstalking).

Article 30 paragraph 1 with elements of a criminal offense: "accessing another person's computer and/ or electronic system in any way." (Related to cyberbullying in the form of impersonation).

Article 32 paragraph 2 with elements of a criminal offense: "transferring or transmitting Electronic Information and/ or Electronic Documents to another person's electronic system without rights." (Related to cyberbullying in the form of outings and deception).

Apart from anticipating the law through applicable laws, other approaches need to be taken in dealing with cyberbullying. Barda Nawawi Arief's views on overcoming cybercrime are also in line with the approach generally applied in this context. The following is an explanation of the approaches he put forward:

- a. Technological Approach (Techno Prevention): This approach involves the use of technology to prevent and combat cybercrime. This includes developing strong security systems, using data encryption, network monitoring, and using sophisticated security software. Technology can also be used to detect cyberattacks, block illegal access, and trace the digital footprint of perpetrators.
- b. Cultural Approach: The cultural approach involves changing attitudes, values, and norms in society regarding the use of technology and online behavior. This includes raising awareness about the importance of digital ethics, respecting others' privacy, and treating others well in digital environments. Education and social campaigns can be used to develop a positive culture in the use of technology.
- c. Educational/Moral/Religious Approach: This approach emphasizes the importance of education and the formation of moral and religious values to combat cybercrime. This includes education about digital ethics, awareness of the consequences of cyberbullying, privacy protection, and responsibility for the use of technology. Furthermore, religious and ethical values can be instilled to increase awareness of the negative impacts that may arise from cybercrime acts.
- d. Global Approach (International Cooperation): Cybercrime often involves perpetrators operating across borders or countries. Therefore, international cooperation is important in eradicating this crime. Countries need to cooperate in exchanging information, exchanging intelligence, and coordinating law enforcement actions. This can be done through bilateral and multilateral

agreements, similar legal frameworks, and capacity building in the field of cybersecurity.

These approaches reflect the need to adopt a holistic and multisectoral approach to fighting cybercrime. When facing a threat as complex and pervasive as cybercrime, no single approach is effective enough. Instead, a combination of technological, cultural, educational/ moral/ religious approaches and international cooperation are needed to reduce the risks and negative impacts of these crimes.

Conclusion

Cyberbullying is a serious problem that is increasing in Indonesia. This phenomenon involves the use of technology and digital media to spread threats, abuse, or demean others online. The popularity of social media and ease of internet access have become major factors in the spread of cyberbullying. Cyberbullying has a significant negative impact on its victims. Victims of cyberbullying can experience stress, anxiety, depression, decreased self-esteem, and even suicidal thoughts. In some cases, the impact can also extend into the real world and affect the victim's social and emotional life. The Indonesian government has taken several steps to anticipate and deal with the problem of cyberbullying. The ITE Law (Electronic Information and Transactions) is used as the main legal tool to deal with cyberbullying. Several articles in this law can be applied to prosecute perpetrators of cyberbullying and provide strict sanctions. Although steps have been taken, further efforts are needed to address this issue. It is important for the government to continue to improve the monitoring and implementation of laws related to cyberbullying. Apart from that, it is also necessary to continue to increase public awareness regarding the negative impacts of cyberbullying and the importance of mutual respect and support in the digital environment.

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Protection of Digital Evidence After Case Administration and Electronic Court Proceedings Regulation

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Abstract:

Evidence is a crucial component of the justice system, capable of shedding light on cases and aiding in the resolution of court proceedings. As society becomes increasingly digital, the judicial system must adapt, including the handling of digital evidence. The importance of evidence, which plays a vital role in judicial processes, necessitates the protection of its confidentiality. However, in the digital era, judicial institutions in Indonesia have not fully optimized the protection of such evidence. A scientific study is required to assess the effectiveness of confidentiality protection for evidence within Indonesia's electronic justice system. The central issues include: What are the juridical provisions regarding the position of digital evidence within Indonesia's justice system? How has the protection of digital evidence evolved in the justice system following the enactment of PERMA (Supreme Court Regulation) Number 1 of 2019? This research is normative juridical in nature, employing statutory, conceptual, and case-based approaches. The findings are as follows: First, the juridical provisions concerning digital evidence are regulated under specific laws such as the ITE Law and other related regulations. Second, digital evidence is safeguarded by the ITE Law and Supreme Court Regulation Number 1 of 2019. However, this PERMA does not comprehensively regulate the protection of digital evidence. Thus, Indonesia requires stricter regulations to ensure the protection of electronic evidence and uphold the integrity of the national judiciary.

Keywords: digital evidence; protection; judicial provision.

Introduction

Digital transformation in the world of justice began to be constructed after the issuance of Supreme Court Regulation (PERMA) Number 1 of 2019 concerning Electronic Case Administration and Court Trials. Technological development has indeed penetrated into various sectors and has also become part of the civilization of m

modern society that cannot be slowed down. The presence of technology has changed the way the world works and services that have been conventionally transformed by utilizing technological sophistication. It is not only adapted to practices in the economic, agricultural and industrial sectors but has also been logged into the realm of judicial administration. The utilization of technology is a grand design contained in the blueprint of Indonesian Judicial Reform 2010-2035. Digitalization is present to answer the demands of the fast-paced needs of modern society, especially for people who seek asylum in court and in supporting the principles of simple, fast and low-cost justice.¹ The adage has the substance that a slow judicial process is the same as not providing justice to the parties. Thus, inductively from public expectations of fast case handling, it immediately provides justice, legal certainty and expediency.²

The presence of PERMA Number 1 of 2019 concerning Case Administration and Trial in Court Electronically is a breath of fresh air that is expected to dissolve the assumption that the process of litigating in court which has been considered slow and slowed down and causes expensive costs, difficult public access to justice, low integrity of the judicial apparatus due to the wide open opportunities for mala administration by some unscrupulous judicial officers.³ Digitalization is a condition in which all aspects of life use digital instruments. Digitalization is a process of change that occurs in technology that was originally analog turning into digital technology. The process that occurs is heavily influenced by technological developments, until now various aspects of human life have used electronics or digitalization in their operations.⁴ According to Sukmana, digitization is a process in media from printed, audio, and video to digital form. Digitization is carried out to create a digital form document archive. Digitization requires supporting equipment that is more systematic and practical, including computers, scanners, source media operators, and supporting software. In addition, the digitalization era also affects the stages in carrying out daily activities, including in the scope of the judiciary which has used the intervention of digitalization technology in its essence and existence.

The growth of digitalization has penetrated various sectors, one of which is the judiciary. The transition process is also aimed at facilitating all matters required by users or service users, and accessing judicial products such as the repository of Supreme Court decisions and the Public Service Information System (SIPP). The Public Service Information System is a one-stop electronic information medium that includes information storage and management as well as a mechanism for delivering information from public service delivery to the public. The various facilities available thanks to this process are expected to increase user loyalty and increase the value of transactions that occur. The use of technological advances in digitization in the judicial sphere will make it easier for the justice-seeking public and law enforcement officials to follow the trial process in court. In addition, it will streamline the procedural process so that later court proceedings will be in accordance with the principles of spe

¹ Andi Hakim Lubis, *Digitalisasi, Kolegial dan Integritas*, Tabloid Intelektual, Edisi XXIII, Juni 2023, hlm. 19

² Nursobah, A. (2019). Pemanfaatan Teknologi Informasi Untuk Mendorong Percepatan Penyelesaian Perkara di Mahkamah Agung. *Jurnal Hukum dan Peradilan*, 4(2), 323-334.

³ Sudarsono, *Legal Issues pada Peradilan TUN Pasca Reformasi*, Jakarta, Kencana, 2019, hlm.202.

⁴ Sobirin Sobirin et al., "Manajemen Perpustakaan Di Era Digital," *Cendekia Inovatif Dan Berbudaya* 1, no. 1 (2023): 64–71, <https://doi.org/10.59996/cendib.v1i1.204>.

edy justice and low costs. Law No. 48 of 2009 on Judicial Power in Article 2 Paragraph 4 explains that the judiciary is conducted quickly, simply and at low cost.⁵ This principle requires the implementation of law enforcement in Indonesia to be guided by the principles of fast, simple and low cost justice to provide protection and legal certainty to justice seekers undergoing judicial proceedings..

The principle of speedy trial associated with the digitization of the judicial process will be in line. This principle is intended that case handling can be completed in a short time, so that it does not need to take a long time, not long-winded, meaning that the judicial process is not much delayed or postponed due to obstacles from the parties and other reasons. Simple justice is the examination and settlement of cases carried out in an effective and efficient manner. This principle explains that simple means not complicated, not convoluted, and not complicated by the digitization of the judicial process.⁶ The principle of low cost means that the cost of cases can be afforded by the community. Through the digitization of the judicial process, it will facilitate the judicial process for justice seekers and facilitate the cost of following the judicial process in court. Administrative costs will be slightly lightened by the digitization of the judicial process. For example, in a litigation file, manually registering a file with the court will cost a certain amount of money for file fees and other unexpected things. Meanwhile, through the digitization of judicial procedures in accordance with the provisions of Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Trial in Court Electronically, it automatically facilitates and eases the costs incurred by justice seekers and law enforcement officials.

Provisions related to digital evidence are regulated in Article 5 Paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) as amended by Law Number 19 of 2016 explaining that electronic information and/or electronic documents and/or their printouts are valid legal evidence. Article 5 Paragraph 2 explains that electronic information and/or electronic documents and/or their printouts as referred to in Paragraph 1 are an extension of legal evidence in accordance with the applicable procedural law in Indonesia.⁷ Based on the juridical provisions above, it can be seen that technological developments have influenced substantial legal changes. Thus, legal certainty can be obtained by transforming the law in accordance with the times. Law through substantial legislation is also influenced by technological developments in the scope of justice. The development in the judicial procedure, namely from manual to digitalization, various risks and adverse effects always threaten it. Coupled with increasingly sophisticated conditions, technological

⁵ Wika Yudha Shanty, "Sistem 'Full Pre Trial Disclosure' Dalam Penegakan Asas Peradilan Sederhana, Cepat, Dan Biaya Ringan," *Jurnal Cakrawala Hukum* 11, no. 3 (2020): 271–81, <https://doi.org/10.26905/idjch.v11i3.5473>.

⁶ Made Witama Mahardipa and Ratna Artha Windari, Ni Putu Rai Yuliantini, "Implementation of the Principles of Simple, Fast, and Low Cost Justice in Criminal Cases at Singaraja District Court Class I B," *E-Journal Komunitas Yustisia*, Ganesha University of Education, Department of Law 2, no. 3 (2019): 181-91.

⁷ Natalia Maria Tumiwa, "Tinjauan Hukum Pembuktian Dalam Hukum Acara Pidana Setelah Diberlakukannya Undang Undang Informasi Dan Transaksi Elektronik Undang Undang No 11 Tahun 2008 Yang Telah Dibaharui Oleh Undang Undang Nomor 19 Tahun 2016," *Lex Privatum* 9, no. 4 (2021): 187–93, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33754/31922>.

developments have a positive impact, but do not rule out the possibility of having a negative impact as well. The development of science and technology that affects the development of the justice system from manual to digital has risks and negative impacts of this technological development. Based on research data, the crime rate has always increased from time to time in line with the development of human civilization.⁸ Especially in the digitalization period, everything can be reached very easily, so crime occurs very easily. The solution to overcoming this crime is an interesting thing to discuss. Especially in the scope of the judiciary concerning important data that is highly confidential in order to maintain the integrity and dignity of the judicial power institution in Indonesia.

Indonesia as a country based on law must make normative law the main reference in addition to the law that develops in society (the living law). The state has law as an instrument to organize and organize the country properly. An unorganized state will have an impact on hampering development, because it cannot be denied that law is one of the pillars of the state and national development. Law is a compelling rule in which there are strict sanctions if the rule is violated. This firmness is related to legal certainty which is used as one of the tools to regulate life in the state so as to achieve an ideal country to live in an atmosphere that is safe, comfortable, peaceful, and prosperous. Law aims to ensure the achievement of order and security for the community.⁹ Order can be maintained if people obey the existing laws. So with regard to the potential for crime involving the digitization system in the judicial process, the law is present to create security and order.

Juridically, the protection of electronic or digital data in the administration of justice is regulated in Article 32 Paragraph 1 of Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Trial in Court Electronically, which explains that the Court receives information, data and electronic documents related to cases and manages them in an integrated manner in the court information system. Paragraph 2 emphasizes electronic documents as referred to in Paragraph 1 in word processing document format and/or sound or video format. Paragraph 3 electronic documents received in the Court Information System as referred to in Paragraph 1 include electronic documents of lawsuits, answers, replications, duplicates, requests for intervention, conclusions, and scans of letter evidence. These provisions only discuss the management of judicial administration through an integrated court information system, but do not contain detailed protection of digital data and evidence related to judicial purposes in Indonesia. The essence of law to create security and order when examined from these regulations has not been achieved. So it is better to update and strengthen the regulation. Novelty in this research is to propose that a Supreme Court Regulation be formed for the short term and a Legislation for the long term that regulates the protection of digital data or digital evidence so that it cannot be acces

⁸ Muhammad Bahrul Ulum and Rehnalemken Ginting, "Tinjauan Kriminologi Terhadap Meningkatnya Kriminalitas Saat Pandemi Covid-19 Di Kota Depok," *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 10, no. 3 (2022): 202, <https://doi.org/10.20961/recidive.v10i3.58961>.

⁹ Nur Iftitah Isnantiana, "Hukum Dan Sistem Hukum Sebagai Pilar Negara," *Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2019): 19, <https://doi.org/10.30595/jhes.v2i1.4470>.

sed by unauthorized people. The aim is also to maintain the dignity of the judiciary. If judicial institutions maintain the confidentiality of their digital evidence, public trust in judicial institutions will improve.

Digital evidence in its existence in the practice of the judicial system in Indonesia is still often found obstacles to the uncertainty of the panel of judges in interpreting digital evidence. Digital evidence as one of the valid evidence according to the law in judicial practice, for example in cases in the Religious Court, the panel of judges is still uncertain in responding to it. There are judges who can place it as evidence in the decision because other evidence is sufficient and some make it as evidence that is equated with written / letter evidence, so that it must meet the formal requirements of letter evidence, namely postage stamped (*nazegelen*). In addition, judges also consider printed electronic evidence as presumptive evidence or preliminary evidence. Meanwhile, the strength of the preliminary evidence has not yet met the minimum limit of proof, because it must still be supported by one other piece of evidence to meet the minimum limit of proof. Previous research relevant to this research was researched by Dewa Gde Rudy and I Dewa Ayu Dwi Mayasari entitled *The Validity of Mail Evidence in Civil Procedure Law Through Electronic Trials* published in the *Undiksha Journal of Civic Education* Volume 9 Number 1 February 2021.¹⁰ This research only discusses the validity of letter evidence in civil procedure law in virtual trials through electronic media.

Previous research written by Agung Alvandi and Anggi Dwita Clara, entitled *Credibility of Electronic Evidence in Civil Law Formal Hearings* published in *Jutke 1 Journal of Telecommunications, Control, and Electricity*, Volume 3 Number 1 Year 2023.¹¹ This research emphasizes the credibility of electronic evidence in civil trials. In contrast to previous research, this research has a novelty, namely the breakthrough of the proposed idea that the protection of digital evidence is emphasized in the regulation of laws and regulations at the level of laws that are binding and compelling, so that they are obeyed throughout the scope of judicial power. This research formulated several problems, namely the first, How is the juridical provision of the position of digital evidence in the judicial system in Indonesia? Second, How is the protection of digital evidence in the judicial system in Indonesia after the enactment of PERMA Number 1 of 2019? This research uses normative juridical research methods, which examine written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure, and composition. There is also normative legal research that calls it research that focuses on analyzing legal norms and putting legal norms as an object of research. The approaches used are the statutory approach (Statue approach), case approach, and conceptual approach.¹² The sources of legal m

¹⁰ Dewa Gde Rudy and I Dewa Ayu Dwi Mayasari, "Keabsahan Alat Bukti Surat Dalam Hukum Acara Perdata Melalui Persidangan Secara Elektronik," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 167–74, <https://ejournal.undiksha.ac.id/index.php/JJPP/article/view/31440>.

¹¹ A Alvandi et al., "Kredibilitas Alat Bukti Elektronik Dalam Sidang Formil Hukum Data," ... , *Kendali Dan Listrik* 3, no. 1 (2023): 16–26, <https://ummaspul.e-journal.id/Jutkel/article/download/5983/2782>.

¹² Margie Gladies et.al Deassy J.A. Hehanussa, *Metode Penelitian Hukum*, ed. Elan Jaelani, *Jurnal Widina Bhakti Persada*, vol. 4 (Bandung: Widina Bhakti Persada Bandung, 2023), <https://medium.com>

aterials used are primary legal materials in the form of laws and regulations, secondary legal materials such as books, legal articles, information sourced from the internet, and tertiary legal materials in the form of legal dictionaries and encyclopedias. Data collection techniques are carried out by document study (Library research) which is then analyzed qualitatively and presented with descriptive analysis.

Result and Discussion

Juridical Provisions on the Position of Digital Evidence in the Indonesian

Evidence is a vital component in evidence in criminal, civil, state administrative and other fields. This evidence will provide a sense of justice for the justice-seeking community. It is also through evidence that the case being handled becomes brightly lit. Evidence must be brighter than light. This philosophy has an adage, namely "in criminalibus probantiones bedent esse luce clariores." Based on the sound of the adage, it explains that evidence has an important role in the process of examining cases in the judicial power institution. 148 Page Evidence is a series of procedures that are considered very important in the process of civil, criminal, state administrative law, and so on. Evidence becomes very crucial because it is related to the handling of cases of judges' decisions in court. In the trial, the panel of judges can be active and passive. For example, in the trial process of criminal cases, the panel of judges is active in the evidentiary process in the trial process. Whereas in civil and state administrative cases, the panel of judges is passive in the examination process in court. The judges only participate in leading the trial and do not participate in the evidence. This is what is called the judge in civil cases is passive.¹³ In civil cases, written documents will validate the agreement, so written evidence such as letters and documents become strong evidence to be presented at trial.

Bambang Waluyo defines evidence as something determined by the law that will be used to strengthen the charges, demands, or lawsuit as well as to reject the charges or lawsuit.¹⁴ Evidence is everything that has to do with an act, where the evidence is used as evidentiary material to generate a judge's confidence in the truth of a judge's confidence in the truth of a criminal act or an unlawful act or other act contrary to the law committed by a legal subject that is contrary to existing legal provision.

The formal legal system regarding evidence in Indonesia, both in the Civil Code (HIR / RBg) and the Criminal Procedure Code, has not accommodated electronic documents or information as evidence. Juridical provisions relating to the essence and existence of digital evidence have been regulated in Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions. Digital evidence has been recognized and valid in several laws and regulations, such as Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. Evidence has several juridical provisions relating to digital evidence which are referred to in several statutory provisions, namely as follows:

/@arifwicaksanaa/pengertian-use-case-a7e576e1b6bf%0Ahttps://doi.org/10.1016/j.biteb.2021.100642.

¹³ Anita Afriana et al., "Batasan Asas Hakim Pasif Dan Aktif Pada Peradilan Perdata," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 142–54, <https://doi.org/10.23920/jbmh.v7i1.1078>.

¹⁴ Iwan Taufik Firdaus, "Pidana Melalui Teleconferensi Di Masa Pandemi," *Al Adl* XII, no. 1 (2020): 151–71, <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/download/4324/2825>.

Law Number 11 of 2008 as amended by Law Number 19 of 2016

The existence of types of digital evidence is regulated in Article 5 Paragraph 1 of the Electronic Information and Transactions Law, which emphasizes that electronic information and/or electronic documents and/or their printouts are legal evidence. Starting from the provisions of the article, the types of digital evidence can be detailed in the form of electronic information, electronic documents, electronic information and electronic documents and their printouts, electronic information and its printouts, electronic documents and their printouts, printouts of electronic information, and printouts of electronic documents.

Electronic evidence or digital evidence acts as an extension of legal evidence. This is explained in Article 5 Paragraph 2 that electronic information and / or electronic documents and / or their printouts as referred to in Paragraph 1 are an extension of legal evidence in accordance with applicable procedural law in Indonesia. So with the expansion of this evidence, it causes an easier process of proof in criminal procedure law when it is related to digital evidence. First, it serves to add evidence that has been regulated in the Indonesian criminal procedure law, such as the Criminal Procedure Code (KUHAP). Electronic information and/or electronic documents as electronic evidence add to the types of evidence regulated in the criminal procedure law, for example in the Criminal Procedure Code. The printout of electronic information and/or electronic documents is a letter evidence regulated in the Criminal Procedure Code.

Evidentiary practices in civil cases in the Religious Courts regarding electronic evidence have been found in several cases that consider the use of digital evidence by the panel of judges in divorce cases. The use of electronic evidence of printouts of electronic information or electronic documents as written / letter evidence is more dominant. There are several models of application of electronic evidence in the judge's decision. First, digital evidence in the form of recorded conversations between the defendant and the plaintiff, due to a dispute related to the status of the motorcycle taken by the defendant, but used as evidence at trial because the panel of judges did not see who was at fault, with the recording showing that the plaintiff and defendant's household had a dispute and argued with each other.

In order to be used as valid legal evidence, electronic information and electronic documents must meet the formal and material requirements that have been determined. The formal requirements include that electronic information or documents are not documents or letters that according to the law must be in written form.¹⁵ This is regulated in Article 6 of Law Number 11 of 2008 concerning Electronic Information and Transactions which states that in the event that there are other provisions other than those stipulated in Article 5 Paragraph 4 which requires that information must be in written or original form, electronic information and/or electronic documents

¹⁵ I Nengah Ariana, "Tinjauan Yuridis Terhadap Kedudukan Alat Bukti Elektronik Berdasarkan Putusan Mk Nomor 20/Puu-Xiv/2016," *UNES Law Review* 5, no. 1 (2022): 1–19, <https://doi.org/10.31933/unesrev.v5i1.277>.

ts are considered valid as long as the information contained therein can be accessed, displayed, guaranteed integrity, and can be accounted for so that it explains a situation.¹⁶ Meanwhile, the material requirement is that electronic information and documents must be guaranteed for their authenticity, integrity, and availability. The essence and existence of digital evidence in the Indonesian judicial system is recognized as valid evidence according to the juridical provisions in Article 5 of Law Number 11 of 2008 concerning Electronic Information and Transactions. The existence of electronic evidence as one of the legal evidence can be grouped into two, first, electronic information and electronic documents as electronic evidence (Digital evidence). Second, printouts of electronic information and electronic documents become written / letter evidence.

However, the phrase electronic information and/or electronic documents must be interpreted specifically, and not generally. The Constitutional Court through Decision Number 20/PUU-XIV/2016 explained that the phrase "Electronic Information and Electronic Documents" as stated in Article 5 Paragraph 1 and Paragraph 2 of the Electronic Information and Transaction Law was declared contrary to the 1945 Constitution and did not have binding legal force as long as it was not interpreted specifically. The meaning of special meaning is that the phrase is used specifically by law enforcement officials with the aim of the law enforcement process. For example, requests from the Police, the Attorney General's Office, the Corruption Eradication Commission, and / or other law enforcement institutions that have been determined based on the law. This is explained in Article 31 Paragraph 3 of Law Number 19 of 2008 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Article 31 Paragraph 3 of the Electronic Information and Transaction Law explains that the provisions referred to in paragraph 1 and paragraph 2 do not apply to interception or wiretapping carried out in the context of law enforcement at the request of the police, prosecutor's office, or other institutions whose authority is determined by law..

Law No. 20 of 2001 Concerning the Amendment to Law No. 31 of 1999

Law Number 2 of 2001 Concerning the Amendment to Law Number 31 of 1999 Concerning the Eradication of Corruption. Based on the provisions in the Criminal Procedure Code, clue evidence is only obtained from witness testimony, letters, and based on the testimony of the defendant. Based on Law Number 20 of 2001, evidence can be obtained from other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or similar to that but not limited to electronic data interchange, electronic mail, facsimile, and from documents in the form of any recording of data or information that can be issued with or without the aid of means, whether written on paper, physical objects or other than paper, or recorded electronically which has implied or explicit meaning. The provisions as mentioned above are explained in Article 26A of Law Number 31 of 1999 concerning L

¹⁶ Muhammad Ridho, "Sebagai Alat Bukti Dalam Sistem Pembuktian Di Indonesia," *Jurnal Notarius* 1, no. 2 (2022): 226–35, <https://jurnal.umsu.ac.id/index.php/notarius/article/download/13987/8753>.

Law Number 20 of 2001 concerning the Eradication of Corruption, which explains that valid evidence in the form of clues as referred to in Article 188 Paragraph 2 of Law Number 8 of 1981 concerning Criminal Procedure Law, specifically for corruption crimes is also obtained from

- a. Other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or the like;
- b. Document is any recording of data or information that can be seen, read, and /or heard that can be issued with or without the aid of a means, whether it is contained on paper, any physical object with or without the aid of a means, whether it is contained on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, images, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning.

The expansion of the meaning of "clues" in addition to being obtained from witness testimony, letters, and testimony of the defendant, is also obtained from other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or similar to that but not limited to electronic data link, electronic mail, telegram, and facsimile, and from documents, namely any data recording. Therefore, this law has accommodated the expansion of evidence as mentioned in the Criminal Procedure Code (KUHP). The provisions of the principle used to address the general and special provisions related to evidence are the principle of *lex specialist derogat legi generalist*, which means that special laws will override general laws. The law of evidence in the Electronic Information and Transaction Law is *lex specialist* because this law regulates everything that is more specific in the law of evidence contained in the Criminal Procedure Code.¹⁷ In this regard, the provisions of evidence in the Criminal Procedure Code only become general provisions combined with the provisions of evidence as stipulated in the Law on the Eradication of Corruption which expands the provisions of evidence.

Law Number 8 Year 2010 on Prevention and Eradication of Money Laundering

Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes explains that digital evidence or electronic evidence is explained in Article 73, that valid evidence in proving money laundering crimes are :

- a. Evidence as defined in the Criminal Procedure Code;
- b. Other evidence in the form of information that is spoken, sent, received, or stored electronically by means of an optical device or a device similar to an optical device and documents.

This law accommodates evidence other than using evidence specified in the Criminal Procedure Code. So electronic evidence is allowed to be one of the evidence that is recognized. This juridical provision only explains that evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices similar to that. Documents are data, recordings, or information that can be seen,

¹⁷ Gabriella Apriyani Anes, Veky Y. Gosal, and Dientje Rumimpunu, "The Crime of Suspects in Illegal Access to Instagram Accounts Seized by Investigators as Evidence Under the Criminal Code," *Lex Privatum IX*, no. 13 (2021): 231-41.

read, and/or heard that can be issued with or without the aid of a means, whether written on paper or any physical object other than paper or recorded electronically, including but not limited to:

- a. Text, sound, or image;
- b. Maps, plans, photographs, or the like;
- c. Letters, signs, numbers, symbols, or perforations that have meaning or can be understood by people who are able to read or understand them. Tulisan, suara, atau gambar;

Article 44 Paragraph 1 letter h of Law Number 8 Year 2010 explains that it is important for law enforcers to intercept or tap electronic information and/or electronic documents in accordance with the provisions of laws and regulations.

Law Number 15 of 2003 Concerning the Stipulation of Government Regulation

Law Number 15 Year 2003 on the Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 on the Eradication of the Criminal Acts of Terrorism. This article of the Terrorism Law stipulates that evidence for the examination of criminal acts of terrorism includes other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices similar to this. This provision accommodates digital evidence if there is content or recordings that contain elements of radicalism that lead to terrorism, this evidence can be used as evidentiary data in the criminal law enforcement process.

Protection of Digital Evidence in the Indonesian Judicial System

The rapid growth and development of information and communication technology encourages the emergence of crime in it. The crimes that emerge range from ordinary crimes to systematic crimes. Crimes in the field of information and communication technology, especially crimes related to the internet, are commonly referred to as mayantara crimes or in English, cyber crimes. This crime is a threat caused by someone having illegal access to a computer network, damaging the network, changing it, and performing actions that harm many parties.¹⁸ Cyber crime usually damages the network system and enters into a confidential system so that the secret is hacked. Crimes like this are undeniably happening more and more. This is the responsibility of all information and/or electronic document providers who must keep all data safe and not hacked by anyone. In addition, if hacked, the law must be present as part of the realization of legal certainty. Legal certainty is one of the principles in law enforcement that emphasizes that regulations are present as a form of maintaining order and security with certainty. Legal certainty embodies the normative principle and the nature of legal positivism. Legal certainty requires that the law be carried out to the fullest and must not be violated. So that if someone does not obey the law, then that is when the law is present to enforce the substance of the law in order to achieve security, peace and order as the purpose of the law should be.

¹⁸ Pandoe Pramoe Kartika, "Data Elektronik Sebagai Alat Bukti Yang Sah Dalam Pembuktian Tindak Pidana Pencucian Uang," *Indonesia Journal of Criminal Law (IJoCL)* 1, no. 1 (2019): 33–46, <https://journal.ilinstitute.com/index.php/IJoCL>.

Article 16 of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions explains that as long as it is not determined otherwise by a separate law, every electronic system operator must operate an electronic system that meets the following minimum requirements:

- a. Can retrieve electronic information and/or electronic documents intact in accordance with the retention period stipulated by laws and regulations.
- b. Can protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information in procedures or instructions for organizing the electronic system.
- c. Can operate in accordance with the procedures or instructions in the operation of the electronic system.
- d. Equipped with procedures or instructions that are announced with language, information, or symbols that can be understood by the parties concerned with the implementation of the electronic system.
- e. Have an ongoing mechanism to maintain the novelty, clarity, and accountability of procedures or guidelines.

Article 16 of the Electronic Information and Transaction Law contains the phrase "can protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information in procedures or instructions in the implementation of the electronic system." The sentence contains the phrase "may" which means that it is not absolute and not mandatory. This is a weakness of this juridical provision which certainly contradicts the principle of legal certainty and the nature of law to create security and order.

Electronic system organizers carry out electronic-based activities including judicial institutions with electronic systems in them, of course, must be required to maintain all data related to the existing system. Talking about the system, it will involve a unity that supports each other so that a unity is formed. Therefore, a strict regulation is needed regarding the protection of digital evidence data within the scope of justice in Indonesia in order to achieve the principle of legal certainty within the scope of judicial power.

Supreme Court Regulation Number 1 of 2019 on Case Administration and Electronic Court Proceedings Article 32 Paragraph 1 explains that the court receives information, data, and electronic documents related to cases and manages them in an integrated manner in the court information system. Paragraph 2 emphasizes electronic documents as referred to in Paragraph 1 in word processing document format and/or sound or video format. Paragraph 3 electronic documents received in the Court Information System as referred to in Paragraph 1 include electronic documents of lawsuits, answers, replications, duplicates, requests for intervention, conclusions, and scans of letter evidence. The juridical provisions in the regulation only regulate data management with the court information system and are not accompanied by a digital evidence data protection mechanism. Since the Supreme Court regulation is essentially a lex specialist for judicial power institutions that apply specifically within the scope of judicial power. In addition, the protection of digital data is urgently needed to maintain the noble and dignified spirit of the judiciary. The judiciary acts as God's representative on earth to uphold the principles of justice on earth.

Evidence in the justice system is an important element in the judicial process which is vital and confidential. So the digitization of evidence must be maximally protected by electronic system administrators including judicial institutions with good management. This is an extraordinary challenge that requires maximum foresight. Crime has entered across sectors including in cyberspace. The existence of individuals who hack data will certainly be very dangerous for the confidentiality of judicial data. This is the responsibility of the judiciary although there are still no juridical provisions that strictly regulate the protection of electronic evidence data.

Protecting electronic evidence data is needed in the digitalization era to ward off various cyber crime efforts that are harmful to the confidentiality of judicial data in Indonesia. Talking about this matter can certainly adopt from the Legal System theory conveyed by Lawrence Meir Friedman that there are three elements that form the legal system, including structure, substance, and legal culture.¹⁹ Therefore, the legal structure includes all components of the state apparatus and law enforcement to carry out the task of developing a digital evidence data protection system in the justice system in Indonesia which is urgent. The development of human resources who master the field of technology must be maximized. In addition, it is necessary to develop legal substance in the form of changes and strengthening of laws and regulations to ensure legal certainty for the sake of upholding the law.²⁰ The substance needed is legislation that regulates details and is firmly related to the protection of digital evidence data in the judicial system carried out by judicial institutions. In addition, the laws and regulations needed are those that are able to provide strict penalties for those who damage and hack electronic evidence data managed by judicial institutions. To date, Indonesia does not have a legal substance that strictly regulates efforts to damage and hack electronic evidence data in judicial institutions.

Conclusion

The conclusion of this discussion is first, that the juridical provisions related to the position of digital evidence in the justice system in Indonesia are regulated in Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, in Article 5 Paragraphs 1 and 2 it is emphasized that in the judicial evidentiary system in Indonesia recognizes the existence of digital evidence in the judicial evidentiary system in Indonesia. There are several laws that accommodate digital evidence in evidence, including Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, Law Number 2 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of the Crime of Corruption, and Law Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of the Crime of Terrorism. Until now, the comprehensive use of digital evidence has not been accommodated into the substance of legislation in Indonesia. So it is neces

¹⁹ Ana Aniza Karunia, "Penegakan Hukum Tindak Pidana Korupsi Di Indonesia Dalam Perspektif Teori," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 1 (2022): 1–17, <https://jurnal.uns.ac.id/hpe/article/view/62831/pdf>.

²⁰ Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Masyarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68, <https://doi.org/10.21274/legacy.2021.1.1.46-68>.

sary to revise the national legislation by making digital evidence as valid evidence based on the relevant laws.

The second conclusion is that the protection of digital evidence in the Indonesian Judicial System after the enactment of Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Trial in Court Electronically, there is no firmness of regulations and sanctions in the regulation regarding the protection of digital evidence in the scope of justice in Indonesia. In addition, there are no provisions in the laws and regulations governing the regulation of data protection of digital evidence within the scope of judicial power in Indonesia. So it is necessary to strengthen the firmness of the legal substance related to the protection of digital evidence data in the judicial system in Indonesia that applies to all national judicial power institutions.

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Assessing the Implication of Law 41/2004 on Waqf Practice: A Systematic Literature Review

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Abstract:

The enactment of Law No. 41 of 2004 in Indonesia significantly impacts the country's socio-economic landscape, particularly concerning the management of waqf assets. With Indonesia hosting the world's largest Muslim population, waqf emerges as a critical avenue for advancing societal welfare, yet its realization often faces challenges. This study aims to discern Law No. 41 of 2004 on waqf practices by examining its positive and negative impact after long years of its enactment. The study employs the Systematic Literature Review (SLR) method, involving the identification, analysis, evaluation, and interpretation of previously obtained research data. SLR aims to discover relevant articles, gather necessary information, evaluate, and synthesize them to gain a broader understanding. The study found that in the positive parts, the Law gave a more broadened scope of waqf, ensuring more potential. It also gives better contribution to the enhancement of socio-economics welfare of its recipient. Meanwhile, we also found the lack of nazir professionalism and many lands remains uncertified. The findings rise awareness of all stakeholders that the current regulation while boosting the waqf development, it has several points need to be improved.

Keywords: waqf; regulation; economic.

Introduction

The enactment of legislation governing waqf in Indonesia holds significant implications for the country's socio-economic landscape. With Indonesia boasting a population of approximately 229.62 million Muslims on 2020 or roughly an 87.2% of the nation's total population, the management of waqf assets emerges as a critical avenue for advancing societal welfare. The regulatory framework established by the government plays a pivotal role in shaping the trajectory of waqf practices, reflecting a focused effort to balance state interests with the broader welfare concerns of the Muslim community. As it is known, the strategic formulation of policies not only guides the utilization of waqf resources but also underscores their potential to foster communal prosperity and educational advancement.¹ Waqf, as a longstanding tradition of Islamic philanthropy, holds immense promise for uplifting community

¹ Solikhul Hadi, "Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial)," *Jurnal Penelitian* 8, no. 2 (2014).

economies, given Indonesia's status as home to the world's largest Muslim population. Associated with various social endeavors such as education, mosque construction, and healthcare facilities waqf emerges as a cornerstone of socio-economic development. Number of waqf innovations have been initiated to ensure this socio-financial instrument contributes well for society, from waqf logo², waqf micro bank³, waqf linked sukuk⁴, and many others.

However, despite its vast potential, the realization of waqf's benefits often faces challenges. To optimize waqf performance, number of efforts are required to enhance awareness, secure governmental support, expedite waqf land certification, improve trustee management, embrace digitalization, and integrate waqf data into comprehensive systems. Waqf Information System from Ministry of Religious Affairs in 2022 underscores the extensive scope of waqf assets in Indonesia, encompassing 440.5 thousand points of land totaling 57.2 hectares. Moreover, the country's waqf sector, particularly cash endowments, exhibits substantial annual potential, estimated at 180 trillion Indonesian rupiah. Notably, the Indonesian Waqf Board reported a cash waqf income of 1.4 trillion rupiah as of March 2022, reflecting a significant increase from the 855 billion rupiah collected between 2018 and 2021.

The evolution of waqf governance in Indonesia has been marked by legislative milestones, notably with the enactment of Law No. 41 of 2004 on Waqf. This legislation, alongside Government Regulation No. 42 of 2006 and BWI Regulation No. 1 of 2021, delineates the legal framework governing waqf practices. Unlike previous regulations, Law No. 41 of 2004 represents a seminal moment in waqf history, as it provides comprehensive legal provisions dedicated solely to waqf matters. Historically, waqf regulations were dispersed among various statutes, including those concerning land tenure, reflecting a fragmented legal landscape. Moreover, the period following Indonesia's independence witnessed significant shifts in waqf legislation. The promulgation of Law No. 5 of 1960 on Basic Agrarian Principles marked the first official declaration aimed at safeguarding waqf assets during the Old Order era. Subsequently, during the New Order era, Government Regulation No. 28 of 1977 laid out substantive and technical aspects of waqf regulation, supplemented by additional legal provisions found in Law No. 7 of 1989 on Religious Courts. Law No. 41 of 2004 on Waqf represents a hallmark of regulatory reform, positioned to enhance the socio-economic significance of waqf in the Reform Era (Hadi, 2014).

While the regulation of UU 41/2004 was effective 5 years after its enactment, it already brought significant change from the time of enactment. Therefore, the regulation has been active in providing rule for two decades. This is a long period and therefore must have provided changes in Indonesian waqf landscape. Based on what described above, this study aims to assess the effects of Law No. 41/2004 on waqf

² Mochamad Firdaus Fajar Baharsyah et al., "Waqf Logo as a Productive Waqf of the Digital Age in the Perspective of Maqashid Sharia," in *International Conference on Islamic and Muhammadiyah Studies (ICIMS 2022)* (Atlantis Press, 2022), 354–60.

³ Fauzul Hanif Noor Athief, Darlin Rizki, and Arum Pratwindya, "Performa Bank Wakaf Mikro Selama 2017-2021: Sebuah Studi Literatur Sistematis (Systematic Literature Review)," *IQTISHADIA Jurnal Ekonomi & Perbankan Syariah* 9, no. 2 (2022): 204–21.

⁴ Afief El Ashfahany and Novita Lestari, "Optimizing Cash Waqf and Cash Waqf Linked Sukuk: The Role of Nazhir and The Strategies," *Iqtishadia* 15, no. 2 (2023): 171–90.

landscape in Indonesia. This legislation, alongside subsequent governmental regulations, has significantly influenced the landscape of Islamic philanthropy and socio-economic development in the country. Particularly, this research seeks to find the impact of Law No. 41/2004, focusing on both its positive and negative implications.

Previous Studies

There are numerous studies examining previous waqf legislation; the first study discussed here was conducted by Sudirman. This research primarily scrutinized waqf law in Indonesia post-independence. The approach used in this study was mandatory in nature. Primary legal sources cited included Law No. 51 of 2004 and Law No. 5 of 1960. This research utilized three concepts: *Lex Superior Derogat Legi Inferiori*, *Lex Specialis Derogat Legi Generali*, and *Lex Posterior Derogat*. The conclusion of this research indicates that there is a significant demand for unique waqf laws in Indonesia post-independence, as well as responses to advancements in modern waqf laws. These demands form the basis for diverse waqf regulations.⁵ Another research by Hadi examined the interconnectedness of various socio-political, socio-economic, and socio-religious contexts with Law No. 41 of 2004, which regulates Waqf. Socio-historical studies were used in conjunction with qualitative techniques and a legal-political perspective to examine these issues. Basic theory approaches were utilized. Data analysis approaches used comparative analysis, meaning that each time a group or category of data emerged, it was always examined based on related data. Legal-political analysis states that Law No. 41 of 2004 regarding Waqf is a political step by the government to ensure the implementation of PROPENAS (National Development Program) in the field of national legal development. The purpose of Law No. 41 of 2004 regarding Waqf is to empower waqf in order to enhance welfare and social benefits, according to economic studies. From a theological perspective, Law No. 41 of 2004 regarding Waqf is a new advancement in waqf science towards a dynamic and contextual paradigm.⁶

Apart from it, there was a research examined the development of waqf law in Indonesia, particularly related to the growth of cash waqf. In addressing field demands and global challenges, Indonesian waqf laws have progressed significantly. The evolution of waqf legislation from pre-independence to post-reformasi demonstrates progress in waqf law in Indonesia. Regarding monetary waqf, there is fundamental legal progress. The enactment of Law No. 41 of 2004 regarding Waqf signifies this. The governance system of waqf in Indonesia needs to adopt a new paradigm offered by this law. As the waqf sector in Indonesia develops, this law now allows the handling of cash waqf. This law has clearly advanced the use of waqf assets in other ways. Moving and non-moving assets considered by the community are included in the definition of waqf assets according to Law No. 41 of 2004. Additionally, the institutional aspect of cash waqf governance and waqf law is influenced by its progressive nature. This evolution, at the very least, demonstrates

⁵ Sudirman Sudirman, "Regulasi Wakaf Di Indonesia Pasca Kemerdekaan Ditinjau Dari Statute Approach," *De Jure: Jurnal Hukum Dan Syar'iah* 6, no. 2 (2014).

⁶ Hadi, "Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial)."

societal awareness of the strategic importance of waqf in Indonesia.⁷

According to Masdar (2018), cash waqf has existed in Indonesia for a long time, established based on government regulations and the Indonesian Waqf Board (BWI). This study examines how Indonesia applies the law of cash waqf from the perspective of the Friedman legal system theory. According to Friedman's legal system theory, legal substance covering legislation and MUI fatwas is examined first, followed by the legal structure consisting of legal institutions and authorized law enforcement agencies such as judges, prosecutors, police, and legal advisors to the police. Furthermore, considering legal culture, especially regarding community responses. There are limitations on the third aspect, especially the lack of full public trust, while there are no issues with the other two aspects. From a legal cultural perspective, society perceives the government's difficulty in enforcing cash waqf laws under BWI.⁸

Another research noted that in Indonesia, the government's role is quite significant in the development and management of cash waqf. Several regulations have been made with the aim of organizing monetary waqf and functioning as social funds. Therefore, this article covers the professional management of cash waqf, the role of Nazirs in cash waqf management, cash waqf procedures, and the benefits of cash waqf. It also covers cash waqf management and financial institutions involved in cash waqf, such as the Ministry of Religion, BWI, LKS PWU, and others. The research findings show that cash waqf regulations have a significant influence on how cash waqf is generated and managed, and that governments in these countries need to be more careful in monitoring and controlling cash waqf management.⁹

Another study by Faishal (2021) elaborates the historical evolution of waqf, encompassing its legal aspects delineated by governmental regulations. Employing a literature research technique, it delineates the legal framework concerning waqf and legal norms. The study presents normative juridical facts descriptively using qualitative data analysis methods. The spirit of waqf regulations established by the Dutch colonial government was to manage waqf land under the supervision of regents or authorized officials. Republic of Indonesia Law Number 5 of 1960 concerning Agrarian, issued after Indonesia's independence, mandated land ownership to be safeguarded and regulated by law. Government Regulation Number 28 of 1977, which regulates Owned Land Waqf, is the fulfillment of this task. With the issuance of Presidential Instruction Number 1 of 1999 concerning the Socialization of the Compilation of Islamic Law, the legal positivization of waqf progressed. The purpose of waqf has shifted from land ownership to tangible assets due to the legality of both items. The Fatwa of the National Sharia Board of the Indonesian Ulema Council (DSN MUI), which also provides support, and the societal dynamics emerging concurrently with the enactment of Law Number 41 of 2004 regulating waqf. One significant sign of the government's attention and hope for the future of waqf is the legal establishment of cash waqf.¹⁰ Based on the

⁷ Mansur Efendi and others, "Menakar Progresivitas Hukum Wakaf Dalam Pengembangan Wakaf Uang Di Indonesia," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 3, no. 2 (2018): 191–204.

⁸ Masdar Masdar, "Penerapan Hukum Wakaf Uang Di Indonesia Perspektif Legal System Theory," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): 79–92.

⁹ Nanda Suryadi and Arie Yusnelly, "Pengelolaan Wakaf Uang Di Indonesia," *Syarikat: Jurnal Rumpun Ekonomi Syariah* 2, no. 1 (2019): 27–36.

¹⁰ Ahmad Faisal, "Perkembangan Wakaf Di Indonesia (Postivisasi Hukum Wakaf)," *EKSYA: Jurnal*

aforementioned literature, it is evident that each study seeks to explore waqf legal regulations, although concentrating on waqf itself. However, this research takes a different approach by treating existing research literature as the subject of investigation and aim to identify the strengths and weaknesses of the implementation of Law Number 41 of 2004 concerning Waqf.

Method

The authors employ one of 14 types of review methodologies which is systematic review under the umbrella of literature review.¹¹ Particularly, this study uses Systematic Literature Review (SLR) method. SLR involves identifying, analyzing, evaluating, and interpreting all previously obtained research data. The researcher systematically identifies and reviews selected research articles to explore the findings further. In this paper, the Systematic Literature Review (SLR) approach is applied to examine, analyze, and interpret. The aim of SLR is to discover relevant articles, gather necessary information, evaluate, and synthesize them to gain a broader understanding for the primary article review.¹² Systematic Literature Review plays several vital roles, including synthesizing knowledge in a field, identifying future research priorities, addressing unanswered questions from individual studies, identifying issues in the main research for future improvement or further investigation, and evaluating theories in response to real phenomena.¹³

SLR has been regarded by researchers as a more appropriate, transparent, and explicit method in terms of structure and systematicity. Therefore, by using this method, researchers can obtain more systematic results and find accurate synthesis among various research papers written. To achieve precise SLR results, this study adopts the PRISMA (Preferred Reporting Items for Systematic Review and Meta-Analyses) protocol introduced by Liberati et al¹⁴ and has been used widely by researchers in the field of Islamic finance such as in the insurance field¹⁵ or microfinance¹⁶. First step of SLR is defining the source of data. Here, Google scholar is used instead of Scopus or any other indexing machine since it holds the biggest database for Indonesian scholarly article.¹⁷ This study targets Indonesian scholarly article because it talks about specific legislation within Indonesia. Second step is data

Ekonomi Syariah 2, no. 1 (2021): 76–93.

¹¹ Maria J Grant and Andrew Booth, “A Typology of Reviews: An Analysis of 14 Review Types and Associated Methodologies,” *Health Information & Libraries Journal* 26, no. 2 (2009): 91–108.

¹² Hannah Snyder, “Literature Review as a Research Methodology: An Overview and Guidelines,” *Journal of Business Research* 104 (2019): 333–39.

¹³ Stefan Korber and Rod B McNaughton, “Resilience and Entrepreneurship: A Systematic Literature Review,” *International Journal of Entrepreneurial Behavior & Research* 24, no. 7 (2017): 1129–54.

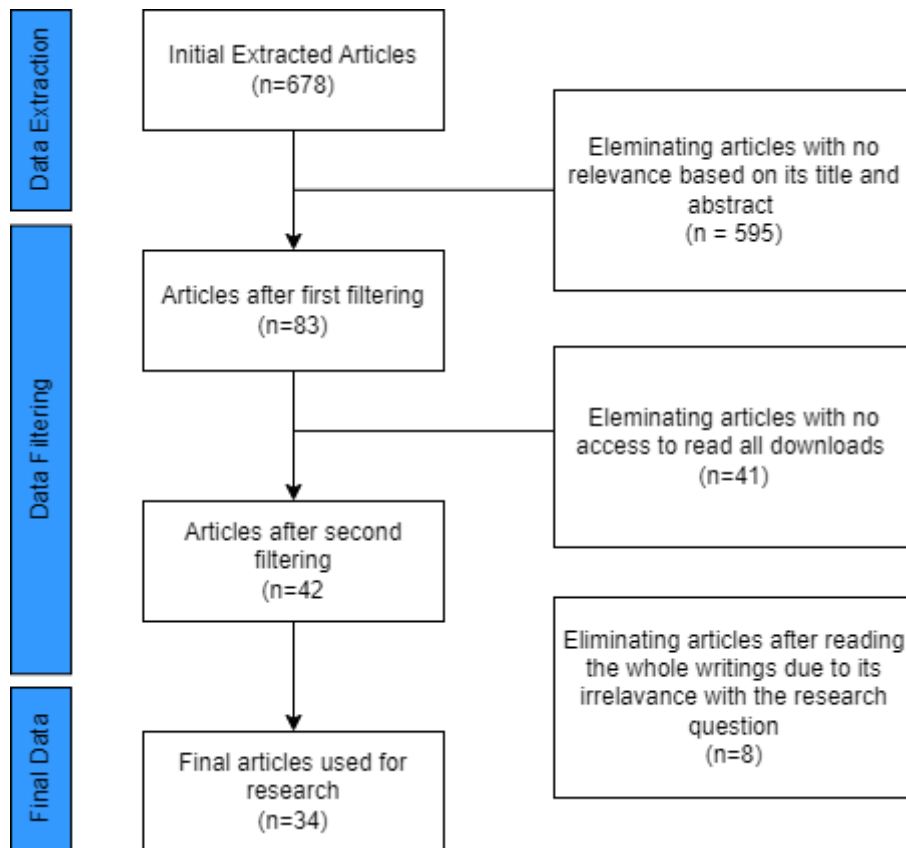
¹⁴ Alessandro Liberati et al., “The PRISMA Statement for Reporting Systematic Reviews and Meta-Analyses of Studies That Evaluate Health Care Interventions: Explanation and Elaboration,” *Annals of Internal Medicine* 151, no. 4 (2009): W-65.

¹⁵ Azhar Alam et al., “Efficiency Studies of the Sharia Insurance Industry: A Systematic Literature Review,” *Insurance Markets and Companies* 13, no. 1 (2022): 90–101.

¹⁶ Fauzul Hanif Noor Athief, Aminudin Ma’ruf, and Faris Shalahuddin Zakiy, “Surviving amidst Pandemic: Indonesian Islamic Microfinance Experience,” *International Journal of Advanced and Applied Sciences* 10, no. 3 (2022): 119–29.

¹⁷ Fauzul Hanif Noor Athief et al., “Ending the Debate of Islamic Law Permissibility of Digital Wallet Through the Lens of Fiqh Adaptation,” *Manchester Journal of Transnational Islamic Law and Practice* 19, no. 3 (n.d.): 194–211.

extraction. We use Publish or Perish to help scrapping numerous data for its competitive advantage in compiling Google Scholar articles. In scrapping the data, we use the keyword “wakaf 2004” for its close meaning with the UU 41/2004 on Waqf. Third step is data filtering which involves three things: removing articles with no correlation with the topic of interest based on its title and abstract, removing articles with no accessibility, and finally removing article which substance deviated from our research question. Figure 1 gives details on these steps.



Results and Discussion

Informants

The data extraction and filtering resulting on 34 articles that has the answers towards our main research question. Table 1 shows the academic writings published in journal used as the data.

Table 1. Data from journals

No	Author and Year	Type	Title
1	Amirah (2023)	Journal	Implementation of Law 41/2004 on Waqf Management

2	Shofi (2016)	Journal	Analysis of Waqf Management Practice based on Law 41/2004
3	Choeri (2022)	Journal	Optimalization of Law 41/2004 at Jepara City
4	Sumarlan (2018)	Journal	Implementation of Law 41/2004 on the Legagility of Waqf Land
5	Wahyuningsih (2018)	Journal	Management Implementation of Law 41/2004
6	Insani & Fathurrohman (2016)	Journal	Productive Cash Waqf Management from the Perspective of Islamic Law and Law 41/2004
7	Nisa et al., (2022)	Journal	Implementation of Law 41/2004 in South Palu
8	Taufik et al., (2021)	Journal	Implementation of Waqf Management in Kediri City from the Perspective of Law 41/2004
9	Yuslem et al., (2019)	Journal	Implementation of Nazhir and Waqf Deeds from the Perspective of KHI and Law 41/2004
10	Nawawi (2013)	Journal	Waqf Implementation on Productive in Indonesia after the Enactment of Law 41/2004
11	Fatimah (2015)	Journal	Implementation of Cash Waqf in Bank Muamalat East Lampung
12	Harahap et al., (2021)	Journal	Implementation of Cash Waqf on HalalMart MUI Sumatera Management from the Perspective of Law 41/2004
13	Farisi (2022)	Journal	The implementation of Term-Waqf Based on Law 41/2004 and Government Regulation PP 42/2006
14	Hendrik & Mufidah (2019)	Journal	The Role of the Indonesian Waqf Board After the issuance of Law Number 41 of 2004 concerning Waqf
15	Hidayat (2016)	Journal	Productive Waqf (Implementation of Law 41/2004)
16	Fikri (2016)	Journal	Implementation of Oral Waqf Based on 41/2004
17	Kamarudin (2014)	Journal	Implementation of 41/2004 and Government Regulation 42/2006 Concerning Waqf in Kendari
18	Fatoni (2010)	Journal	Implementation of Waqf in Kanigoro Blitar
19	Al Ansori (2016)	Journal	Changes of Function on Waqf Land from Its Original Purpose in Purwakarta from the Perspective of Islamic Law and Law 41/2004

20	Dewi & Effendy (2016)	Journal	Waqf Land with No Certificate of Owner from Islamic Perspective and Law 41/2004
21	Aditya et al., (2015)	Journal	The influence of the implementation of waqf law no. 41 of 2004 regarding reporting and supervision of going concern waqf institutions
22	Nisa et al., (2022)	Journal	Implementation of Law 41/2004 in South Palu
23	Maksum & Hidayatullah (2022)	Journal	Revitalization of Nazhir in Waqf Management Based on Law 41/2004
24	Yolandra & Teuku (2023)	Journal	Implementation of Nazhir and Waqf Deedd in Mandailing Natal from the Perspective of Law 41/2004
25	Hak et al., (2019)	Journal	Revitalization of Maslahah Theory Through Isbat Waqf in Overcoming the Problem of Waqf Land Certification Post Law 41/2004

There are also data extracted in the form of thesis. In this regard, thesis means either bachelor thesis or master thesis.

Table 2. Data from Thesis

No	Author and Year	Type	Title
26	Rosid (2019)	Thesis	Implementation of Law No 41/2004 and Compilation of Islamic Law Concerning Nazhir and Waqf Deeds
27	Erika & Ulfah (2021)	Thesis	Implementation of Law 41/2004 in Boarding School
28	Wahyudi (2004)	Thesis	The Effectiveness of Law 41/2004 on Cash Waqf
29	Fatimah (2012)	Thesis	Implementation of Cash Waqf Based on Law 41/2004
30	Habiburrohman (2017)	Thesis	Implementation of Law 41/2004 In Majelis Waqf
31	Maharani (2017)	Thesis	Intensification and Extensification of Waqf Based on Law 41/2004 in Yogyakarta
32	Wijaya (2019)	Thesis	Community Views on The Position Of Waqf Land After The Implementation Of Law 41/2004
33	Suhaimi (2018)	Thesis	The Implementation of Cash Waqf in Central Lampung from the Perspective of Law 41/2004
34	Hendrik & Hidayahnto (2023)	Thesis	Implementation of Law 41/2004 in the Organization of National Waqf Movement in Banjarmasin

Positive Aspects

New Waqf Potential

The enactment of Law Number 41 of 2004 has instilled confidence in society, provided clear legal guidance, and protected waqf assets. Ratifying this law was a calculated step towards enhancing the well-being of all individuals. With the passage of the Waqf Law Number 41 of 2004, the definition of waqf has been expanded to include both movable assets such as money and immovable.¹⁸ The division of waqf assets is delineated into two categories: immovable and movable assets.¹⁹ In Law Number 41 of 2004, waqf can be established for a specified period by allocating a portion of one's assets for perpetual or temporary use, according to its relevance to worship or public welfare under Shariah law.²⁰ One of the significant activities under Law Number 41 of 2004 encompasses two noteworthy contracts: the first involves charitable programs that do not burden anyone, while the second pertains to agreements made during transactions, envisaged to contribute to the ongoing development of waqf in society.²¹

Waqf as a means to enhance the socio-economic welfare

Law 41/2004 gives legal standing to many organizations that function as nazhir or trustee. Apart from adhering to Law Number 41 of 2004, which prohibits the use of mosques and Islamic boarding schools as venues for religious activities, trustees also carry out waqf duties in asset development and management.²² Law Number 41 of 2004 states that Shariah concepts such as mudharabah, musyarakah, murabahah, and ijarah financing have been utilized in the establishment and management of waqf assets, particularly waqf funds.²³ A case study of waqf management organizations examining the impact of implementing Law Number 41 of 2004 on the operational sustainability of waqf institutions. The findings of this examination provide empirical evidence that the ability of waqf institutions to continue operating will improve with the enhancement of Law Number 41 of 2004 implementation.²⁴

¹⁸ Mohamad Hendrik and Mufidah Mufidah, "Peran Badan Wakaf Indonesia Pasca Terbitnya Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *SALAM J. Sos. Dan Budaya Syar-i* 6, no. 5 (2019): 417–46.

¹⁹ Muhammad Shofi, "Analisis Praktik Dan Pengelolaan Wakaf Uang Menurut Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *Jurnal Syarikah: Jurnal Ekonomi Islam* 2, no. 2 (2016).

²⁰ Salman Al Farisi, "Implementasi Wakaf Berjangka Menurut Undang-Undang Nomor 41 Tahun 2004 Dan Peraturan Pemerintah No. 42 Tahun 2006," *Pena: Jurnal Ilmu Pengetahuan Dan Teknologi* 36 (2022): 8–15.

²¹ Ammar Zaki Siregar, Ramadhan Syahmedi Siregar, and Mhd Yadhi Harahap, "Implementasi Wakaf Uang Dalam Pengelolaan Halalmart Majelis Ulama Indonesia Provinsi Sumatera Utara Perspektif UU No. 41 Tahun 2004 Tentang Wakaf Uang," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 9, no. 02 (2021).

²² Diaz Ayu Erika, "Implementasi Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Yayasan Pondok Pesantren Miftahu Nurul Huda 3 Desa Banjarejo Kabupaten Magetan" (Bachelor Thesis, IAIN Ponorogo, 2021).

²³ Achmad Suhaimi, "Pelaksanaan Wakaf Uang Dalam Tinjauan Undang-Undang No. 41 Tahun 2004 Tentang Wakaf (Studi Pengelolaan Wakaf Uang Di Kecamatan Gunung Sugih Kabupaten Lampung Tengah)" (Bachelor Thesis, IAIN Metro, 2018).

²⁴ Gilland Aditya, Sri Fadilah, and Helliana Helliana, "Pengaruh Penerapan Undang-Undang Wakaf No. 41 Tahun 2004 Mengenai Pelaporan Dan Pengawasan Terhadap Going Concern Lembaga

Following the enactment of Law Number 41 of 2004 in an effort to actualize society's involvement in waqf collection and utilization, the government has begun to maximize the potential of community-owned waqf assets.²⁵

Negative Aspects

The Lack of Professionalism among Nazirs

In general, waqf affairs are still handled by Nazirs who lack the necessary competencies in managing the waqf assets under their responsibility. Many Nazirs exhibit a lack of professionalism, including a limited awareness of their rights and duties.²⁶ Numerous waqf assets in Indonesia remain economically unproductive due to the low level of professionalism among waqf Nazirs.²⁷ Despite being granted authority, Nazirs often fail to effectively manage and administer waqf assets according to their intended purposes and functions.²⁸ The deficiency in status, duties, and responsibilities can significantly impact the implementation, management, and development of waqf in Indonesia.²⁹ Only a small fraction of Nazirs possess professional qualifications and specialized experience in waqf management.³⁰

Challenges in waqf land certification post the enactment of Law Number 41 of 2004

Many waqf lands remain uncertified and are sometimes sold by the overseeing organizations.³¹ Due to the lack of support in waqif data, many waqf lands remain uncertified, resulting in prolonged certification procedures.³² Public unawareness of waqf practices in accordance with Law Number 41 of 2004 stems from insufficient socialization and education on waqf matters in rural areas.³³ Despite socialization

Wakaf (Nazhir) Di Bandung," *Prosiding Akuntansi*, 2015, 140–45.

²⁵ Lubab Habiburrohman and others, "Penerapan Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf Di Majelis Wakaf Dan Kehartabendaan Pimpinan Daerah Muhammadiyah Kabupaten Banyumas Lubab Habiburrohman NIM. 1423401023" (Bachelor Thesis, IAIN, 2017).

²⁶ Paridatul Amriah, "Implementasi Undang-Undang Wakaf No. 41 Tahun 2004 Dan Peraturan Pemerintah No. 42 Tahun 2006 Terhadap Pengelolaan Harta Wakaf," *Journal of Comprehensive Islamic Studies* 2, no. 1 (2023): 17–32.

²⁷ Nawawi Nawawi, "Implementasi Wakaf Produktif Di Indonesia Pasca Berlakunya UU No. 41 Tahun 2004 Tentang Wakaf," *Al-Tahrir: Jurnal Pemikiran Islam* 13, no. 2 (2013): 393–415.

²⁸ Yolandra Yolandra and Teuku Muttaqin Mansur, "Penerapan Pasal 42 Dan Pasal 43 Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Kecamatan Cot Girek Kabupaten Aceh Utara," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 7, no. 2 (2023): 223–31.

²⁹ Maksun and Hidayatullah Hidayatullah, "Revitalisasi Nazhir Dalam Pengelolaan Wakaf Di Indonesia (Studi Yuridis Terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf)," *Prosiding Penelitian Dosen UNISKA MAB*, no. 1 (2022).

³⁰ Hendrik Hidayahnto, "Implementasi Pasal 28, 29, 30 Undang-Undang No. 41 Tahun 2004 Tentang Wakaf Dalam Penyelenggaraan Gerakan Nasional Wakaf Uang (GNWU) Di Kota Banjarmasin" (Bachelor Thesis, Syariah, 2023).

³¹ Imron Choeri, "Optimalisasi Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Kabupaten Jepara," *El-Usrah: Jurnal Hukum Keluarga* 5, no. 1 (2022): 23–40.

³² Nurul Hak, Desi Isnaini, and Miti Yarmunida, "Revitalisasi Teori Masalah Melalui Isbat Wakaf Dalam Mengatasi Problem Sertifikasi Tanah Wakaf Pasca Undang-Undang Nomor 41 Tahun 2004" (Bachelor Thesis, IAIN Bengkulu, 2019).

³³ Nawir Yuslem, Ramadhan Sahmedi Siregar, and Ahmad Rosidi, "Implementasi Nazhir Dan Akta

efforts aligned with Law Number 41 of 2004, some waqf lands remain unregistered. Registering waqf lands is crucial to obtain certificates.³⁴ Due to lack of awareness, Law Number 41 of 2004 concerning waqf, particularly regarding movable assets, has had little impact.³⁵ The implementation of Law Number 41 of 2004 is influenced by several factors, including content, organization, and legal knowledge.³⁶

Conclusion

After conducting research, it can be concluded that the impact of the implementation of Law Number 41 of 2004 has both positive and negative effects. Positively, the enactment of Law Number 41 of 2004 has expanded the potential of waqf objects, as it now encompasses movable assets such as money, not just immovable assets. However, there are negative impacts observed. Generally, waqf affairs are still handled by Nazirs who lack the necessary competence in managing waqf assets under their responsibility. Many Nazirs exhibit unprofessional behavior, including a lack of awareness of their rights and obligations. The process of waqf land certification is lengthy, with a significant portion of waqf lands remaining uncertified due to insufficient evidence of waqif ownership. Furthermore, the lack of public awareness regarding waqf practices in line with Law Number 41 of 2004 is attributed to insufficient socialization or education about waqf matters among the public.

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³⁴ Ika Putry Wijaya, "Pandangan Masyarakat Terhadap Kedudukan Tanah Wakaf Pasca Diberlakukannya UU No. 41 Tahun 2004 Tentang Wakaf Di Kua Kotagajah" (Bachelor Thesis, IAIN Metro, 2019); Eka Putri Santi Dewi and Deddy Effendy, "Uncertified Wakaf Land Based on Islamic Law and Law Number 41 of 2004 on Wakaf (a Case Study on a Jami Mosque Miiftaahussalam in the Jayamukti Village of Leuwisari District of Tasikmalaya Regency)," *Prosiding Ilmu Hukum*, 2016, 59–66.

³⁵ Achmad Fatoni, "Penerapan Wakaf Di Kec. Kanigoro Kab. Blitar: Studi Atas Pelaksanaan PP No. 28 Tahun 1977 Dan UU No. 41 Tahun 2004" (PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2010).

³⁶ Kamaruddin Kamarudin, "Implementasi Undang-Undang Nomor 41 Tahun 2004 Dan Peraturan Pemerintah Nomor 42 Tahun 2006 Tentang Wakaf Di Kota Kendari," *Al-Izzah: Jurnal Hasil-Hasil Penelitian* 9, no. 2 (2014): 39–64.

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Revenge Porn: Integral Policy And Public Moral Awareness

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Abstract:

Law Number 12 of 2022 on the Crime of Sexual Violence (TPKS) has specifically regulated online-based sexual crimes, including revenge porn, which has a high crime rate. The crime in the form of revenge porn causes the spread of personal photos or videos of a person containing pornography with the aim of taking revenge. The purpose of this study is to explain that the violence of revenge porn has been regulated in various laws systematically, and explain the integral policy in tackling revenge porn based on public moral awareness. This research uses a statutory approach and a conceptual approach. With descriptive analysis and interpretation of the principles in the TPKS Law to obtain valid research results. The results of the study indicate that (1) revenge porn has been regulated in the Criminal Code, the Pornography Law, the Electronic Information and Transaction Law, and the TPKS Law systematically, and has elements that form a criminal offense. (2) Integral policies that can be taken to tackle revenge porn violence can be done through fostering public legal awareness that forms public moral awareness, considering that revenge porn violence is synonymous with moral crimes. This study found that collaboration is needed from all parties involved in fostering public moral awareness in integral policies, such as schools and hospitals, as well as increasing digital literacy

Keywords: revenge porn; integral policy; moral awareness

Introduction

Law Number 12 Year 2022 on Sexual Violence Crimes (TPKS) has specifically regulated online-based sexual violence¹, but in fact this type of sexual violence experienced a significant upward trend from 2018-2022². This upward trend is reinforced by the high number of social media users in Indonesia, which also has the potential to become a new field for cyber crime³. Data shows that in National Commission for Women's 2023 Annual Report (CATAHU), 869 cases of GBV occurred in Indonesia throughout 2022⁴. One of the online-based sexual violence is

¹ Dinda Nurfitri et al., "Revenge Porn Tidak Mendapat Perlindungan Hak Asasi Manusia," *Advances In Social Humanities Research*, 2023.

² Mela Syaharani, "Jumlah Kasus Kekerasan Berbasis Gender Online Tahun 2022 Menurun, Berapa Totalnya?," goodstat, 2023, <https://goodstats.id/article/jumlah-kasus-kekerasan-berbasis-gender-online-tahun-2022-menurun-berapa-totalnya-3EFTc>.

³ Imelia Sintia, "Analisis Perlindungan Hukum Terhadap Perempuan Sebagai Korban Pornografi Balas Dendam (Revenge Porn)," *Jurnal Ilmiah Mahasiswa Hukum (KIMHUM)* 1, no. 3 (2021).

⁴ Rusti Dian, "Hotline Aduan Penyebaran Konten Intim Dan Kekerasan Berbasis Gender Online," narasi.tv, 2023, https://narasi.tv/read/narasi-daily/hotline-ancaman-revenge-porn#google_vignette.

revenge porn (Non Consensual Intimate Image (NCII)/revenge porn). The crime of revenge porn causes the dissemination of private photos or videos of a person containing pornography without the consent of the individual depicted in the image with the aim of taking revenge⁵. Another interesting thought in the scope of revenge porn violence is that sexual violence, including online-based violence, is often associated with moral crimes⁶, which is related to the moral awareness of the community and the resilience of the community to ward off crime.

So far, studies that discuss revenge porn emphasize more on the aspects of law enforcement related to online-based sexual violence, as well as legal protection for victims. Other writings focus more on sociological and psychological studies. These writings tend to be limited to three topics. First, the protection of victims of revenge porn that has been accommodated in Law Number 12 of 2022 comprehensively, such as the rights of victims, to the provision of restitution for victims⁷, and in Law Number 13 of 2006 jo Law Number 31 of 2014 which emphasizes that victims with the assistance of LPSK are entitled to get their rights back⁸, Second, the criminal liability of the perpetrators of revenge porn can be subject to criminal liability in accordance with the provisions of Article 281 and Article 282 of the Criminal Code (KUHP), Article 45 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, and Article 29 of Law No. 44 of 2008 concerning Pornography⁹, and the accountability of the perpetrators of "sexortion" can be punished using the Criminal Code, ITE Law and Pornography Law¹⁰, and third, studies of resilience and victim blaming in revenge porn cases, including factors that influence resilience in survivors¹¹, and the need for policies to address the potential stigma directed at victims of revenge porn¹². From the existing writings, there are not many that discuss the serious threat of revenge porn and integral policies in overcoming it considering that it has experienced an upward trend.

The purpose of this paper is to complement previous writings on revenge porn by explaining that it has become a serious threat in Indonesia as evidenced by the increasing number of reports. In line with that, two questions will be answered in this paper. First, how is violent revenge porn regulated in various laws systematically

⁵ Mega Triutami Sundari, "Victim Blaming Terhadap Penyebaran Konten Video Pornografi Pada Korban Toxic Relationship Dan Balas Dendam (Revenge Porn)," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2023.

⁶ Asrianto Zainal, "Kejahatan Kesusilaan Dan Pelecehan Seksual Di Tinjau Dari Kebijakan Hukum Pidana," *Al-'Adl* 7, no. 1 (2014): 138–54, <https://ejournal.iainkendari.ac.id/al-adl/article/view/215>.

⁷ Rahimah Ismah Salimah, "Perlindungan Korban Revenge Porn Dalam Hukum Positif Indonesia," *Jurnal Mahasiswa Indonesia*, 2023.

⁸ Zalzabila Armadani and Purnama Sari, "Perlindungan Hukum Terhadap Perempuan Sebagai Korban Tindak Pidana Pornografi Balas Dendam (Revenge Porn)," *Jurnal Magister Hukum Argumentum* 8, no. 1 (2022): 2715–7709.

⁹ Ni Putu and Winny Arisanti, "Pertanggungjawaban Pidana Pelaku Revenge Porn (Pornografi Balas Dendam) Menurut Hukum Positif Indonesia," *Jurnal Kertha Desa*, 2023.

¹⁰ Fikri Chandra Permana, "Pertanggungjawaban Pidana Pelaku 'Sektorsi' Dalam Kekerasan Berbasis Gender Online (KBGO)," *Jurist-Diction*, 2022, <https://doi.org/10.20473/jd.v5i3.35776>.

¹¹ L Wahyuni and N E Saputra, "Resiliensi Pada Penyintas Revenge Porn: Resilience of Revenge Porn Survivors," *Jurnal Psikologi Jambi*, 2022.

¹² Tiffany Lavis Tahlee Mckinlay, "Why Did She Send It in the First Place? Victim Blame in the Context of 'Revenge Porn,'" *Psychiatri, Pschycology, and Law* 27, no. 3 (2020): 386–96, <https://doi.org/https://doi.org/10.1080/13218719.2020.1734977>.

along with its elements? Second, how integral policies in tackling revenge porn are based on the moral awareness of society. The two definitions of the problem will be the main study in this paper. The idea of this paper is based on the argument that today revenge porn in Indonesia has experienced a significant increase, one of which is caused by the unlimited use of social media. This increase is a serious threat because the majority of perpetrators and victims of revenge porn are young adults who are the golden generation of Indonesia 2045. In addition, so far, cases related to online-based sexual violence cannot involve only one party but require collaboration from various parties and a multidisciplinary approach to make laws that are just and humane.

The type of research used is normative research using a statutes approach and conceptual approach. Furthermore, in this paper the type of data used is primary legal material in the form of laws and regulations that are studied in more depth, namely Law Number 12 of 2022, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Law No. 44 of 2008 concerning Pornography, and the Criminal Code, and secondary legal material in the form of all publications on law that are not official documents, namely law books including theses, theses, and legal dissertations, and legal journals. The data analysis method uses legal interpretation techniques, namely in the form of historical interpretation by paying attention to the history of the formation of these laws and regulations, systematic interpretation by connecting a law and regulations with the entire legal system, and hermenetic or interpretation of the meaning in a text in interpreting the principles contained in laws and regulations in order to obtain valid research results.

Results and Discussion

Revenge Porn in Positive Law

Carmen M. Cusack in her book *Pornography and the criminal justice system*, defines that "revenge porn is pornography produced or distributed by intimate partners with the intent of humiliating or harassing the victim, which when translated means revenge pornography is pornography production or distribution by intimate partners with the intent of humiliating or harassing the victim"¹³. Meanwhile, researchers from the Support Group and Resource Center on Sexuality Studies (SGRC) define revenge porn as a form of coercion, threatening someone, generally women, to spread pornographic content in the form of photos or videos that have been sent to the perpetrator, with the aim of embarrassing, destroying lives, or ostracizing. The perpetrators in revenge porn are often former partners¹⁴.

An example of a revenge porn case that has occurred in Pandeglang, Banten is the case of Alwi (22 years old) and IAK (23 years old). In this case Alwi disseminated intimate content of Alwi and IAK to IAK's friends with the aim that IAK would not break off the relationship. The case ended up in court with Alwi being charged with a maximum sentence of 6 years in prison and fined 1 billion rupiah based on Article 45 Paragraph (1) in conjunction with Article 27 Paragraph (1) of Law Number

¹³ Adi Dharmawan and Eman Solaeman, "Tinjauan Yuridis Terhadap Korban Revenge Porn," *Alauddin Law Development Journal* 4, no. 3 (2022): 699–716, <https://doi.org/10.24252/aldev.v4i3.19800>.

¹⁴ Salimah, "Perlindungan Korban Revenge Porn Dalam Hukum Positif Indonesia."

11/2008 on Electronic Information and Transactions¹⁵. Another case related to revenge porn involved Rebecca Klopper, a young artist whose vulgar footage was spread on social media in 2023 and continued with a report to the Police Criminal Investigation Unit¹⁶.

In positive law, the regulation of online-based sexual violence has been regulated in several laws. Namely in the Criminal Code both in Law Number 1 of 1946 and the National Criminal Code, Law Number 44 of 2008 concerning Pornography, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The articles that regulate are as follows:

1. Article 281 of the Criminal Code (KUHP, Law Number 1 Year 1946)

The article stipulates a maximum imprisonment of 2 years and 8 months or a maximum fine of Rp4.5 million for those who intentionally and publicly violate decency; and intentionally and in front of other people who are there against their will, violate decency. Furthermore, Article 282 of the Criminal Code states the prohibition for people who broadcast, show or paste in public writings, images or objects that are known to violate decency..

2. Article 406 of the Criminal Code (KUHP, Law No. 1 of 2023)

In the National Criminal Code, gender-based sexual violence has been regulated in Article 406 that is punishable by a maximum imprisonment of 1 year or a maximum fine of category II, namely IDR 10 million, for every person who violates decency in public; or violates decency in front of another person who is present without the will of the person present.

3. Article 27 (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 on Information and Electronic Transactions

Article 27 (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. While the sanctions of the article are in article 45 (1), it is stated that: *'Any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp.1,000,000,000.00 (one billion rupiah)'*.

4. Article 44 of Law Number 44 of 2008 on Pornography

Looking at the Law on Pornography, it basically states that every person is prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains, among others: intercourse (including deviant), sexual violence, masturbation (masturbation), nudity or displays that give the impression of nudity, genitals, or child pornography. As for the sanctions regulated in Article 29, which can be imprisoned for a minimum of 6 months and a maximum of 12 years and/or a fine of at least Rp250 million and a maximum of Rp6 billion.

¹⁵ Clementine Kristenesia Bonaparte, "Kasus Revenge Porn Pandeglang: Perspektif Hukum Dan Ancaman Terhadap Pelanggaran Privasi Seksual," FH UI, 2023, <https://lk2fhui.law.ui.ac.id/portfolio/kasus-revenge-porn-pandeglang-perspektif-hukum-dan-ancaman-terhadap-pelanggaran-privasi-seksual/>.

¹⁶ Aliya Musyriyah Anas, "Revenge Porn & Sextortion: Polemik Yang Dialami Rebecca Klopper, Bagaimana Negara Melindungi?," advokatkonstitusi, 2023, <https://advokatkonstitusi.com/polemik-yang-dialami-rebecca-klopper-bagaimana-negara-melindungi/>.

5. Article 14 of Law Number 12 of 2022 on the Criminalization of Sexual Violence

In the Law on criminal acts of sexual violence, it has been regulated in Article 14 (1) which basically regulates that every person who without the right to record and / or take pictures or screenshots of sexual content against the will or without the consent of the person who is the object of recording or pictures or screenshots can be sentenced to imprisonment for a maximum of 4 years and / or a maximum fine of Rp.200,000,000.

In connection with the systematic regulation of revenge porn in various laws, the elements of the crime of revenge porn can be obtained. The elements or in other literature are referred to as elements. The formulation in the article has two functions. First, as an embodiment of the principle of legality, the second formulation is a show of evidence in the context of criminal procedure law¹⁷. So that when researched more, the elements of revenge porn can be found¹⁸ :

1. The existence of action or behavior Action

Action is an absolute element of a criminal offense or offense. According to Moeljatno, a criminal act is an act prohibited by a rule of law, which prohibition is accompanied by threats or sanctions in the form of certain punishments, for those who violate the prohibition. In this regard, when reviewing the definition of revenge porn expressed by Kirchengast, which states revenge porn as "the sharing of intimate images without the consent of the person depicted"¹⁹, has also explicitly included 'act' in its definition. It should be understood that in the definition there is the phrase 'without consent', which means that the dissemination of images or videos is done without permission or without the knowledge of the party concerned. This point is what makes revenge porn an online-based sexual violence. Based on the analysis of the definition of the crime and the definition of the act of revenge porn and based on the articles that regulate it, it is known that the meaning of the act or behavior in question is to broadcast or distribute. The act is an operational verb that requires a real action, as well as a sign that revenge porn is a completed offense that requires the distribution of images or videos.

2. The existence of the object of the criminal offense

In relation to the object of a criminal offense, it is always associated with the interests to be protected by criminal law itself. The placement of the object is behind the element of behavior because behavior is always related to the object of the crime²⁰. In connection with the act of evenge porn based on the articles that regulate the object of the criminal act, namely images or videos that contain pornography and violate decency, which if spread will cause harm to the party concerned because it has been distributed without permission or without knowledge. The loss in this case can be in the form of material loss or related to dignity or good name.

3. The existence of faults

¹⁷ Eddy O.S Hiariej, *Prinsip Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016).

¹⁸ Putu and Arisanti, "Pertanggungjawaban Pidana Pelaku Revenge Porn (Pornografi Balas Dendam) Menurut Hukum Positif Indonesia."

¹⁹ Tyrone Kirchengast, "The Limits of Criminal Law and Justice: 'Revenge Porn' Criminalisation, Hybrid Responses and The Ideal Victim," *Unisa Student Kaw Review* 2 (2016).

²⁰ Adami Chazawi, *Tindak Pidana Pornografi* (Jakarta: Sinar Grafika, 2016).

Fault is a requirement for criminal liability as the principle of "no punishment without fault"²¹. Fault is always related to the inner attitude of the maker or dader in realizing the criminal act. In revenge porn, it is clear in the articles that the form of guilt that exists in the maker is intentional (*dolus*) to disseminate images/video that contain pornography and violate decency. Willfulness (*dolus*) in criminal law has two requirements, namely wanting the act to occur (*willens*), and knowing the act is a criminal offense (*wittens*)²². In revenge porn, the perpetrator has both elements because they want to disseminate the images or videos.

4. The existence of the unlawful nature of the act

Actions can contain the nature of censure, which comes from 2 sources. Formelle wederrechtelijk or against formal law if the act is censured by law, and materiele wederrechtelijk or against material law if the act is censured by the legal consciousness of society²³. Based on this, the nature of unlawfulness is apparent from the formulation of the relevant articles. This is also consistent with the decision of the Supreme Court which emphasizes the inherent unlawfulness of every criminal act or action even though the phrase 'against the law' is not included. Based on the articles regulating revenge porn, the prohibitions referred to have also been contained, so that the nature of unlawfulness also automatically arises.

5. Accompanying circumstances

The accompanying circumstances can indicate how the perpetrator committed a criminal offense, so that things that were previously abstract can become more concrete and clear because they are limited by the way the criminal offense was committed²⁴. In the case of revenge porn, the element of the act is disseminating or distributing pornographic content which is done by broadcasting the content on the internet or social media, with the aim of humiliating, embarrassing, or taking revenge. Based on the description above of the various laws that regulate, it is clear that revenge porn has the elements of a criminal act that can be used as an offense formulation, to be used as a show of evidence in formal criminal law (Criminal Procedure Law).

Moral Awareness in Integral Policy

When examined from the previous discussion, revenge porn has been regulated by several laws and has elements that make up the Act. However, what also needs to be underlined in this discussion is the integral policy that needs to be systematically harmonized so that the regulation of revenge porn is carried out as intended. Integral policy is a harmonization of penal and non-penal policies that not only prioritize the principle of legality but also the principle of benefit.²⁵ . So that this affects how the creation of a policy related to revenge porn must focus on the perpetrators, victims, and build public legal awareness considering the dangers of revenge porn itself.

²¹ Suslianto Suslianto and Ismet Hadi, "Penerapan Asas Tiada Pidana Tanpa Kesalahan Dalam Ketentuan Pasal 78 Ayat (15) Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan," *At-Tanwir Law Review*, 2022, <https://doi.org/10.31314/atlarev.v2i2.2028>.

²² Hiariej, *Prinsip Prinsip Hukum Pidana*.

²³ Eddy Irianto Syahputra, "Analisis Yuridis Tindak Pidana Pornografi Yang Disebarluaskan Melalui Media Sosial (Twitter)" (Universitas HKBN Nommensen, 2019).

²⁴ Chazawi, *Tindak Pidana Pornografi*.

²⁵ RR. Putri A. Priamsari, "Kebijakan Integral Penanggulangan Tindak Pidana Penyalahgunaan Narkotika," *Jurnal Hukum Progresif*, 2022, <https://doi.org/10.14710/jhp.10.2.99-111>.

Based on the findings of previous research, revenge porn is often blamed on women^{26 27}, who are actually criminalized. This fact indicates that in society there is a stigma that women are often considered as triggers for sexual violence, such as the use of clothing, make-up, or ways of speaking that are considered seductive until sexual violence occurs. This is also reinforced by the patriarchal culture in society which further exacerbates the situation experienced by women who are often victimized. In a patriarchal culture, men are considered stronger, more powerful, and more entitled to occupy important roles that have constructed a cultural order that favors men over women²⁸. So that if sexual violence occurs, the woman is still considered the guilty party..

Although various laws regulating revenge porn have included the rights of victims, the high number of revenge porn violence has shown that this is still a threat that has the potential to damage the younger generation so that it needs serious attention from various parties to prevent, overcome, and tackle revenge porn. The involvement of all elements of society and the government is an effort to harmonize all interests, and protect the rights of all parties concerned. Given that in revenge porn violence there is a unique power relationship because the majority of perpetrators and victims are lovers²⁹ so it still belongs to the young adult age range.

In connection with this, a structured effort is needed to deal with revenge porn in the current era. The integrated approach is a combination of penal and non-penal approaches. The integrated approach is a rational approach, which in addition to respecting the principle of legality also prioritizes the principle of expediency or utility³⁰. According to Barda Nawawi Arief, the main problem in crime prevention is to integrate and harmonize non-penal (non-criminal law) and penal (criminal law) activities or policies, namely towards suppressing or reducing potential factors for the growth of crime. With this integral policy approach, it is hoped that social defense planning can be successful.³¹

Related to revenge porn, integral policies can be carried out by considering legal culture factors to foster legal awareness. According to Friedmann, "without legal culture, the legal system is inert, a dead fish lying in a basket, not a living fish swimming in its sea"³². Legal culture includes the views, habits and behavior of the community regarding the values and expectations of the applicable legal system, in other words, legal culture is the climate of social thought about how the law is applied, violated or implemented³³. From this description, it can be seen that legal culture is an important element of the enforceability of law in society.

²⁶ Okamaisya Sugiyanto, "Perempuan Dan Revenge Porn: Konstruksi Sosial Terhadap Perempuan Indonesia Dari Perspektif Viktimologi," *Jurnal Wanita Dan Keluarga*, 2021, <https://doi.org/10.22146/jwk.2240>.

²⁷ Tahlee Mckinlay, "Why Did She Send It in the First Place? Victim Blame in the Context of 'Revenge Porn.'"

²⁸ Nanang Hasan Susanto, "Tantangan Mewujudkan Kesetaraan Gender Dalam Budaya Patriarki," *Muwazah* 7, no. 2 (2016), <https://doi.org/10.28918/muwazah.v7i2.517>.

²⁹ Salimah, "Perlindungan Korban Revenge Porn Dalam Hukum Positif Indonesia."

³⁰ M.H. Rini Fathonah, S.H., "Kebijakan Integral Terhadap Penanggulangan Tawuran Antar Pelajar (Studi Kasus Pada Wilayah Hukum Kota Bandar Lampung)," *Universitas Lampung* (2018).

³¹ Barda Nawawi Arief, "Kebijakan Penanggulangan Kejahatan Dengan Hukum Pidana," *Masalah-Masalah Hukum* 2, no. 4 (1982).

³² Lawrence Meir Friedmann, *American Law*, ed. W.W Norton & Company (London, 1984).

³³ Yusri Munaf, *Hukum Administrasi Negara* (Pekanbaru: Marpoyan Tujuh Publishing, 2016).

In addition, fostering legal awareness can also be obtained through education to the community regarding gender-based sexual violence. Patriarchal culture and blaming women who are actually victims are issues that need to be considered and addressed immediately. Although in the law victims get legal protection in several forms such as restitution, compensation, medical assistance, and theoretical legal assistance, it should also be realized that victims of revenge porn are reluctant to report for fear of being blamed by the community, even by law enforcement officials themselves³⁴. This fact is corroborated by the findings of S. Azzahra's research, which states that victims of revenge porn are often blamed by the public for their immoral behavior, despite the fact that they did not intend to spread the information to the public³⁵. It is well known that society's response to revenge porn tends to be victim blaming and slut shaming, which leads to the violation of victims' rights, honor, and security. Slut shaming, according to the Oxford Dictionary definition, refers to a form of social control that stigmatizes women for their sensual and wild behavior.

Building a legal culture in the context of revenge porn is more towards human development. This is related to the interests that are protected, namely decency. The crime of revenge porn is often related to a person's morals so that efforts need to be made to re-ground the values or social norms in society so that people's behavior is directed towards what is a common goal. This thinking is based on the idea that sexual violence is a crime against decency. In drafting a law in the field of decency and sexual harassment, it must be based on the values that live in society³⁶. The habituation of values that live in society is often called habituation³⁷. In habituation, a person will be familiarized to form the character as desired by the policy maker. So that this is a strategy to instill morals for generations taught to the younger generation through cultivation which emphasizes which is right and wrong in absolute terms. This strategy is in line with the findings in the study by Alqadri, et al who emphasized the cultivation of morals as early as possible to form a commendable character³⁸.

In connection with the cultivation of morals in the digital era that cannot be separated from the development of technology that is growing rapidly, and clearly has an impact on human morals. Magnis-Susino says that morals always refer to the good and bad of humans as humans, so that the field of morals is the field of human life seen in terms of its goodness as a human being. In the beginning, law and morals were two aspects that merged in the law of God (Natural Law), before being influenced by the secularization of life which separated the life of the world into the life of the state, and the affairs of the afterlife which became the domain of religion³⁹.

³⁴ Permata Adinda, "Derita Korban Revenge Porn: Trauma Hingga Tak Mendapat Perlindungan Hukum," *asumsi*, 2021, <https://asumsi.co/post/58608/derita-korban-revenge-porn-dari-trauma-hingga-minimnya-perlindungan-hukum/>.

³⁵ Sahira Azzahra et al., "Kajian Literatur : Perlindungan Hukum Terhadap Korban Revenge Porn," *Doktrin 2*, no. 2 (2024).

³⁶ Zainal, "Kejahatan Kesusilaan Dan Pelecehan Seksual Di Tinjau Dari Kebijakan Hukum Pidana."

³⁷ Voni Fitria, Hambali, and Supentri, "Pengaruh Habitiasi Nilai Karakter Tanggung Jawab Terhadap Pembentukan Profil Pelajar Pancasila Siswa Kelas XI SMAN 1 Benai," *Journal on Education*, 2023.

³⁸ Bagdawansyah Alqadri, Edy Kurniawansyah, and Ahmad Fauzan, "Habitiasi Nilai-Nilai Karakter Sebagai Perilaku Anti Korupsi Pada Masyarakat Kajang," *Jurnal Pendidikan Sosial Keberagaman* 8, no. 1 (2021): 10–29, <https://doi.org/10.29303/juridiksiam.v8i1.178>.

³⁹ Salman Luthan, "Dialektika Hukum Dan Moral Dalam Perspektif Filsafat Hukum," *Jurnal Hukum Ius Quia Iustum* 19, no. 4 (2012): 506–23, <https://doi.org/10.20885/iustum.vol19.iss4.art2>.

Immanuel Kant in his theory argues that morals are autonomous so that moral rules are obeyed by humans because of the impulse of their own will (awareness). In law, morals have a function, one of which is as an ethical basis in the formation of legal rules. Moral values, especially the values of virtue in the association of human life must animate and direct the formation of legal rules (laws), which in this case are contained in an integral policy that requires human moral development in it to achieve public moral awareness⁴⁰. Moreover, laws that are not based on morality are unjust laws⁴¹, because the rule of law is born based on thoughts about what is good and what is bad⁴².

In line with technological advances in the digital era, public moral awareness will guide people's behavior by itself in line with moral values in accordance with conscience. Such as obeying the rule of law or in everyday life such as wearing polite clothing, not being rude or saying harsh words, or other behaviors that are not in line with the values that live in society. This is also what will lead people's behavior to legal compliance. Legal compliance itself cannot be considered from one side as a form of community fear of threatening sanctions, but can be considered as community approval by governing legal rules that are in line with conscience or good values. The existence of technology that is growing rapidly, and causes impacts that erode the morals of the younger generation⁴³, can be dispelled by itself if the moral awareness of the community has grown. This is in line with the concept of social defense in integral policy.

The use of integral policies certainly cannot be done by one party alone, but requires collaboration from various related parties to be able to achieve legal objectives in society. Although the TPKS Law has systematically regulated from the prevention stage to recovery by appointing related parties, what needs to be considered together is how prevention efforts can be successful. In this case, the Government, the community, and other related parties such as schools, and hospitals need to work together to create a safe and orderly digital environment by following applicable rules and ethics. Collaboration from various related parties was also agreed by Pratama, et al⁴⁴ in its research findings. Inclusive and sustainable partnerships can also help raise awareness of the challenges and opportunities faced, as well as strengthen capacity to deal with changes that occur in the digital era. This further affirms the equal position of all parties including the community itself to jointly prevent sexual violence revenge porn in open cooperation.

In an individual context, digital literacy awareness also needs to be pursued as much as possible so that a person can understand every action in cyberspace that is dangerous and illegal and can avoid it. And understanding that actions in cyberspace also have the same consequences in the real world can lead to reasoning for the ability to be responsible for every action taken. These findings are also corroborated by

⁴⁰ Luthan.

⁴¹ Jonathan Crowe, *Legal Theory, Second Edition* (Nutshell LawBook Series Co, 2014).

⁴² Eddy O.S Hiariej Zainal Arifin Mochtar, *Dasar-Dasar Ilmu Hukum; Memahami Kaidah, Teori, Asas Dan Filsafat Hukum* (Yogyakarta: Raja Grafindo Persada, 2022).

⁴³ Ade Kurniawan et al., "Krisis Moral Remaja Di Era Digital," *Literaksi: Jurnal Manajemen Pendidikan* 01, no. 02 (2023): 21–25, <https://literaksi.org/index.php/jmp/article/view/9/11>.

⁴⁴ R Pratama, R. A., Sari, R. M., & Effendi, "Transformasi Digital Dan Perkembangan Hukum Di Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 26, no. 1 (2019), <https://doi.org/https://doi.org/10.20885/iustum.vol26.iss1.art1>.

research conducted by Bahram⁴⁵ on the importance of digital literacy. Digital literacy should be a priority in formal and informal education so that people are not technology illiterate and are able to know legal and illegal actions in cyberspace. In the end, public moral awareness can encourage public behavior in accordance with good values and conscience so that it can become a filter for any deviant actions or behavior, including revenge porn violence which has recently become a trend will fade due to the process of internalizing moral values to individuals and society and awareness of digital literacy.

Conclusion

From this research, it is found that it turns out that the integral policy that can be taken in tackling revenge porn violence is to foster public legal awareness that can form public moral awareness, because revenge porn violence is identical to moral crimes, so it requires the collaboration of all parties concerned to be able to overcome it together in order to create social defense. These findings can be a conceptual contribution to criminal law policy in Indonesia by considering non-legal factors such as legal culture to shape community behavior in accordance with social norms and conscience. This research is limited to the type of sexual violence studied, namely revenge porn, and is limited to the approach taken, namely integral policy. The hope for further research is to use different methodologies such as socio-legal to refine the findings of this research so that revenge porn violence can be addressed through an interdisciplinary approach.

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⁴⁵ Muhammad Bahram, "Transformasi Masyarakat Di Era Digital: Menjaga Kaidah Hukum Sebagai Landasan Utama," *SENTRI: Jurnal Riset Ilmiah* 2, no. 5 (2023): 1733–46, <https://doi.org/10.55681/sentri.v2i5.884>.

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Cyber Crimes on Influencer Victims of Online Gambling Marketing

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Abstract:

The massiveness of cybercrime on influencers who are victims of online gambling marketing underlies this research by raising the first research focus, how the practice of cybercrime cutting influencer videos for online gambling promotion, second, what legal protection is obtained for influencers who are victims of cybercrime cases. The method in this library-type research uses a statutory approach which aims to examine the rules of law and regulations that have a relationship with the issue being studied. Secondary data sources consist of primary legal materials, secondary legal materials and tertiary legal materials that are closely related to the object of research. The results of the study show that the practice of cybercrime on influencer victims of online gambling marketing begins when the perpetrator takes a video from an influencer and then cuts and edits it according to what is needed for online gambling promotion videos, so that it looks as if the influencer is promoting, then after the perpetrator succeeds in taking and connecting the influencer's video, the perpetrator posts the promotional video on the social media platform through a fake account or fake account. The perpetrators also utilize photos of influencers to carry out their criminal acts, the edited photos include online gambling frills along with links to the gambling website. Protection of Influencer victims of online gambling marketing begins at the preventive legal protection stage in the form of providing socialization about the rules and use of social media to be wiser and more careful. Repressive legal protection in the form of enforcement related to the victims' reports to the authorities is then followed up with existing regulations including the Consumer Protection Law and the Electronic Information and Transactions Law (ITE), so that people feel safe and protected in carrying out activities in cyberspace

Keywords: Cybercrime, influencers, online gambling, legal protection.

Intoduction

With the rapid progress of social media growth, now all access to *platforms* such

as Instagram, Tik Tok, You tube and so on can be done anywhere. The speed of social media is also starting to seem to replace the role of conventional mass media in disseminating all types of news.¹ It is undeniable that at this time social media has become a new way for people to communicate.² Arslan et al., 2021 Revealed that the coronavirus outbreak had an impact on the increase in the number of addictions to social media. The vast percentage of internet users around the world has been the basis for the development of social media. Online media Data Indonesia Id stated that the number of active social media users in Indonesia was 167 million people in January 2023. This number is equivalent to 60.4% of the population of Indonesia.³ Especially Indonesia in this case has experienced an increase in the use of Social Media accessed from *mobile phones*, various sources that state that Indonesia is experiencing growth in the use of social media which currently ranks third with the largest internet users after China.⁴ Social media is a *Media Platform* that can be used for various two-way activities in sharing information to make it easier for users to communicate with each other.⁵

The development of social media has now created a new type of celebrity commonly called influencers. These people have built their following by creating engaging content and engaging with their audience personally. They often collaborate with trademarks to promote products, and their endorsements can be very beneficial.⁶ According to Ladhari, et al. (2020) influencers are prominent social media users who are seen as experts in certain areas of interest, such as fashion, lifestyle, culinary, photography, travel, and so on. Influencers have a reputation that comes from a knowledge of a particular topic, such as beauty, so they are considered digital opinion leaders. Influencers are social media users who package and communicate authentic personal narratives by combining videos, photos, and activities they do to create a strong online identity.⁷

The role of *social media influencers* has dimensions in every promotion, including influencers with high credibility that attract customers. *Influencers* have a clear picture of the product being appreciated with video in terms of influencing purchasing decisions by consumers, audio content, and visual *influencers* that can improve purchasing decisions.⁸ The influence of influencers on social media is very large, influencers as public *figures* can influence the behavior of their followers based on the information conveyed and with the large number of followers he has, it can make

¹Kadarudin, *Smart Social Media from a Legal Perspective* (Semarang: CV. Pilar Nusantara, 2020). 82.

²Ahmad Setiadi, 'The Utilization of Social Media for Communication Effectiveness', *Journal of Communication Sciences*, No 1, 2022.

³A Hermila and others, 'Exploration of the Intensity of Social Media Use (Descriptive Study on Informatics Engineering Students)', *INVERTED: Journal of Information Technology Education p-ISSN:*, Vol 3.No 2 (2023).168.

⁴Hendra Junawan and Nurdin Laugu, 'The Existence of Social Media, Youtube, Instagram and Whatsapp in the Midst of the Covid-19 Pandemic Among Indonesia's Virtual Society', *Baitul 'Ulum: Journal of Library and Information Science*, Vol 4.No 1 (2020). 42.

⁵Fonny J. waani & Jouke J lasut Tongkotow Liedfray, 'The Role of Social Media in Strengthening Interaction Families in Esandom Village, East Tombatu District, Southeast Minasa Regency', *Scientific Journal of the Society*, Vol 2.No 1 (2022). 2.

⁶<https://pgsd.binus.ac.id/2023/03/11/pengaruh-influencer-media-sosial-bagaimana-mereka-membentuk-budaya-kita/> Accessed on February 28, 2024.

⁷Rizka Wulandari, 'The Role of Influencers in the Promotion Strategy of the Digital Disruption Era on Consumer Behavior (Case Study: Jerome Polin's Instagram Followers)', *Thesis*, 2022. 13.

⁸Heny Handayani, 'Implementation of Social Media Influencers on Consumer Buying Interest: A Digital Marketing Approach', *Journal of Sharia Economics & Economics*, Vol 6.No 1 (2023). 921.

an attraction to his followers in making choices about buying an item.⁹

The presence of influencers on social media so that an alternative to promote a product or brand emerges, it is used by companies or sellers to be part of their product campaigns with the aim of increasing reach, sales, and relationships with consumers.¹⁰ When compared to traditional media, social media influencers are effective in presenting a large amount of information to all their followers, so that the information provided is more likely to be received by social media users.¹¹ The job of an influencer is to provide reviews that can give confidence with interesting content to their followers. Interesting and diverse content is also an advantage of conducting marketing strategies using influencers. This¹² influencer creates content in the form of videos or photos containing products that will be introduced to the public which are processed based on personal perspective and in accordance with the state of the product and then uploaded to the social media that he has, because the content contains honesty about the product makes some people interested in the product they are introduced and interested in buying.¹³

Apart from the many impacts that can be obtained with the development of social media such as the emergence of an influencer, *cybercrime* in Indonesia is also increasingly rampant and growing.¹⁴ The development of social media is used by some irresponsible people to commit crimes. Not a few crimes are committed using social media due to the development of this technology.¹⁵ Technological developments not only open up opportunities for the emergence of new crimes that have been considered unlikely or unthinkable to occur, but also provide convenience in committing crimes that have existed or have occurred frequently.¹⁶ Recently, crimes in the form of cutting videos from an influencer and connected with online gambling promotional content are often found. The promotional content profiteers big names and influencers, videos made by individuals and influencers are often misused and used by malicious mobile phones to carry out their actions in promoting illegal sites such as online gambling.¹⁷

Based on the exposure to the above phenomenon, the researcher is interested in

⁹Ismi Dwi Purwanti and Budi Istiyanto, 'The Role of Social Media, Influencers, and Culture Through Consumptive Behavior on Purchase Decisions Using Intervening Variables in Bts Meal Products', *SCIENTIFIC JOURNAL OF REFLECTION: Economic, Accounting, Management and Business*, Vol 5.No 2 (2022). 214.

¹⁰Wulandari. 13.

¹¹Handayani. 921.

¹²Made Arini Hanindharputri and I Komang Angga Maha Putra, 'The Role of Influencer in Strategies to Increase Promotion of a Brand', *Sandyakala: Proceedings of the National Seminar on Arts, Crafts, and Design.*, Vol 1.No 29 (2019). 339.

¹³Dhara Ayu Crystrie and Sri Hardianti Sartika, 'Does Influencer Marketing Affect Purchase Decision Making on Shopee Marketplace in Gen Z?', *Bridge : Scientific Journal of Management*, Vol 19.No 1 (2022). 20.

¹⁴Miftakhur Rokhman Habibi and Isnatul Liviani, 'Information Technology Crime (Cyber Crime) and Its Countermeasures in Indonesia's Legal System', *Al-Qanun: Journal of Islamic Thought and Reform*, Vol 23.No 2 (2020). 412.

¹⁵Wisnu Ari Mukti, Siti Umami Masruroh, and Dewi Khairani, 'Analysis and Comparison of Forensic Evidence of Facebook and Twitter Social Media Applications on Android Smartphones', *Journal of Informatics Engineering*, Vol 10.No 1 (2018). 74.

¹⁶Jesslyn, 'Accountability of Recipients of Endorsements of Illegal Gambling and Cosmetics Through Instagram', *Lex Librum : Journal of Law*, Vol 6.No 2 (2020). 203.

¹⁷ Kasisolusi, (2024 January 8). The Story of Repentance of Nopek Comics!! Online Bookie, Lowest UMR in Indonesia, Had Violated [Youtube Video], accessed via <https://youtu.be/yHNzIRf6xp4?si=PvhFsmXImWdShjzr>, March 5, 2024.

further elaboration and in-depth exploration related to how cybercrime practices cut an influencer's video for online gambling promotion and what legal protection is obtained for influencers who are victims in the cybercrime case.

Review Literature

A lot of research has been done on cybercrime, as have Miftakhul Rokhman Habibi and Ismiatul Liviani researched related to Information Technology Crime (*cyber crime*) and its Countermeasures in the Indonesia Legal System. The researcher's findings are that the public still abuses social media to spread crimes in cyberspace, where the perpetrators can be ensnared by Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). The law should protect internet users, and provide strict action for cyber crime perpetrators. However, the legal system has not solved all these crimes, in its investigation, there are many obstacles related to legal tools, investigators' capabilities, evidence, and forensic computer facilities. This is why the enforcement of cybercrime laws is still weak.¹⁸

Law Enforcement Against Crimes in Advertising Through Social Media Carried out by Alfina Yulistari Siagian & Faisal They concluded that law enforcement regarding crimes in advertising through social media by public figures (*influencers*), if business actors are proven to have committed criminal acts, they can be held legally accountable as stipulated in Article 62 of the UUPK and for *influencers* who advertise by spreading false and misleading news to the detriment of consumers can be held legally accountable in Article 28 of the ITE Law.¹⁹ Legal Sanctions Against Bookmakers and Players of Cyber Crime Online Gambling by Bayu Tri Maryono, Fajar Saputra & Asmak Ul Hosnah in their research concluded that law enforcement against online gambling crimes either as bookmakers, players or related to gambling can be subject to and charged with article 303 of the Criminal Code or the Criminal Code Bill which will soon be enforced and also entangled in article 27 paragraph (2) of the ITE Law. In this case, the government's efforts in our opinion as authors are quite good and there are also three institutions that directly supervise the indications of online gambling which in essence the three institutions do not overlap each other in having authority, but complement each other to observe, monitor and find cases of online gambling in Indonesia.²⁰

From another study entitled Analysis of the Working System and the Negative Impact of Zeus Online Gambling Applications in the Perspective of Information Systems by Julianto, he concluded in his research Gate of Olympus or better known in Indonesia Slot Grandpa Zeus is an online gambling platform whose working system will direct the ball on a virtual reel, where players will be asked to spin the virtual reel to create a combination of symbols that produce multiples. The advantage of the ball appearing or the advantage is in the form of a power boost. Grandpa Zeus Slot is classified as online gambling and fraud because of its nature in the form of *gambling* that damages mental and emotional well-being, makes players addicted, and game manipulation carried out by slot admins makes it difficult for players to escape the

¹⁸Habibi and Liviani. 400-426.

¹⁹Alfina Yulistari Siagian, 'Law Enforcement Against Crime in Advertising Through Social Media', *Journal of Legal Education*, Vol 2.No 2 (2023).

²⁰Fajar Saputra & Asmak Ul Hosnah Bayu Tri Maryono, 'Legal Sanctions Against Bookmakers and Players of Online Gambling Cybercrime', *Journal of Law, Social Sciences, and Humanities*, Vol 2.No 1 (2024).

influence so that they are trapped in it. One of the negative impacts concluded by Julianto in the online gambling game Grandpa Zeus slot is that Grandpa Zeus slot gambling can cause opium for players because the music, flickering lights and attractive displays in the game trigger the release of a person's dopamine so that players like and always want to play it, which makes it difficult for players to escape from their snare.²¹

The Rise of Online Gambling in the Life of the Young Generation and According to the Prevailing Legal Views by Muhammad Urifianto Ardhan, Muhammad Fadel Adepio, Lawrentiust Kennardy, Febriyandi & Seipul they concluded in their research that the rise of online gambling in the lives of the younger generation is a complex phenomenon that has a significant impact on various aspects of life. The legal view that applies to online gambling in Indonesia is that it can be subject to Article 303 of the Criminal Code, with a maximum prison sentence of four years or a fine of up to ten million rupiah. Online gambling has an impact including, social, economic, and individual impacts, from the younger generation of online gambling to become antipathy towards each other or social, addiction problems, impaired psychological development, and financial risks. The legal view of online gambling ranges from a total ban, namely with the aim of protecting the public, especially the younger generation, from potential losses etc.²²

Method

The type of research in this study is literature (normative),²³ with a statute approach that aims to examine the rules of laws and regulations that are related to the issue being studied. Secondary data sources consist of primary legal materials, secondary legal materials and tertiary legal materials,²⁴ which are closely related to the object of research. The primary legal materials used in this study consist of the 1945 Constitution, Law Number 8 of 1999 concerning Consumer Protection, and Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Secondary Legal Materials that provide explanations of primary legal materials, including writings from experts related to the issues being researched or related to primary legal materials, in the form of literature in the form of books, papers or seminar materials, magazines, journals, and scientific writings related to this research. Tertiary legal materials, namely materials that provide explanations of primary and secondary legal materials. The above legal materials are collected to be continued with the study of documents or literature materials,²⁵ which are analyzed qualitatively descriptively, then poured in the form of a logical and systematic description, then analyzed to obtain clarity on problem solving, then deductive conclusions are drawn, namely from general things to special things.²⁶ So that the analysis method applied in this study is descriptive

²¹Julianto, 'Analysis of the Work System and the Negative Impact of the Zeus Online Gambling Application in the Perspective of Information Systems', *Simasi Journal: Scientific Journal of Information Systems*, Vol 3.No 2 (2023).

²²Muhammad Urifianto Ardhan, Muhammad Fadel Adepio, and Lawrentiust Kennardy, 'The Rise of Online Gambling in the Life of the Young Generation and According to the Prevailing Legal View', *COMSERVA: Journal of Research and Community Service*, Vol 3.No 8 (2023).

²³Cholid Narbuko and Abu Achmadi, *Research Methodology*, (Jakarta: Bumi Aksara, 2005). 41.

²⁴Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, Ed. Ninth (Jakarta: PT. Raja Grafindo Persada, 2006). 13.

²⁵Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: Universitas Indonesia Press, 1986). 66.

²⁶Soetrisno Hadi, *Research Methodology Volume II* (Yogyakarta: Yayasan Penerbit Fakultas Psikologi UGM, 1985). 10.

analysis stated by the respondents in writing or orally and also their real behavior, researched and studied as something whole.²⁷

Result and Discussion

Cybercrime Practices on Influencers Victims of Online Gambling Marketing

Promotional activities for online gambling activities on social media are increasingly massive, in "creative" ways, lately social media has become a "wetland" where various online gambling (online gambling) are scattered. The use of well-known charms and influencers who have many followers and fans, is an easy target for cybercriminals from various gambling sites to promote and invite the public to participate in playing it. Not out of resource, a number of gambling sites began to upload promotional content with different formats on social media. Recently, there are a number of uploads in the form of mass media-style news, as if reporting information but infiltrated by the promotion of gambling sites. Social media is rampant to display videos of influencers and large influencers who are victims of cybercrime practices of cutting online gambling promotional videos, they are suspected of supporting online gambling.²⁸

Broadly speaking, cybercrime in influencers victims of online gambling marketing carried out by perpetrators can be seen in three stages. The first stage, the perpetrator takes a video from an influencer as material to carry out his crime, of course, the video taken is a video that contains elements of closeness to online gambling marketing, as well as a change in the degree of success of an influencer associated with the results of victory on online gambling sites. The second stage, after the perpetrator gets the video, then the editing process is cut and added to the suitability of what is conveyed by the influencer with the online gambling promotion video that he provides, so that it seems as if the online gambling marketing video is official from the influencer who is promoting. Third, after the perpetrator succeeded in taking and connecting the video from the influencer, he posted/uploaded the promotional video on social media platforms through a fake account or fake account. Not only videos, the perpetrators also use photos from various influencers to carry out their crimes, edited photos are added with online gambling appendages (*watemark*) along with links to the online gambling website. As a result of the video clips and photos that seem to be made by cybercriminals, there is a division in the netizen camps. Some netizens accepted and were deceived and considered the originality of the video, but some netizens asked questions and negative comments about its validity. Posts/uploads like the one above tend to be viral news.

The rise of cybercrime activities is based on several factors, including: The public's legal awareness factor, the meaning of legal awareness starts from the lack of attention of social media users to filter their uploads, sometimes they do not pay attention to the bad possibilities that will be present for the post/upload. Likewise with influencers, who already have many followers and fans, the slightest blunder that they make can be used by online gambling site marketers to find the suitability of the influencer's uploads with the online gambling marketing content, so that the video made seems to be an endorsement or affirmation of an influencer for the online gambling site. Online gambling marketers do not run out of wits in running their business, the illegal

²⁷Soekanto. H 12

²⁸<https://tirto.id/hoaks-promosi-judi-online-yang-mencatut--dan-media-massa-gQap> accessed on April 16, 2024.

activities they carry out will certainly not get facilities from policy makers and it is difficult for actors to find people who can cooperate to promote online gambling. The next factor is the difficulty of law enforcement. The reason for this is because the online gambling marketers by cutting influencer videos using media that provide flexibility for users to create accounts easily without detailed verification of the account owner, so that the perpetrators use fake accounts to launch their activities, and if the account has been reported by other social media users, the social media organizers close the account. So the perpetrators switched to using other fake accounts. So there needs to be more efforts for law enforcers in overcoming online gambling marketing activities.

Legal Protection of Cybercrime for Influencers Victims of Online Gambling Marketing

Legal protection is a protection that provides protection for human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights provided by the law. The law can protect the rights and obligations of every individual, with solid legal protection will realize the general purpose of law, namely order, tranquility, security, welfare, peace, and justice.²⁹ The protection of the victim itself must be a special concern from both the government, lawmakers, law enforcement officials (police), legal entities (judiciary), and other communities, so that victims do not need to appear as forgotten people and as individuals who are very disadvantaged.³⁰

Philipus M. Hadjon wrote in his book entitled *Legal Protection for the People of Indonesia*, Philipus stated that in legal protection there are two distinctions, namely preventive legal protection and repressive legal protection.³¹

1. Preventive Legal Protection

Preventive legal protection is a protection provided by the government before the occurrence of a violation as an effort to prevent violations that cause both material and non-material losses by one person to another. The preventive legal protection in question is the provisions regulated in laws and regulations.³² In the case of cybercrime in influencers who are victims of online gambling marketing, a form of preventive legal protection that can be done to reduce cybercrime is by providing socialization about rules related to cybercrime perpetrators can be punished criminally or civilly. In addition, understand social media users to be wise and always be careful in sorting out the content that will be posted/uploaded. However, if cybercrime still occurs, law enforcement can provide understanding to the general public or to influencers to be able to report to the authorities when something similar happens so that it can be followed up immediately, so that the community using technology really feels safe in carrying out activities in cyberspace and becoming supervisors in cybercrime practices.

2. Repressive legal protection

Repressive legal protection where a protection is carried out after a violation is committed. Repressive protection is provided to restore the circumstances of the

²⁹Nindi Bimantari, Sekaring Ayumeida Kusnadi, and Fifin Dwi Purwaningtyas, 'Legal Protection for Victims of Love Scam Crimes', *Journal of Wijaya Putra Law*, Vol 1.No 2 (2023). 181-182.

³⁰Annisa Hesti Kurniawati, Dara Pustika Sukma, and Yulio Iqbal Cahyo Arsetyo, 'Legal Protection for Victims of Online-Based Fraud Crime Based on Law Number 19 of 2016 concerning Information and Electronic Transactions in Victimology', *Journal of Scientific Horizon*, Vol 2.No 9 (2023). 3470.

³¹Philipus M. Hadjon, *Legal Protection for the People of Indonesia* (Surabaya: PT. Bina Ilmu, 1987). 30

³²Muhammad Irfan Reza Mahendra and Jeane Neltje, 'Preventive and Repressive Legal Protection Against Plagiarism of Song or Music Creations', *Nusantara: Journal of Social Sciences*, Vol 10.No 4 (2023). 1689.

aggrieved party and attempt to find a legally valid settlement and recover the losses of a party.³³

Preventive and repressive legal protection are complementary approaches to each other. Prevention efforts can help reduce the number of violations of the law (preventive), while law enforcement actions are carried out to ensure justice and recover losses and find solutions that occur (repressive). Law enforcement requires legal certainty, legal certainty is a judicial protection against arbitrary actions. The community expects legal certainty because with legal certainty, the community will be orderly, safe and peaceful. The legal protection needed by victims of cybercrime on influencers victims of online gambling marketing is an action that must be taken by government and private institutions in helping victims to secure control, for life satisfaction in accordance with human rights that have been determined.³⁴

Currently, the regulation used as the legal basis for *Cyber Crime* cases is Law Number 11 of 2008 concerning information and electronic transactions (ITE). And Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE). The law that can be applied to cyber crime perpetrators on influencers who are victims of online gambling marketing through electronic media is the ITE Law with Article 45 Paragraph (2) which reads that "Every person who intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents that have gambling content as referred to in article 27 paragraph (2) shall be sentenced to a maximum of 6 (six) years in prison and/or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah)." and the ITE Law with paragraph 45A Paragraph (1) which states that every person who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions as referred to in article 28 paragraph (1) shall be sentenced to imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1. 000. 000.000.00 (one billion rupiah. With the existence of material or formal rules that regulate crimes in cyberspace, at least it can help law enforcement officials in dealing with crimes that occur in cyberspace, both conventional crimes and modern crimes. With the hope of providing a sense of security for the community of information technology users, considering that this technology crime knows no space and time and can happen to anyone and anytime.³⁵

Conclusion

Cybercrime on influencers who are victims of online gambling marketing begins when the perpetrator takes a video from an Influencer and then cuts and edits according to what is needed for the online gambling promotion video, so that it seems as if the influencer is the one who promotes, then after the perpetrator successfully takes and connects the influencer's video, the perpetrator posts the promotional video on social media platforms through a *fake account or fake account*. The perpetrator also used photos from influencers to carry out his crimes, the edited photos included online gambling frills along with links to the gambling website. Protection of influencers who are victims of online gambling marketing can begin with the stage of preventive legal protection in the form of providing socialization about the rules and use of social media

³³Mahendra and Neltje. 1689.

³⁴Bimantari, Kusnadi, and Purvaningtyas. 183.

³⁵Dheny Wahyudi, 'Legal Protection for Cyber Crime Victims in Indonesia', *Jambi Journal of Law*, Vol 4.No 1 (2013). 111.

to be wiser and more careful. Repressive legal protection in the form of enforcement related to victims' reports to the authorities is then followed up with existing regulations including the Consumer Protection Law and the Electronic Information and Transaction Law (ITE), so that people feel safe and protected in carrying out activities in cyberspace.

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The 7th International Conference on Law, Technology, Spirituality and Society
(ICOLESS). 21-22 May, 2024
Sharia Faculty UIN Maulana Malik Ibrahim Malang, Indonesia

Impact of Digital Marketing and Social Factors on Customer Behavior Towards The Residential Construction In Shangdong, China

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Abstract:

This research aimed to (1) assess the demographic factors that affect customer behavior towards residential construction in Shandong, China, and (2) examine the influence of digital marketing and social factors on customer's behavior towards residential construction in Shandong, China—the conceptual framework based on CDJ model. The sample was 400 customers, or expected to be the customers of the residential construction business in Shandong province, China. Statistics used to analyze data were descriptive statistics, including Frequencies, Mean, and Standard Deviation, and inferential statistics were Independent Samples t-test, One-way ANOVA, LSD, and Multiple Linear Regression. The analysis found that most customers, or expecting to be customers of the residential construction business in Shandong province, China, are females aged 36-45, married, have a Bachelor's degree, have a monthly income of 10,000-20,000 yuan, and are state-owned employees. The hypotheses found that the significant difference in educational background affects customers' behavior differently. Digital marketing influences customer behavior, including SEM, display ads, influencers, and social factors, including family, reference groups, roles, and status. The recommendations to improve the residential construction business are provided in detail.

Keywords: digital marketing, social factors, residential construction, housing purchase

Introduction

Digital marketing has changed the way firms communicate with their customers and how those customers behave in many different industries, including China's retail and real estate markets. In their research on the Chinese real estate industry, Li (2022)

demonstrated how digital marketing increases real estate businesses' transaction volumes by increasing consumers' intention to buy homes through tailored product and service offerings. In a similar vein, Wang (2023) looked at digital payment systems, which are an essential part of digital marketing strategies, and studied how it affected consumer behavior. The results reveal that online environments designed for essential consumer groups, like women and college students, significantly contribute to economic growth. These studies highlight the impact of digital marketing on consumer behavior, economic growth, and sectoral development in China's specific market.

Digital marketing has several advantages, e.g., increasing consumer involvement and changing purchasing habits (Jossy & Reena, 2024). However, there are still certain obstacles to overcome, especially when trying to tailor these methods to certain demographics and market segments in China, like the construction industry in Shandong. Research on these characteristics in regional settings is urgently needed so businesses like Shandong China Construction Sixth Engineering Bureau Corp., Ltd. may optimize their digital marketing tactics to impact consumer behavior positively. Filling this void will have two purposes: first, it will add to what is already known about the effects of digital marketing on consumer behavior, and second, it will provide practical advice to companies in China that are trying to improve their digital marketing campaigns for specific demographics.

To fill this knowledge vacuum, researchers in China's construction industry should analyze how digital marketing influences consumer behavior, specifically, how businesses like Shandong China Construction Sixth Engineering Bureau Corp., Ltd. use digital marketing to increase customer engagement, satisfaction, and loyalty. This research is essential for filling in the gaps in our knowledge about how digital marketing impacts customer behavior in an industry that has historically used fewer digital platforms for communication. By filling this knowledge gap, companies in the construction industry would better understand how to use digital marketing in China to reach their target population and cater to their tastes and preferences.

Research Objectives

- (1) To assess the demographic factors that affect customer behavior towards residential construction in Shandong, China.
- (2) To examine the influence of digital marketing and social factors on customer's behavior towards residential construction in Shandong, China.

Research Questions

- (1) How do demographic factors affect customer behavior toward residential construction in Shandong, China?
- (2) How does digital marketing influence the customer's behavior towards residential construction in Shandong, China? And in what way?
- (3) How do social factors influence the customer's behavior toward residential construction in Shandong, China? And in what way?

Research Hypotheses

H₁: Different demographic factors, including gender, age, educational

background, occupation, and monthly income, affect customer behavior toward residential construction in Shandong, China, differently.

H₂: Digital marketing influences customer behavior towards residential construction in Shandong, China.

H₃: Social factors influence customer behavior towards residential construction in Shandong, China.

Research Framework

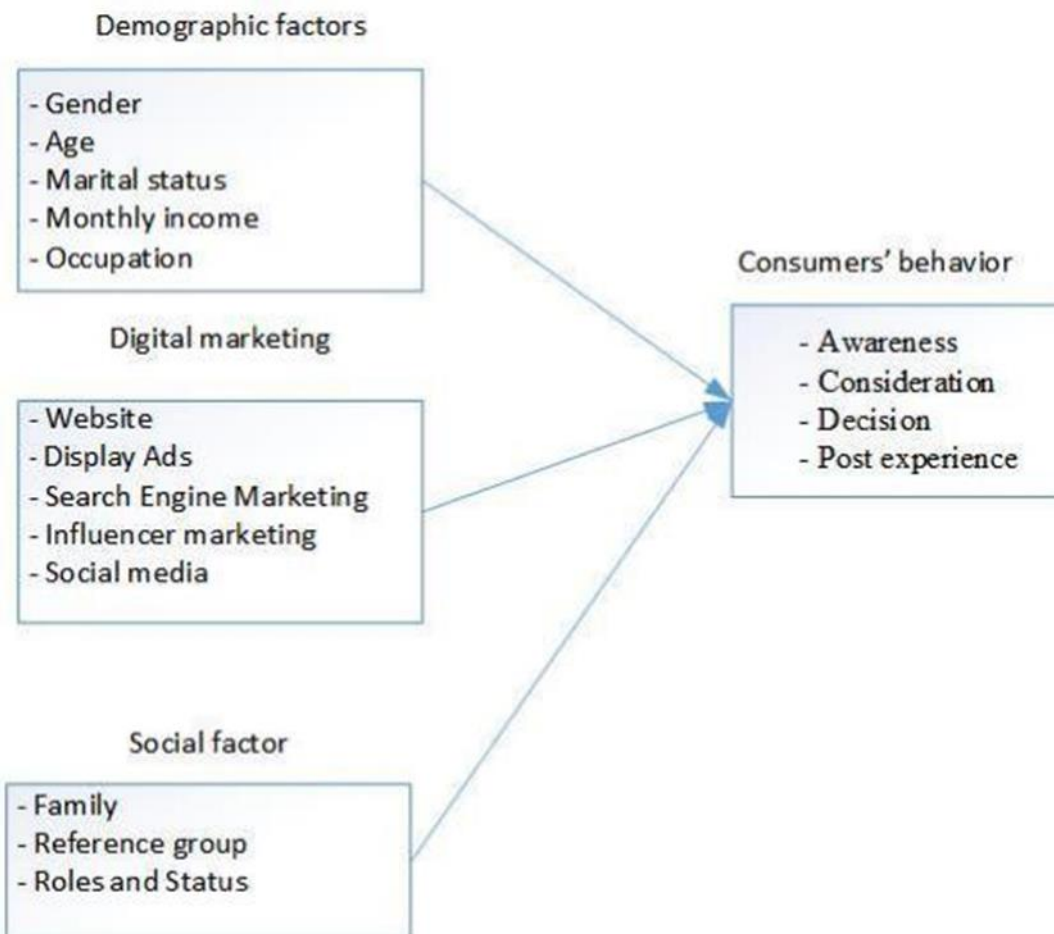


Figure 1: Research Framework

Literature Review

Consumer's behavior

Understanding consumer behavior is crucial for businesses to develop effective marketing strategies and deliver products or services that meet consumer needs and preferences. One well-known consumer behavior is social identity theory (SIT), developed by Tajfel and Turner (1986), which explains how social group memberships influence self-concept and behavior. Key concepts of SIT are social categorization, social identification, and social comparison. The applications of SIT are in consumer behavior, intergroup relations, and organizational behavior. SIT is applied to understand consumer behavior and brand preferences. Consumers often

align with brands that reflect their social identity. The theory of planned behavior (TPB) developed by Ajzen (1991) suggests that attitudes, subjective norms, and perceived behavioral control collectively shape an individual's intention to perform a particular behavior. Deci & Ryan (2000) proposed self-determination theory (SDT) that identifies autonomy, competence, and relatedness as fundamental psychological needs that drive intrinsic motivation and well-being. Gryshchenko and Shkoda (2023) proposed the theory of reasoned action (TRA), which focuses on how attitudes and subjective norms affect behavioral intentions, with implications for digital marketing strategies.

Court, Elzinga, Mulder, and Vetvik (2009) proposed a consumer decision journey (CDJ) that describes the stages consumers go through when purchasing, including assessment, consideration, decision, and post-purchase experience. CDJ is a theory that is relevant in the field of digital marketing. It was developed to define customers' processes before, during, and after purchasing. The introduction of digital marketing has led to the development of this theory, which emphasizes the non-linear and ever-changing nature of interactions between consumers and brands across various digital channels for consumers. This study is about customers' behavior towards residential construction, which is a long-term commitment by nature and requires careful review before making a decision. Therefore, this research used CDJ as a theory to develop a research framework.

Digital Marketing

Digital marketing is a marketing approach that uses emerging media, such as digital technology and the Internet, as well as technical means, such as big data and artificial intelligence (AI), to promote products or services, enhance brand influence, and improve sales performance through targeted marketing strategies and activities. Key principles of digital marketing include precise targeting, diversified channels, and continuous innovation. This study concentrates on popular media channels consisting of websites, display Ads, search engine marketing (SEM), influencer marketing, and social media, which are described in detail as follows.

The website is the main online presence for businesses and offers details about their goods and services and brand messaging. A well-designed website is the center of online activity and improves a company's reputation. Evans et al. (2020) research emphasizes how website design and usability affect user engagement and conversion rates.

Display Advertising or Display Ads. Refers to display advertising entails posting graphical or multimedia advertisements on websites or platforms owned by other parties to reach target audiences. These advertisements may appear as interactive rich media, banners, or movies. Li et al. (2019) claim that display advertising can raise brand awareness and improve website traffic when properly targeted and optimized.

Search Engine Marketing (SEM) encompasses paid search advertising, where advertisers bid on keywords to display ads in search engine results pages (SERPs). It includes pay-per-click (PPC) advertising on platforms like Google Ads and Bing Ads. Cho et al. (2020) examine the impact of SEM on consumer behavior and purchase

intentions, emphasizing the importance of keyword relevance and ad quality in driving clicks and conversions.

Influencer Marketing involves collaborating with individuals with a significant following and influence in a particular niche or industry to promote products or services. Influencers create authentic content that resonates with their audience, driving engagement and trust. De Veirman et al. (2019) explored the effectiveness of influencer marketing in enhancing brand credibility and purchase intentions among consumers.

Social media platforms such as WeChat, Sina Weibo, Douyin (TikTok), and Tencent QQ provide opportunities for businesses to engage with their target audience, build brand awareness, and drive conversions. Kaplan and Haenlein (2019) discussed the role of social media in shaping consumer behavior and fostering brand-consumer relationships through interactive communication and user-generated content.

Social Factors

Social factors directly or indirectly related to consumer behavior are relevant in daily life, including family, reference groups, roles, and consumption status. Family members significantly influence purchasing decisions and roles in the buying process. Family involvement is crucial in determining criteria and financial planning for residential construction. Reference Groups such as close friends, colleagues, and public figures greatly influence purchase decisions. Understanding these influences helps in shaping marketing strategies.

Roles and Status

Consumers interact with various social groups, leading to the creation of multiple roles. For instance, a woman might be a 'daughter' within her family and a 'marketing manager' at work. Each role involves anticipated activities and responsibilities.

Related Studies

Digital marketing and social factors are critical in shaping consumer behavior in the residential construction industry. Understanding these elements helps design targeted marketing strategies that resonate with consumers' needs and preferences. Recent studies in customer behavior reveal diverse aspects of how consumer actions and preferences shape brand loyalty and marketing strategies. Kasianova and But-Husaim (2022) emphasize the importance of understanding consumer purchase responses and long-term loyalty to enhance market share and competitive advantage. Iyer and Soni (2023) discuss how integrating digital channels and social media requires coordinated efforts across various departments to improve the customer experience. In the B2B sector, Bilro, Loureiro, and Souto (2023) stress the need for a comprehensive understanding of B2B customer behavior to engage effectively with clients.

Demographic research has also been highlighted, with Kangalakova et al. (2022) projecting Kazakhstan's population growth and regional variations, which are crucial for strategic planning. Stupariu (2023) suggests that Europe should improve demographic policies through better coordination and participation to address

declining birth rates and aging populations. Rostovskaya, Bedrina, and Khramova (2023) trace the evolution of demographic research, while Gower et al. (2022) advocate for standardized models like the Demes data model to enhance demographic data analysis.

In the tourism and healthcare sectors, research by Elgarhy and Mohamed (2022) and Mutia and Pujianto (2022) demonstrates the significant impact of the 7Ps marketing mix on customer satisfaction and business profitability. Warganegara and Nurya (2023) show that effective promotion strategies are key to increasing tourism visits. Swami (2023) and Tan (2023) underline the importance of digital marketing in reaching and engaging global audiences, while Qian et al. (2023) highlight its role in transforming brand promotion and consumer engagement.

China Construction Sixth Engineering Bureau, a top global enterprise, excels in real estate development and architectural design. With over 11,000 employees and a strong focus on engineering and construction, it combines real estate development with engineering contracting to create high-quality residences and maintain a leading position in its industry.

Methodology

This study aims to assess the demographic factors that affect customers' behavior toward residential construction in Shandong, China, and to examine the influence of digital marketing and social factors on customer's behavior toward residential construction in Shandong, China. The conceptual framework was developed based on customers' behavior and decision-making process, which include consideration, assessment, decision, and post-experience. Digital marketing concentrates on media channels, including websites, display Ads., SEM, influencer marketing, and social media. The social factors include family, reference group, and roles and status. The demographic factors include gender, age, marital status, monthly income, and occupation. The target population consists of customers who expect to be the customers of the residential construction business in Shandong Province, China. Data were collected from customers or expected to be the customers of the residential construction business in Shandong province, China. The sample size was 400, calculated using Cochran's formula. Data were collected through an online platform using a convenience sampling method. To ensure the quality and confidence of the questionnaires, the content validity test using Item Object Consistency (IOC) by 3 experts in the field. The reliability test using Cronbach's alpha coefficient (α) for social factors, digital marketing, and customer behavior were 0.906, 0.891, and 0.959. Statistics used to analyze data were Independent sample t-test, One-way ANOVA, and Multiple linear regression.

Findings

Descriptive Statistics

The analysis found that the respondents were 58.3% female and 41.8% male. Age distribution is skewed towards older groups, with 37.3% aged 36-45 and 38.0% aged 56 or older, indicating the market caters to middle-aged and older consumers. Most of the respondents were married, with 45.3% being married. Educational

background is relatively high, with 51.3% holding a bachelor's degree and 26.3% having a master's degree or higher. Income distribution reveals that 40% earn between 10,000-20,000 yuan monthly, and 22.5% earn less than 10,000 yuan. There are no respondents with the highest income above 30,000 yuan, indicating a low to middle-income market. Occupation reveals relatively equal distribution: state-owned employees 29.3%, unemployed 22.3%, and private company employees 17.5%. Table 1 displays the descriptive statistics of the respondents' opinion level on digital marketing. The results reveal that in terms of providing information, Search Engine Marketing (SEM) is at the top level, followed by display advertising and social media marketing. This suggests that the company should prioritize these areas when planning digital marketing strategies.

Table 1: Opinion level on digital marketing

Digital Marketing	1	2	3	4	5	Mean	SD	Meaning	Rank
Website	6	75	222	97	0	3.03	0.700	Neutral	5
Display Ad	4	38	174	109	75	3.53	0.936	Agree	2
SEM	9	33	152	125	81	3.59	0.974	Agree	1
Influencer	3	52	232	113	0	3.14	0.652	Neutral	3
Social media	5	77	215	103	0	3.04	0.707	Neutral	4
Overview of digital marketing	3	53	227	117	0	3.15	0.660	Neutral	

The respondents agree that the social factor's opinion is considered when selecting a residential area. Table 2 reveals that the reference group is the most influential, followed by role and status. These findings underscore the importance of peer groups and social status in housing decisions, suggesting that family influence is less critical than traditionally assumed. Residential construction companies should consider marketing strategies that leverage social proof and status-oriented messaging.

Table 2: Opinion level on social factors

Social Factors	1	2	3	4	5	Mean	SD	Meaning	Rank
Family	6	75	222	97	0	3.02	0.700	Neutral	3
Reference Group	3	34	161	121	81	3.61	0.928	Agree	1
Role and Status	11	42	141	130	76	3.54	1.003	Agree	2
Overview of social factor	3	45	171	111	70	3.50	0.660	Agree	-

Table 3 reveals that the opinion level on the overview of customers' behavior on

purchasing decisions toward residential construction is at the agreed level. In detail consideration, the 'consideration' stage ranks highest, followed closely by the 'decision' stage. However, the lower opinions in the assessment and post-experience stages indicate areas for improvement. Companies should enhance initial engagement strategies and post-purchase follow-ups to ensure a consistent customer experience across all stages.

Table 3: Opinion level on customers' behavior

Customer's Behavior	1	2	3	4	5	Mean	SD	Meaning	Rank
Assessment	12	51	158	125	75	3.46	1.028	Neutral	4
Consideration	11	31	158	125	75	3.56	3.56	Agree	1
Decision	12	41	152	126	69	3.50	0.991	Agree	2
Post Experience	12	40	159	117	72	3.49	0.996	Neutral	3
Overview of customer's behavior	10	34	152	133	71	3.55	0.962	Agree	-

Inferential statistics

The independent sample t-test and ANOVA were used to test hypothesis 1. Table 4 shows the analysis results showing that gender, age, marital status, monthly income, and occupation have no significant effect on customers' behavior toward residential construction in Shandong, China. However, the differences in educational background significantly affect customers' behaviors towards residential construction in Shandong, China, in this study at a statistically significant of 0.05. The post hoc analysis using LSD for the multiple comparisons of the difference in educational background group demonstrated that the customers with the educational background Master's Degree or higher are more aware of the customer's behavior than the high school or lower group.

Table 4: Analysis results on the effects of demographic factors

Demographic factors	Purchase Decision	Analysis Results
Gender	-	t(398) = 1.132, p = 0.258
Age	-	F(4,395) = 0.513, p = 0.726
Marital Status	-	F(2,397) = 2.710, p = 0.068
Educational Background	√	F(2,397) = 4.019, p = 0.019*
Monthly Income	-	F(3,396) = 1.111, p = 0.344
Occupation	-	F(5,394) = 0.992, p = 0.422

- No different effects at the statistically significant of 0.05

√ having different effects at the statistically significant of 0.05

To test hypothesis 2, multiple linear regression was used to evaluate the influence

of five independent variables, website, display ad., SEM, influencer, and social media, on five dependent variables: *assessment*, *consideration*, *decision*, *post-experience*, and *customer behavior*. Table 5 shows the analysis results that *SEM*, *display ad*, and *influencer* has a positive relationship with customer's behavior, with a multiple correlation (R) of 0.847 and able to predict the value of the analysis equation equal to 76.30 percent. Table 7 shows the prediction equation for the influence of digital marketing on customer behavior and all stages of residential construction. *SEM*, *display ads*, and *influencers* significantly influence the overview of *customer behavior* at all stages except the *decision stage*, where *SEM* has no influence.

Table 5: The analysis results of social factors influence customer behavior and all stages

Model	R	R ²	Adjusted R ²	Std. Error of the Estimate
Assessment	0.890	0.793	0.791	0.470
Consideration	0.863	0.744	0.742	0.494
Decision	0.852	0.726	0.725	0.520
Post Experience	0.828	0.685	0.683	0.561
Customer's behavior	0.874 ^a	0.765	0.763	0.468

Predictors: (Constant), SEM, Display Ad., Influencer

To test hypothesis 3, multiple linear regression was used to evaluate the influence of three independent variables, family reference group and role and status, on five dependent variables: *assessment*, *consideration*, *decision*, *post-experience*, and *customer behavior*. Table 6 shows the analysis results that *family*, *reference group*, and *role and status* have a positive relationship with customer's behavior, with a multiple correlation (R) of 0.876 and able to predict the value of the analysis equation equal to 76.60 percent. Table 7 shows the prediction equation for the influence of social factors on customer behavior and all stages of residential construction. *Reference groups*, *roles*, and *status* influenced the overview of the customer's behavior and all stages involved at the statistical significance value of 0.05.

Table 6: The analysis results of social factors influence customer behavior and all stages

Model	R	R ²	Adjusted R ²	Std. Error of the Estimate
Assessment	0.908	0.824	0.823	0.432
Consideration	0.863	0.744	0.742	0.493
Decision	0.865	0.749	0.747	0.499
Post Experience	0.830	0.688	0.686	0.558
Customer's behavior	0.876	0.767	0.766	0.466

Predictors: (Constant), Family, Reference Group, Role and Status

Table 7 Forecasting Equations for digital marketing and social factors influence customer's behavior and all stages

Hypotheses	Forecasting Equations
H2: The digital marketing influence customer's behavior towards the residential construction, Shandong, China.	$\hat{Y}_T = 0.130 + .539X_3 + .267X_2 + .173X_4$ (.000*) (.000*) (.001*)
\hat{Y}_T = Customer behavior	
\hat{Y}_1 = Assessment	$\hat{Y}_1 = -0.245 + .570X_3 + .322X_2 + .167X_4$ (.000*) (.000*) (.002*)
\hat{Y}_2 = Consideration	$\hat{Y}_2 = 0.135 + .420X_3 + .397X_2 + .162X_4$ (.000*) (.000*) (.004*)
\hat{Y}_3 = Decision	
\hat{Y}_4 = Post Experience	$\hat{Y}_3 = .253 + .503X_3 + .408X_2$ (.000*) (.000*)
X_3 = SEM	
X_2 = Display Ads.	
X_4 = Influencer	$\hat{Y}_4 = .142 + .539X_3 + .253X_2 + .166X_4$ (.000*) (.000*) (.010*)
H3: The social factors influence customer's behavior towards the residential construction, Shandong, China	$\hat{Y}_T = 0.333 + 0.030X_1 + 0.352X_2 + 0.525X_3$ (.541) (.000*) (.000*)
\hat{Y}_T = Customer behavior	
\hat{Y}_1 = Assessment	$\hat{Y}_1 = -.083 + .047X_1 + .303X_2 + .651X_3$ (.307) (.001*) (.001*)
\hat{Y}_2 = Consideration	
\hat{Y}_3 = Decision	$\hat{Y}_2 = .251 + .100X_1 + .411X_2 + .429X_3$ (.058) (.001*) (.001*)
\hat{Y}_4 = Post Experience	
X_1 = Family	$\hat{Y}_3 = .204 + .046X_1 + .352X_2 + .531X_3$ (.383) (.001*) (.001*)
X_2 = Reference Group	
X_3 = Roles and Status	$\hat{Y}_4 = .282 + .055X_1 + .402X_2 + .450X_3$ (.354) (.001*) (.001*)

Discussion

Demographic factor

Demographic factors are crucial in dividing up the market, especially in the residential construction market, due to different demands from various personal profiles, needs, and habits. Home purchasing decisions involve a long-term commitment to both financial and environmental aspects. It requires a careful review of various concerns from trusted sources of information. However, several studies

from various regions and nations report on the significance of demographic factors that affect customers' behavior in house purchasing (Forsythe, 2016; Lei, 2017; Tan, W. & Goh, Y., 2018; Kabir, Jamal, & Kairy, 2023). This study found that the differences in demographic factors, including gender, age, marital status, monthly income, and occupation, had no significant effect on the customer's behavior, which complies with Ariyawansa (2007). However, in detail consideration, this study found that the differences in marital status affect customers' decision-making behavior in the *assessment* stage, which can be elaborated by the fact that married status was the largest sample group (45.3%) in this study, providing a high volume of reviewed information to support *assessment* stage. The considerations may include house spacing designs, environment, facilities, eco-friendly designs with high-tech conveniences, and posh amenities. The marketer should consider providing rich information to support purchasing decision-making. Residential construction companies can target distinct market segments using gender-specific, age-group, or occupation-group preferences in marketing tactics and product offers. Homes that are more technologically advanced, have more adaptable floor plans, have a green touch, and incorporate eco-friendly elements may appeal more to younger generations like Millennials and Generation Z (Kumar et al., 2024).

On the other hand, the Baby Boomer generation may value accessibility features, a one-story design, and being close to healthcare facilities and other amenities. In addition, companies should tailor pricing strategies, financing choices, and home designs to different customer segments' financial capabilities and lifestyle preferences by segmenting. Housing price level and growth decrease the household's enthusiasm for purchasing a new house (Dong, Hui, Yi & Zhang, 2022). Understanding the different needs of each preferred group will help them better focus their marketing to suit the customers' demands.

The significant finding of this research was that differences in educational background significantly affect customers' decision-making regarding house purchasing. The Customer's home construction business behavior is heavily influenced by educational background. Customers with high educational backgrounds may be pickier about house details such as eco-friendly designs, high-tech conveniences, and posh amenities. Customers with lesser educational backgrounds may value practicality, affordability, and community facilities more. However, perceived behavioral control and willingness to pay had insignificant effects on customers' intention to purchase eco-friendly houses (Chanda et al., 2023). Companies should consider pricing strategies, financing choices, and home designs to match customers' financial capabilities and lifestyle preferences by segmenting the target market based on demographic criteria.

Digital Marketing

The study of digital marketing concerning purchase decisions has been conducted in a variety of scenarios, products, and nations (Cherukur & Priya, 2020; Liem, 2023; Solikhah, Faransisca, & Baitul Jannah, 2024) due to the nature of digital marketing in cost-effectiveness and a tremendous commercial impact on the business.

Bala and Verma (2018) also argued that knowing which social media sites a company's target market utilizes is another key factor in guaranteeing that online marketing will succeed. This study demonstrated that search engine marketing (SEM), display ads., and influencers significantly influenced customers' decision-making to house purchasing. Residential construction in Shandong province, China, can use these results in marketing channels, including SEM display ads. Moreover, influencer promotes their marketing strategies, increase market share, boost brand visibility, create leads, and drive conversion. Although SEM encompasses paid search advertising, advertisers must bid on keywords to display ads in search engine results pages and the importance of keywords, relevance, and ads. Quality is still driving clicks and conversations (Cho et al., 2020), and it is still shining and able to reach the target group in a wide area. However, the results from this study demonstrated that SEM does not influence customers' behavior in the decision stage. It is another point of view that might be useful in considering business strategies for a residential construction company.

Digital marketing, including SEM, display ads, and influencers, can significantly benefit residential construction companies in Shandong, China, by engaging with their target audience, showcasing their work, and building brand awareness. Companies may make their business more relatable and build relationships with potential customers by making eye-catching visual content, posting updates on ongoing projects, and interacting with followers through comments and messages. From the results of this study, using the influencer will greatly benefit the business by expediting the customers' purchasing decisions. A marketing influencer is an individual who has a significant following and creates authentic content, mostly video content and live stream, that resonates with the audience to drive engagement and earn trust. Due to easy access to various online information, wrong content can easily destroy individuals' or businesses' reputations. A positive reputation built through interpersonal interactions and positive recommendations is the key to supporting business continuity (Bareweng et al., 2024). Building trust with potential customers in residential construction in Shandong province, China, is very important, and influencers can be one of the good choices for digital marketing.

Social factor

Social factors heavily impact customer behavior in Shandong, China's home construction business. Social factors, such as peer recommendations and community perceptions, significantly impact customer preferences, buying decisions, and brand perceptions. A business's reliability, trustworthiness, and reputation can be greatly affected by positive reviews, testimonials, and recommendations from friends, family, and colleagues. Residential construction companies in Shandong, China, can use social proof to entice new clients and promote brand loyalty by cultivating positive relationships with existing ones and encouraging them to share their experiences with others.

This study found that social factors, including *family*, *reference groups*, and *roles and status*, influenced the overview of customer's behavior and all stages involved,

including *assessment, consideration, decision, and post-experience stage*. However, the family influence is not statistically significant.

Recommendation

Due to advanced technology and the ability to find information for the residential construction business, it is very easy and convenient for everyone. Providing rich and strong information will help support the long-term continuity of the business. Smart usage of digital marketing is necessary to promote business through online platforms such as SEM, display ads, and influencers. **For future research**, longitudinal studies could better understand customer behavior patterns in China's home construction sector. In order to evaluate the efficacy of marketing strategies and initiatives, researchers can detect long-term trends by monitoring changes in customer preferences, purchasing patterns, and market trends over time. To better grasp the factors influencing customer behavior in the area, longitudinal research would be ideal for studying the interplay and evolution of demographic factors, digital marketing initiatives, and social effects.

To gain a more in-depth knowledge of customer attitudes, motivations, and decision-making processes in the residential construction sector of Shandong, China, qualitative research methods like focus groups, interviews, and ethnographic studies can complement quantitative analysis, which offers valuable statistical insights. Compared to quantitative surveys, qualitative research allows researchers to delve deeper into the motivations behind customer behavior, potentially revealing previously unknown insights. Researchers can learn more about the complex elements affecting homebuyers' decisions, contentment, and brand impressions by talking to experts in the field, homebuyers themselves, and other interested parties.

Customer behavior varies among regions, provinces, or cities in China. It would be helpful to perform cross-cultural studies to understand better these variances and the cultural influences on housing preferences and purchasing behavior. Researchers can learn more about the cultural norms, social expectations, and market dynamics that impact Shandong's housing decisions and market trends by comparing customer attitudes, beliefs, and behaviors with those in other parts of China or worldwide. Companies could benefit from cross-cultural research by learning more about the specific elements influencing customer behavior in Shandong, China, and then adapting their marketing tactics and product lines to appeal to a broader range of customers.

Researchers in China's Shandong province could find niches in the home building industry by applying sophisticated market segmentation methods like cluster or latent class analysis. Segmenting the market according to demographics, psychographics, or behavioral patterns allows researchers to find untapped niches with specific wants, needs, and buying habits. Companies can gain a competitive edge and deeper market penetration by understanding the market's heterogeneity and using that knowledge to create segment-specific marketing strategies, products, and customer experiences.

The home construction industry in Shandong, China, is ripe for digital

marketing optimization. Therefore, studying how different strategies and techniques affect customer behavior in this space would be wise. Digital marketing channels, campaigns, and engagement methods can be evaluated for their impact on customer engagement and conversion results by examining key performance indicators (KPIs) such as website traffic, conversion rates, and return on investment (ROI). Another way to find the best digital marketing techniques and maximize the marketing budget is to run A/B tests and multivariate analysis.

The understanding of the social dynamics at work in housing decisions could be enhanced by investigating how social factors, including community involvement, social proof, and peer recommendations, impact customer behavior in the residential building industry of Shandong, China. The social networks of homebuyers, industry experts, and community stakeholders can be mapped out using social network analysis tools. These techniques reveal the interpersonal linkages, communication channels, and patterns of information flow within these networks. Companies can benefit from social impacts to increase brand recognition, trust, and customer loyalty in the region if they have a good grasp of information dispersion, social contagion effects, and network architecture.

To keep ahead of market changes and take advantage of new opportunities, enterprises in the residential construction industry of Shandong, China, should investigate emerging trends and technologies influencing customer behavior. Sustainable building techniques, modular construction methods, innovative house technology, and VR/AR experiences during the homebuying process are all potential areas for further research. Researchers can help businesses in the highly competitive home construction industry innovate and stand out by keeping an eye on technology developments, market disruptors, and shifting customer tastes.

It would be highly interesting to study how green building methods and sustainable design elements affect customer behavior in the residential construction industry of Shandong, China, in light of the increasing focus on sustainability and environmental responsibility. Studies may examine how people feel about eco-friendly houses, what kinds of appliances they like, and how much they're willing to spend on green certifications like LEED or China's Green Building Evaluation Label. Marketers, product designers, and policymakers can benefit from a better understanding of the factors driving demand for sustainable housing and how customers view environmental responsibility.

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The 7th International Conference on Law, Technology, Spirituality and Society
(ICOLESS). 21-22 May, 2024
Sharia Faculty UIN Maulana Malik Ibrahim Malang, Indonesia

Journal of Marketing Communications: 1-18.

The Internationalization of Guizhou-based Small and Medium Enterprises: An Entrepreneurship Study

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Abstract:

The objectives of this study were to 1) identify the international entrepreneurship (IE) dimensions and examine the influence of IE dimensions on the internationalization process of SMEs in Guizhou, China, and 2) investigate the strategies and identify the barriers and challenges encountered during the internationalization of SMEs in Guizhou, China. A mixed-methods approach was employed, combining quantitative and qualitative methods. Surveys were administered to general managers and executive directors of SMEs to collect quantitative data, which were analyzed using multiple linear regression. Qualitative data were gathered through in-depth interviews with senior executives to identify strategies, challenges, and barriers Chinese SMEs encounter during internationalization. The analysis revealed that IE dimensions, both scope and degree of internationalization, significantly influenced the internationalization process of SMEs in Guizhou, China. The scope of internationalization became the most significant influence on SMEs' internationalization process. The qualitative findings indicated that expenses for overseas expansion, finding trustworthy partners, and technology or innovation were the top three challenges. At the same time, the shortage of working capital for financing exports was the major barrier to the internationalization of SMEs.

Keywords: SMEs' internationalization, international entrepreneurship, degree of internationalization, exporting funding

Introduction

China's small and medium-sized firms (SMEs) have played a key role in the recent globalization movement, especially in seeking opportunities for global expansion (Jia et al., 2020; Hänle et al., 2022). Due to the recent evolvement of SMEs, China's foreign direct investment (FDI) has reported a compound average growth rate of 80% from 2012 to 2023. Therefore, China's total foreign stock of outward direct investment (OFDI) will achieve approximately \$17,000.0 billion in 2023. SMEs in China differ from other sectors in terms of magnitude and quantity. In Guizhou, China, SMEs dominate economic activity by documenting their production processes. They respond rapidly to customer requests. According to the National Bureau of Statistics, 99.7% of Chinese firms are small or medium-sized. The existence of those SMEs has a strategic position in supporting foreign markets.

The data indicated that approximately 68.85% of Chinese SMEs support international economic demands (You & Solomon, 2015; Yao et al., 2016). SMEs possess distinct attributes that can impact their choice to engage in global markets, setting them apart from giant businesses (Svetličič et al., 2007). Several attributes pertain to structure, administration, property limitations, and financial and human resources restraints. Others acknowledge the influence of their acts. SMEs generally perform more flexibility, entrepreneurship, and motivation, while major organizations possess larger economies of scale and coverage and greater financial and technological resources (Niazi, 2017). Large organizations have a greater advantage in overcoming trade obstacles throughout internationalization due to their more advanced resources and capabilities than small companies. Several studies have indicated that SMEs are less committed to internationalization than large businesses (Osei-Bonsu, 2014; Kunday & Şengüler, 2015).

Given the function of SMEs within the current market, numerous evaluations have been conducted on SMEs expanding their operations internationally. Some of these approaches concentrate on particular stages in the internationalization stages of SMEs. In contrast, others address IE as a whole, with SMEs being a subset (Zhang et al., 2017). The first category of reviews includes studies on the participation of well-established international SMEs, the difficulties faced by SMEs in exporting, the motivations for SMEs to engage in international trade, the effect of information and knowledge on SMEs' internationalization, and several ways in which SMEs enter foreign markets (Martineau & Pastoriza, 2016; Haddoud et al., 2021). While these studies pertain to the internationalization of SMEs without considering the specific dimension of IE elements, comprehensive research that examines the overseas expansion process of SMEs in the manufacturing area still needs to be conducted.

Research Objectives

- 1) Determine the dimension of IE that promotes the process of internationalization for SMEs in Guizhou, China.
- 2) Examine the influence of IE dimensions on the SMEs in Guizhou, China.
- 3) Investigate the strategies SMEs in Guizhou have taken to broaden their operations globally.
- 4) Identify the barriers and challenges encountered during internationalization for SMEs in Guizhou, China.

Research Questions

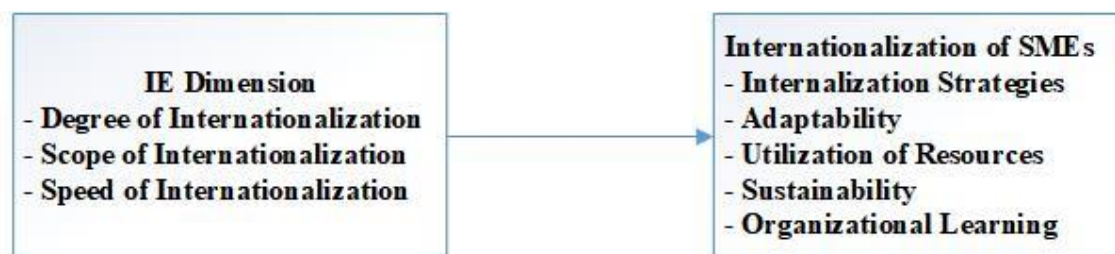
- 1) What aspects of IE do Guizhou-based SMEs exhibit as they pursue internationalization?
- 2) How do the IE dimensions inherent in SMEs affect their internationalization?
- 3) What is the strategy for the phases of the SME internationalization process in Guizhou, China?
- 4) What are the barriers and challenges in the stages of the SME internationalization process in Guizhou, China?

Research Hypotheses

Hypothesis: The IE dimensions, including degree, scope, and speed of internationalization, influence the internationalization of SMEs.

Research Framework

Previous studies described that IE dimensions facilitate the internationalization of SMEs (Perks & Hughes, 2008; Zahra & George, 2017). The three dimensions of IE, namely degree of internationalization, scope of internationalization, and speed of internationalization, encourage SMEs to enter international markets and compete globally. With the fast-moving business environment, the rapid development of technology and innovation has pushed forward the high competition of international business. Therefore, by identifying the dimensions of IE that encourage the internationalization of SMEs in Guizhou, China, we can clearly define the strategic study steps for the various stages of the SMEs' internationalization process.



Literature Review

Internationalization of SMEs

Due to the highly competitive business environment, there are about five million SMEs in China each year, representing at least a ten percent year-over-year growth rate. According to forecasts, the number of SMEs in China in 2020 will increase by about 10.9 percent compared to the previous year (Statista, 2024). Since the economic reformation in China, SMEs have become one of the driving forces in the economy. Researchers show a growing interest in the internationalization of SMEs. Despite being influenced by many theoretical models (Paul et al. 2017), research on this issue remains fragmented. Kuivalainen et al. (2015) proposed a conceptual framework to enhance the understanding of the internationalization of SMEs. The framework consists of antecedents, internationalization patterns, and outcomes, and it aims to identify research gaps. Since 1999, significant examinations have been conducted on the internationalization of SMEs and international entrepreneurship (IE), starting with the research conducted by Oviatt and McDougall (1999). Most studies have concentrated on particular stages of the SME internationalization process, such as entry modes, international engagement, and exporting stimulus. However, there are also more comprehensive examinations of IE, which encompass the internationalization of SMEs as a subset of the field (Jones et al. 2011).

Integrating techniques prioritizing resource efficiency, organizational learning, adaptability, and sustainability can greatly improve the success of SMEs pursuing internationalization. Teece, Pisano, and Shuen (1997) noted that for SMEs to prosper in various frequently unpredictable worldwide markets, they must be flexible and agile. To better understand local consumer behavior, tastes, and operational flexibility—such as shifting the supply chain from upstream to downstream to

accommodate local markets—conduct marketing research, for instance. Barney (1991) highlighted the need for SMEs to use both internal and external resources efficiently. The term "internal resources" describes applying fundamental skills like invention and expertise in technology. Creating alliances and partnerships to reach new markets is called using external resources. According to Elkington (1997), SMEs can improve their brand reputation and compliance with international regulations by incorporating sustainability into their international strategies. Examples include implementing eco-friendly products or engaging in corporate social responsibility (CSR) that benefits local communities in foreign markets. SMEs prioritizing organizational learning are better able to innovate and adapt, which entails continuously gaining and using new knowledge to enhance procedures and strategies.

The following components can be included in an integrated internationalization strategy to improve SME performance significantly. The first component is adaptability. SMEs should continue to be adaptable and sensitive to the demands of the local market, making necessary adjustments to their operations and product lines. Secondly, resource utilization to enhance competitive advantage and operational efficiency makes the most of internal and external networks. Thirdly, sustainability consists of complying with legal obligations, improving the company's reputation, winning over environmentally conscious customers, and integrating environmentally friendly procedures into business models. Finally, organizational learning enhances creativity, strategic flexibility, and decision-making, cultivating an ongoing learning environment.

International Entrepreneurship (IE) Dimensions

The internationalization of SMEs can be defined as the process in which small and medium enterprises or firms expand their operations beyond their domestic borders to engage in global or international markets. This process involves several activities, such as goods and service exports, joint ventures with overseas companies, and setting up production facilities abroad (Haddoud et al., 2021). It also encompasses strategic decision-making and action to tailor the complexities of a firm's operation in different environments, regulations, and cultures, optimizing their resources, assets, and capabilities to achieve sustainable international goals.

The literature on international entrepreneurship has expanded to include the cross-border expansion of enterprises, regardless of their size and age (Zahra & George, 2017). The current article centers on enterprises' entrepreneurial internationalization, which aligns with the subject's progress. Therefore, a significant portion of the existing research focuses on the international expansion of young and small companies, such as born global (Cannone et al., 2014), early internationalization (Gallego & Casillas, 2014), or international new ventures (Kunday & Şengüler, 2015).

Entrepreneurial firms are commonly identified based on their capacity and operations. International expansion refers to companies' inventive and risky actions as they grow or shrink their operations in foreign markets. Entrepreneurial internationalization is a strategic approach that necessitates enterprises to carefully select the optimal degree of foreign engagement to achieve success. Early studies suggest a direct and positive relationship between a company's internationalization and success (Zahra & George, 2017). However, a more comprehensive perspective considers an internationalization plan's advantages and disadvantages. The latter

argument is especially relevant in the context of IE due to its inventive, proactive, and hazardous nature (Autio, 2017). Although entrepreneurial internationalization gives organizations chances for expansion and value generation, adopting this strategy exposes them to risks and probable failure, adversely affecting their performance. According to the research, "export turnover," which measures the degree of internationalization, has the most significant effect on small and medium-sized enterprises' internationalization. Lecerf & Omrani, 2020 and Catanzaro & Teyssier, 2021 studies found that the volume of exports significantly measures the degree to which companies participate in international export operations, and increased export activity directly influences the worldwide growth of small and medium-sized enterprises.

Zahra and George (2017) delineate three fundamental aspects of an entrepreneurial global plan. The level of internationalization is a measure of the proportion of a company's total sales that come from foreign markets. It indicates the level of the company's exposure to international markets. The scope of internationalization refers to the range of nations or regions in which an internationalizing entrepreneurial firm operates, reflecting the extent of the firm's international activity. The pace of internationalization refers to the duration from when a company is established to when it makes its initial sales in foreign markets (Zahra & George, 2017). Therefore, this dimension measures the duration until the company initially expands its operations internationally, demonstrating how early it is exposed to foreign market conditions. Internationalization at a younger age means that internationalization happens more quickly. Multiple previous studies concur that the level, coverage, and process of internationalization become significant factors for distinguishing various characteristics of a global first (Perks & Hughes, 2008).

Research on the internationalization of SMEs

Internationalization of SMEs studies have been extensive, emphasizing numerous factors that impact the capability to expand beyond the domestic markets. One area of study is the driving force of internationalization, the significance of globalization, and its IE process. Regarding the IE process, most of the previous findings did not elaborate on SMEs' specific dimensions of IE. If any, most of them are involved beyond the Chinese manufacturing area. Consequently, the findings cannot explain the IE process of specific dimensions, which can provide new horizons for global economic development.

Dimitratos et al. (2016) conducted a study explaining the differences in internationalization strategies between multinational corporations and SMEs. The findings indicate that multinational firms and SMEs had different internationalization processes in terms of the strategic approach. Corporations often involve long-term planning such as acquisition, merger, and establishment wholly-owned subsidiaries. Meanwhile, SMEs needed to follow this complex process. Additionally, Zhang et al. (2017) comprehensively analyzed the literature on IE, encompassing SMEs as a specific sub-domain. There is still a need for investigations that specifically focus on the main characteristics of IE that drive the internationalization of SMEs.

Petković et al. (2016) have highlighted the significance of globalization in assessing the competitiveness of SMEs, resulting in a greater emphasis on effectively overseeing SMEs' internationalization procedures. SMEs utilize the necessary

expertise in handling internationalization-related information and knowledge to effectively extend their business operations worldwide. Prior studies indicate that SMEs encounter more intricate challenges when growing their commercial operations globally, in contrast to more giant corporations (Muhammad et al., 2010; Petković et al., 2016). This study also focuses on the obstacles hindering SMEs from entering unfamiliar international markets. Kunday and Şengüler (2015) conducted empirical investigations on factors that impede the internationalization process for SMEs, such as environmental, financial, operational, and organizational limitations. Paul (2020) indicated that SMEs experience higher levels of success in extending the operations globally when utilizing robust internal resources or receive incentives and support from external sources.

Hänle et al. (2022) described the crucial factors that contribute to the effective internationalization of SMEs and how SMEs can obtain support to grow their operations on a global scale. External collaborators, local collaborators in the destination country, collaborators in the home country, and institutions that offer consultancy services or facilitate international trade can provide this support. The specific target of internationalization that SMEs experience, such as start-up, early entry, and international growth, have received limited attention in this dynamic context. Furthermore, there has not been a comprehensive study that examines the different processes of SMEs' internationalization process.

The above studies indicated several research areas regarding IE processes and their impact on globalization. Those studies have provided an understanding of how IE was implemented in various SMEs beyond Chinese manufacturing areas. However, since most of the studies did not investigate the process of IE using specific IE dimensions, we need to help understand what specific dimensions and how these specific dimensions impact the process of IE SMEs. Consequently, this study investigates how specific IE elements contribute to the internationalization formation of Chinese SMEs in Guizhou, China.

Research Methodology

This study employed a sequential explanatory mixed-methods design to gather comprehensive data on the internationalization of SMEs, focusing on IE. The design comprises two stages: gathering quantitative data through questionnaires and collecting qualitative data using in-depth interviews. For quantitative research, data were collected from top-level executives and managers of 20 firms engaged in international expansion from three cities, Guiyang, Zunyi, Bijie, and Liupanshui. Of the 142 target respondents, 102 completed the questionnaires, representing 71.83% of the target respondents.

The questionnaire's construction aims to extract quantitative information relevant to the study questions. The questionnaire is divided into five sections: SME business profile, SME indicators, IE dimensions, internationalization of SMEs, and challenge and barrier. The survey uses multiple-choice, open-ended questions and a 5-point Likert scale to gather various answers. Subsequently, the questionnaire was validated by specialists from the Internationalization Firms Development Board (IFDB) and senior executives from other similar firms who were not participants in this study. The IOC index was used to determine the consistency and rationality of the questionnaire. The pretest of 30 samples was conducted to analyze the reliability of the questionnaire. The results found that Cronbach's alpha coefficients for IE

dimensions and internationalization of SMEs were 0.824 and 0.925, which are greater than 0.7 and indicate the reliability of the questionnaire.

Furthermore, semi-structured interviews were implemented to collect qualitative data from the top management of three selected SMEs to gather data on the challenges and obstacles faced in the internationalization process. The interviews focused on three dimensions of internationalization: degree, scope, and speed. A different SME represented each dimension, and two top managers from each SME were individually interviewed. The interviewed participants were selected based on SME categories: micro, small, and macro-SMEs, using the criteria provided by the Ministry of Finance of China. Table 5 presents the respondents' profile.

Table 5 Interviewed subject profile

The initial name of the respondent	Position	Years of Job experience
LJ (macro-SMEs)	Executive director	10
YN (macro-SMEs)	Senior manager	11
NJ (small SMEs)	Executive director	8
LM (small SMEs C)	Senior manager	10
YM (micro-SMEs E)	Executive director	11
JS (micro-SMEs)	Senior manager	9

Research Results

SMEs Profile

The profile of SMEs outlined in this section includes the company's operational tenure, its initiation of worldwide expansion, and its scale, as determined by the number of employees, which is shown in Table 6. The distribution of the SMEs under study is based on their duration of operation; out of the total, 13 firms, or 65%, have been operating for more than ten years, while seven companies, or 35%, have been functioning for less than ten years. Considering the size of the SMEs, two companies, accounting for 10% of the total, were classified as micro-scale. Furthermore, there were 12 companies, representing 60% of the total, categorized as small-scale. Lastly, six companies, making up 30% of the total, were classified as macro-scale.

Table 6 The SME Profile

Year in operation	Frequency	Percent
Less than 10 years	7	35.0%
10 – 15 years	5	25.0%
16 – 20 years	3	15.0%
More than 20 years	5	25.0%
Total	20	100
Year of expansion to the global market	Frequency	Percent
2 - 3 years	6	30%
4 – 5 years	10	50%
More than 5 years	4	20%
Total	20	100

Number of employees	Frequency	Percent
Micro scale	2	10%
Small scale	12	60%
Macro scale	6	30%
Total	20	100

SMEs Indicators

Participants completed a questionnaire to obtain 6 indicators for measuring the internationalization of SMEs. The indicators include SMEs' direct exports, imports, overseas investment, markets and sales, purchases of SMEs from foreign subcontractors, and SMEs obtained from overseas enterprises. Figure 1 provides the degree of internationalization of SMEs based on 6 indicators that differ significantly among micro, small, and macro-SME groups.

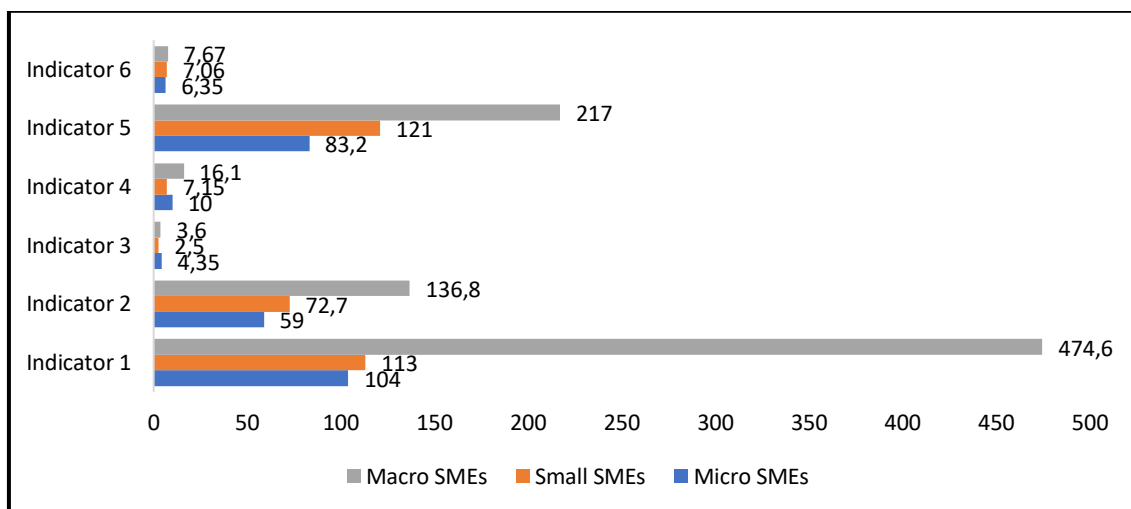


Figure 1: Internationalization of SMEs based on 6 indicators

International Entrepreneurship (IE) Dimension

IE dimensions were determined by degree, scope, and speed of internationalization. Figure 2 demonstrates the degree of internationalization through a number of years to expand international and average export percentage.

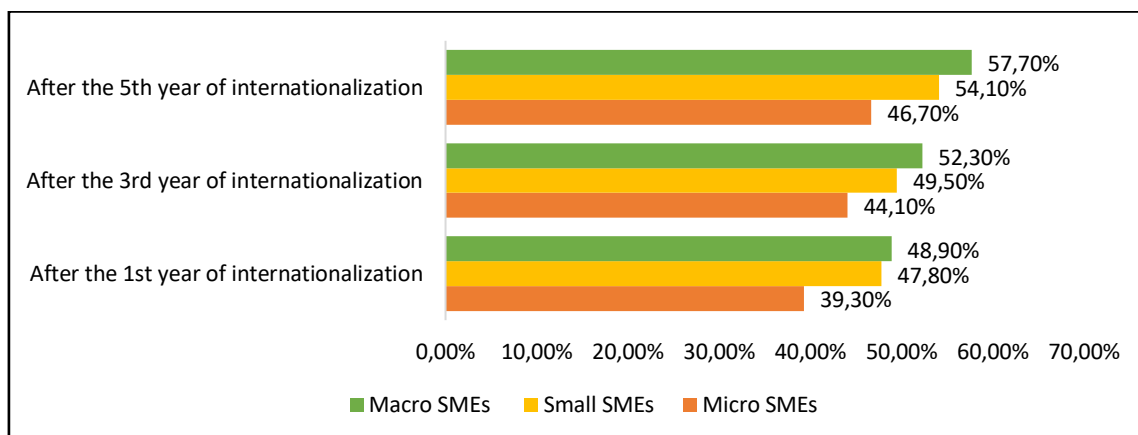


Figure 2: Degree of internationalization: Average proportion of exports

The average export intensity of SMEs varies based on their size. The average export percentage for small SMEs is 39.3% after the first year of internationalization, 44.1% after the third year, and 46.7% after the fifth year. On the other hand, the micro-SMEs group had an average export intensity of 47.8% in the first year of internationalization, 49.5% in the third year, and 54.1% in the fifth year. For the group of SMEs, the average proportion of exports was 48.9% in the first year of internationalization, 52.3% in the third year, and 57.7% in the fifth year.

Furthermore, the scope of internalization is the next aspect of IE dimensions. The geographical reach of SMEs' expansion operations, or the number of countries where a company engages in SME activities, determines the internationalization coverage. Figure 3 shows the scope or coverage of internationalization categorized by SME size. The graph shows a consistent pattern among small SMEs, micro-SMEs, and macro-SMEs in prioritizing and maximizing limited resources by expanding into strategically advantageous locations. Meanwhile, small SMEs are reluctant to develop internationally, unlike micro- and macro-SMEs, as they want to maximize their overseas presence.

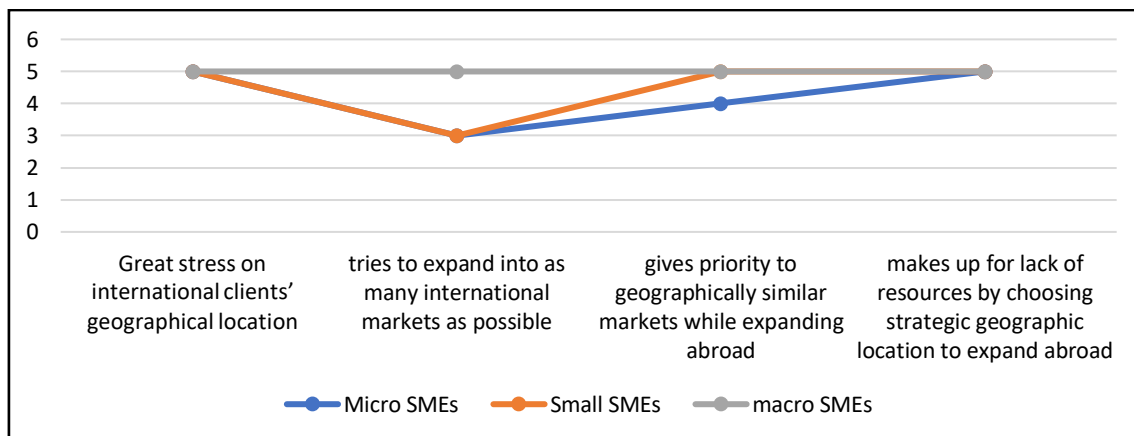


Figure 3: The Scope of internationalization (Geographical perspectives)

Table 7 demonstrates the frequencies and percentages of IE dimensions variables based on a five-point Likert scale. The mean value of the overview of IE dimensions is 1.87, indicating that respondents' opinion on the IE dimensions was lower. Among these lower opinion levels of IE dimensions, the speed of internationalization is in the top ranking, while the scope of internationalization is in the lowest ranking. Due to fewer IE dimensions, there must be space to improve and expedite the business to the international level.

Table 7: Frequency, Mean, and Rank of IE dimensions

IE dimensions	Level of Opinion					Mea n	SD	Meanin g	Ran k
	1	2	3	4	5				
Degree of Internationalization	36	44	20	2	-	1.88	0.787	Less	2

Scope of Internationalization	39	4 2	17	3	1	1.87	0.86 4	Less	3
Speed of Internationalization	37	4 2	20	3	-	1.89	0.81 9	Less	1
Overview of IE dimensions	34	4 8	19	1	-	1.87	0.74 0	Less	

Internationalization of SMEs

For the internationalization of SMEs, this study concentrated on five strategies: international, adaptability, utilization of resources, sustainability, and organizational learning. Table 8 shows the frequencies and percentages of each strategy variable of internationalization of SMEs factor based on a five-point scale. The mean value of the overview of the internationalization of SMEs is 1.88, indicating less opinion on the internationalization of SMEs. Among these lower opinion levels regarding the internationalization of SMEs, the adaptability and organizational learning strategies are equally at the top ranking, while the sustainability strategy is at the lowest ranking.

Table 8: Frequency, Mean, and Rank of Internationalization of SMEs

Inter.-SMEs	1	2	3	4	5	Mea n	SD	Meanin g	Ran k
Inter-strategies	4	4	1				0.76		
Adaptability	4	2	4	2	-	1.75	7	Less	4
Utilization of Resources	3	4	2				0.87		
Sustainability	6	3	0	1	2	1.92	5	Less	1
Organizational Learning	3	4	1				0.89		
Overview of Inter-SMEs	8	1	8	4	1	1.91	1	Less	2
	4	4	1				0.79		
	1	3	5	3	-	1.81	7	Less	3
	3	4	1				0.89		
	7	2	9	2	2	1.92	8	Less	1
	3	4	1				0.73		
	3	9	9	1	-	1.88	5	Less	

Internationalization Strategies

Figure 4 demonstrates four internationalization strategies: direct investment, franchising, joint ventures, and exporting. Top executives' viewpoints regarding their strategy for expanding into overseas markets revealed that exporting was the primary approach for SMEs to expand internationally. This holds for small, micro, and macro-SMEs. Unlike "joint ventures," small and micro-SMEs had similar perspectives, whereas macro-medium-sized enterprises had distinct viewpoints. However, while macro-SMEs had some agreement, it was not as strong as among small and micro-SMEs.

Regarding the preference for franchising, both small and micro-sized SMEs expressed reluctance to adopt this strategy for internationalization. In contrast, macro-sized SMEs endorsed this approach. Similarly, when it came to "direct investment," small and micro-sized SMEs held a similar perspective since they were not inclined to adopt this strategy for internationalization. In contrast, macro-sized SMEs had a different point of view.

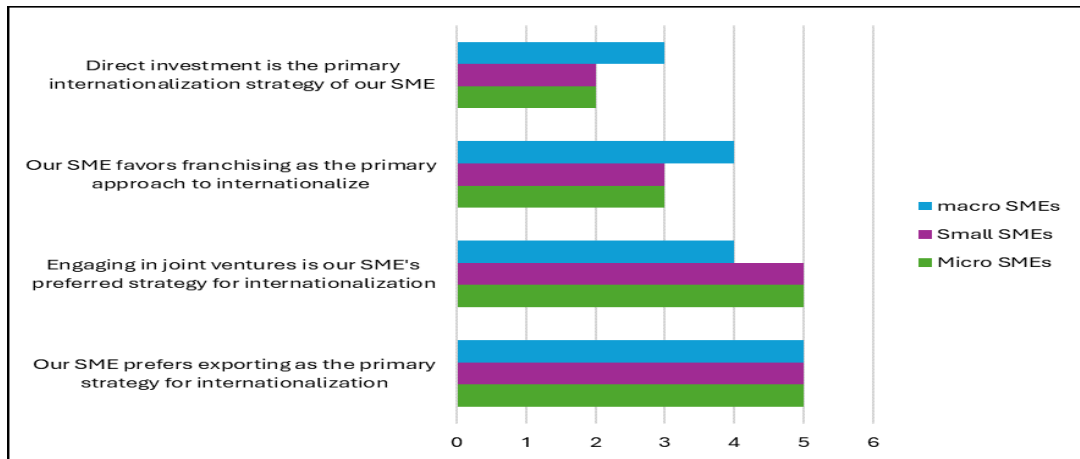


Figure 4: Internationalization Strategies

Inferential statistics

The multiple linear regression analysis was conducted to test the hypothesis that IE dimensions including degree, scope, and speed of internationalization influence internationalization of SMEs, inter-strategies, adaptability, utilization of resources, sustainability, and organization learning. Tables 9 reveal that scope and degree of internationalization have a positive relationship with the internationalization of SMEs, with a multiple correlation (R) of 0.874 and the ability to predict the value of the analysis equation equal to 76.0 percent with statistical significance at 0.05 level.

Table 9: Regression Analysis to predict the influences of IE dimensions on the internationalization of SMEs

Model	R	R ²	Adjusted R ²	Std. Error of the Estimate	Durbin-Watson
Inter-SMEs ^a	0.874	0.764	0.760	0.361	1.569
Inter-strategies ^b	0.713	0.508	0.503	0.540	1.690
Adaptability ^c	0.750	0.563	0.550	0.587	1.657
Utilization of resources ^d	0.734	0.539	0.530	0.611	2.035
Sustainability ^e	0.848	0.719	0.710	0.429	1.908
Organization learning ^f	0.783	0.613	0.601	0.567	1.680

^aPredictors: (Constant), scope, degree

^bPredictors: (Constant), scope

^cPredictors: (Constant), scope, degree, speed

^dPredictors: (Constant), scope, speed

^ePredictors: (Constant), scope, degree, speed

^fPredictors: (Constant), scope, degree, speed

The predictor equations for each hypothesis are summarized in Table 10. The analysis results revealed that the combination of two predictors (scope and degree of internationalization) explained 76.0% of the variances in the internationalization of SMEs. It was found that the significantly predicted scope was higher than the degree of internationalization. If the scope and degree increase, the internationalization of SMEs will be increased. However, the scope of IE dimensions was the most influential variable.

Table 10: Summary of IE dimensions influence internationalization of SMEs

Hypotheses	Forecasting Equations
H ₁ : IE dimensions influence the internationalization of SMEs	$\hat{Y}_T = 0.283 + 0.552X_2 + 0.300X_1$ (.005*) (.000*) (.000*) $X_1 = Scope, X_2 = Degree$
H _{1a} : IE dimensions influence internationalization strategies	$\hat{Y}_1 = 0.560 + 0.633X_1$ (.000*) (.000*) $X_1 = Scope$
H _{1b} : IE dimensions influences adaptability	$\hat{Y}_2 = 0.214 + 0.388X_1 + 0.278X_2 + 0.242X_3$ (.199) (.000*) (.007*) (.028*) $X_1 = Scope, X_2 = Degree, X_3 = Speed$
H _{1c} : IE dimensions influences utilization of resources	$\hat{Y}_3 = 0.214 + 0.455X_3 + 0.395X_1$ (.055) (.000*) (.000*) $X_1 = Scope, X_3 = Speed$
H _{1d} : IE dimensions influences sustainability	$\hat{Y}_4 = 0.117 + 0.531X_1 + 0.214X_3 + 0.152X_2$ (.333) (.000*) (.008*) (.042*) $X_1 = Scope, X_2 = Degree, X_3 = Speed$
H _{1e} : IE dimensions influences organization learning	$\hat{Y}_5 = 0.244 + 0.634X_1 + 0.495X_2 - 0.233X_3$ (.130) (.000*) (.000*) (.028*) $X_1 = Scope, X_2 = Degree, X_3 = Speed$

Discussion and Recommendations

The analysis revealed that IE dimensions had influenced the internationalization of SMEs in Guizhou, China. These findings emphasize the role of IE in facilitating the rapid worldwide expansion of SMEs. The results are consistent with research conducted by Oparaocha (2015) and Chandra et al. (2020), which found that international entrepreneurship (IE) activities played a significant role in motivating SMEs to engage in international markets, especially through exporting. This study also showed that the scope and degree of IE dimensions substantially influenced the process of internationalizing SMEs. Although both scope and degree have influenced the internationalization of SMEs, the scope had a higher influence than the degree of internationalization. The scope of the IE dimensions refers to the extent to which the firm was involved in several nations, reflecting the diversity of its international activities. At the same time, the degree of internationalization indicated the company's level of exposure to the global market.

IE dimensions highlight the importance of innovation, adaptability, and creativity in engaging with global markets. It also improves the company's ability to take on risks, investigate untapped markets, and compete globally. A strong emphasis on the IE dimensions helps stimulate growth by inspiring companies to broaden their global commercial operations quickly. In addition, the IE dimensions foster robust networks and alliances in global markets, facilitating the acquisition of resources, information, and business prospects that bolster the international expansion of SMEs, ultimately leading to sustainable success in the global market.

A strong IE plan can enhance a company's export volume and value, create market diversification prospects, and improve global market competitiveness. The increase in export quantity and value is evidence of the globalization of SMEs. By prioritizing IE dimensions, SMEs can broaden their export market, overcome financial constraints associated with international expansion, and stimulate business growth by achieving a consistent and sustained rise in export operations. Therefore, integrating IE elements into export strategies is crucial for SMEs to maximize their potential for internationalization and enhance their total export performance (Dey et al., 2022).

The results of the analysis of SMEs' challenges and barriers during the internationalization process were identified through interviews. The top five challenges were expenses for overseas expansion, finding trustworthy partners, technology or innovation, overseas experiences, and rules and regulations.

Regarding barriers to internationalization, SMEs, shortage of working capital for financing exports, difficulty obtaining reliable foreign representation, limited information for identifying overseas target markets, and inability to contact target customers were top barriers, as shown in Figure 5.

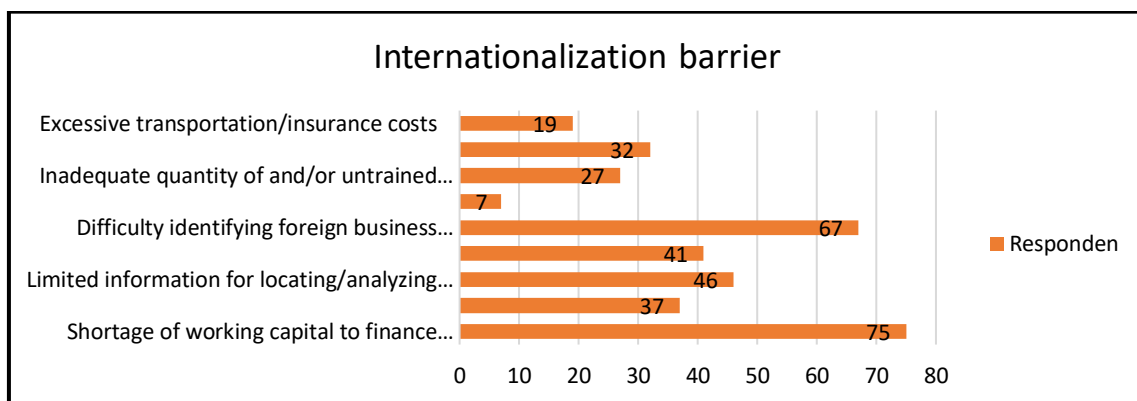


Figure 5 Internationalization barrier: SMEs' perception

Based on respondents' perceptions, the main strategy to internationalize SMEs is 'exporting.' Meanwhile, 'funding for overseas expansion' is the challenge and barrier most SMEs face in their internationalization process. The qualitative method was an in-depth interview with six top management from selected SMEs. The interview aimed to clarify strategies, challenges, and barriers SMEs face while expanding internationally. The interview provides supporting reasons for 'exporting'; exports allow SMEs to introduce their products to foreign markets without investing in large infrastructure investments in the destination country by conducting in-depth market research to identify countries with high demand for SME products. Then, the

destination country's regulations must be identified to ensure that the products meet all legal requirements and quality standards enforced in the destination country.

Regarding strategies that may be employed to address the obstacle of insufficient funds to support the international SME process, loans with low interest rates from financial institutes or government-support programs for subsidies, training, and technical assistance would be helpful for international SME expansion. In addition, optimizing the existing resources, such as increasing production efficiency and cutting unnecessary costs, would support expanding available funds.

In conclusion, IE dimensions significantly influence the internationalization of Guizhou-based SMEs. The dimension that has the most significant influence on the internationalization of small and medium-sized enterprises (SMEs) is the "scope of internationalization," in comparison to the other two dimensions, namely the "degree" and "speed" of internationalization. There exist disparities in the strategic approaches employed for internationalization among small, micro, and macro-SMEs. The cost of expansion becomes the primary challenge to SMEs' internationalization. The primary barrier to SMEs' internationalization is a need for working capital to fund exports. Future research should specifically explore comparative studies between countries to understand the similarities, differences, and determinants of internationalization success across diverse global contexts, which are worth exploring.

Limitations and Suggestions for the Future Research

This study has some limitations that provide directions for future research. Initially, this research was limited to SMEs in Guizhou, China. The results might serve as a basis for further research in the other region. Second, this study collected data from managers and executives, which is difficult to reach in a limited time. Reaching a large percentage of respondents requires connecting to the top management. Third, this research was conducted on the SMEs from an overall business perspective. Research on specific SMEs would benefit particular SMEs' expansion. Lastly, this study did not consider the importance of innovation and technology, which rapidly change and affect business operations in highly global competition. It is recommended that future research emphasizes technology and innovation in detail due to their values in supporting SMEs' global expansion.

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LGBT Marriage from the Perspective of Jasser Auda's Systems Theory

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Abstract:

LGBT (Lesbian, Gay, Bisexual, Transgender) marriage is one of the highly controversial topics worldwide. This issue has led to three different stances among countries, namely those that support, oppose, and remain neutral (without specific governing laws). This research aims to discuss the analysis of LGBT marriage from the perspective of Jasser Auda's System Theory. The goal is to understand the legality of LGBT marriage in Indonesia and how LGBT marriage is viewed from the standpoint of Jasser Auda's system theory. This study falls under the category of normative juridical research, considering law as what is written in legislation. The approach used is a descriptive-analytical approach, where the researcher attempts to analyze legal issues using Jasser Auda's system theory. The research findings indicate that LGBT marriage cannot be legalized in Indonesia based on the system theory. Through the analysis of six system features: first, Cognitive Nature, it is found that LGBT marriage is considered forbidden as it goes against the natural order, human instincts, and is deemed an act of Satan. In terms of Wholeness, it is also forbidden due to its immorality, exceeding boundaries, and bringing punishment. Concerning Openness, LGBT marriage is considered harmful to religion, society, health, and various other fields. Furthermore, in terms of Interrelated Hierarchy, LGBT marriage is deemed inconsistent with *maqashid al-ammah*, *khassah*, and *juz'iyah*, as well as the social nature of humans, conflicting with established norms.

Keywords: Marriage; LGBT; System Theory; Jasser Auda.

Introduction

The phenomenal issue of LGBT is increasingly showing its existence in the international arena. Various international events are used as a stage to voice the existence of LGBT under the pretext of human rights equality and as an open-minded attitude. This has an impact on the view of LGBT marriage which is no longer considered abnormal, but has become a proud thing to be like marriage in general. In addition, social media is also used as a stage for activists to voice LGBT with the One Love symbol.¹The conditions that occur in various countries regarding the LGBT phenomenon are certainly the LGBT phenomenon at the International

¹ Asnida Riani, "Apa Itu Ban Lengan One Love Yang Tuai Kontraversi Di Piala Dunia Qatar 2022," *liputan6.com*, 2022.

Level. In 2011, the UN Human Rights Council first recognized LGBT rights. The UN Human Rights Commission then issued a report documenting violations of LGBT rights, such as discrimination, criminalization of homosexuality, and hate crimes. The UN Human Rights Commission then called on all countries to implement laws that protect LGBT rights. Based on the Universal Declaration of Human Rights, the UN Human Rights Council passed the equal rights resolution, which states that every human being is born free and equal, and that everyone is entitled to his or her rights and freedoms without discrimination. With the recognition of LGBT rights, LGBT people can use human rights to fight for their right.²

The issue of LGBT marriage continues to lead the international community from various cultural, religious, moral and national backgrounds into a debate that divides their thoughts and attitudes. At least the issue of marriage gave birth to three thoughts and attitudes in response to the case.³ First, countries that support and legalize LGBT marriage. Second, countries that reject and discriminate. Third, countries that have not formed a firm law in their criminal law on the issue. Generally, countries that support LGBT come from western countries, while those that refuse to recognize LGBT are mostly from Islamic countries. Meanwhile, some countries including Indonesia fall into the third group.

The debate on LGBT marriage in Indonesia raises the pros and cons of various parties, even though in the study Indonesia is a country that has not formed specific legal rules related to LGBT marriage.⁴ Various actions smelting of LGBT will be discriminated against in the midst of the public. The majority of the public usually rejects using religious arguments by referring to scriptural texts.⁵ LGBT actions are considered dangerous both in terms of religion and health.

Meanwhile, people who support LGBT marriage are mostly feminist activists and academics who move from theology to politics. In the theological field, this campaign undermines the religious structure that previously established heterosexuality as the only choice of human sexuality. LGBT activists try to conduct LGBT campaigns either inserted in related events, or directly, one of which is the discourse of the ASEAN LGBT meeting in Jakarta which was eventually canceled because of the many rejections.⁶ In the political sphere, this was done by attempting to propose the Gender Justice and Equality Bill (RUU KKG), which would have legalized same-sex marriage, although this ultimately failed.

The existence of these problematic issues has made some academics explore topics related to LGBT in their research, which later also became supporting

² Meilanny Budiarti santoso, "Lgbt Dalam Perspektif Hak Asasi Manusia," *Social Work Jurnal* 2 (n.d.): 154–272.

³ Hamid Chalid and Arief Ainul Yaqin, "Perdebatan Dan Fenomena Global Legalisasi Pernikahan Sesama Jenis: Studi Kasus Amerika Serikat, Singapura, Dan Indonesia," *Jurnal Konstitusi* 18, no. 1 (2021): 138–67, <https://doi.org/10.31078/jk1817>.

⁴ Chalid and Yaqin.

⁵ Mulyono Mulyono, "Perkawinan Lesbian, Gay, Biseksual, Dan Transgender Dalam Perspektif Hukum Islam Dan Hukum Positif," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 1 (2019): 101, <https://doi.org/10.29240/jhi.v4i1.789>.

⁶ CNN Indonesia, "Pertemuan LGBT Se-ASEAN Batal Digelar Di Jakarta," cnnindonesia.com, 2023.

literature that intersects directly with this study. Among them is Nur Triyono who studied the legality of same-sex marriage (Study of Irshad Manji's genealogy and epistemology). The purpose of the study was to find out the legality of same-sex marriage perspectives in the study of Irshad Manji's genealogy and epistemology.⁷ Mafaza and Izza Royyani examined LGBT from the perspective of Prophetic Hadith, which in the study examined the Prophetic traditions in depth to address the increasingly widespread LGBT. Mulyono analyzed lesbian, gay, bisexual, and transgender marriage in the perspective of Islamic Law and Positive Law. As the title suggests, the purpose of this study is to conduct a comparison of LGBT marriage in the perspective of Islamic law and positive law in Indonesia.⁸ The above studies, although different in the use of analytical knives, seem to have similarities with the object of study studied. In addition, these studies are normative studies.

The urgency of this research will provide clarity on the position of LGBT marriage in Indonesian law, as well as to explore whether there is a point of benefit to choose to support LGBT marriage or reject it. In systems theory, which will be used as a knife to analyze LGBT marriage, there are six features of the approach that are interrelated with each other like a system for. These features are cognition, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness.

This research is a type of normative judicial research, namely the law is conceptualized as what is written in the law.⁹ The approach used is an analytical descriptive approach, namely researchers trying to analyze legal issues with Jasser Auda's system theory, and a *conceptual* approach. The data used are primary data, namely Grounding Islamic Law Through Maqashid Sharia, Maqasid Al-Shari'ah As Philosophy Of Islamic Law A System Approach, Law No. 16 of 2019, Civil Code, Criminal Code, secondary materials, namely articles in journals related to the object of research, and tertiary, namely from books, theses, scientific articles and websites.

Result and Discussion

The Status of LGBT Marriages in Indonesia from the Perspective of the Marriage Law, Civil Code, and Criminal Code

Looking at LGBT marriage according to the Marriage Law in Indonesia. This can be seen in Law No. 16/2019 on the Amendment to Law No. 1/1974 on Marriage, known as the 2019 Marriage Law. Although there are some significant changes in the 2019 Marriage Law, one of which is increasing the minimum age of marriage, the Law does not change the provision that marriage in Indonesia is still only recognized between a man and a woman.¹⁰ As stated in Article 1 paragraph (1) of the 2019

⁷ M A Mafaza and I Royyani, "LGBT Perspektif Hadis Nabi SAW," *Al Iman: Jurnal Keislaman Dan ...* 4, no. 1 (2020): 131–53.

⁸ Mulyono, "Perkawinan Lesbian, Gay, Biseksual, Dan Transgender Dalam Perspektif Hukum Islam Dan Hukum Positif."

⁹ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2018).

¹⁰ Kesra, "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Journal Presumption of Law* 3, no. 2 (2021): 160–80.

Marriage Law which reads: "*Marriage is the inward and outward bond between a man and a woman as husband and wife with the aim of forming a happy family based on the Supreme Godhead.*" This statement maintains the definition of marriage in accordance with the definition of marriage that has existed since the original Marriage Law, namely Law No. 1 of 1974. In addition, Article 1 of the Marriage Law does not only discuss the definition of marriage, but also includes the purpose of marriage itself, namely to build a happy and eternal family or household based on God Almighty, in this case based on the religion that each adheres to. J. Satrio argues in the book *Principles of Civil Law* that what is meant by family is husband, wife, and children.¹¹

Based on Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, same-sex marriage (LGBT), which means being of the same sex, is still not legally recognized in Indonesia. The law explicitly states that a valid marriage is a heterosexual marriage or a marriage of different sexes.¹² Therefore, same-sex couples, be it two men or two women, cannot legally marry in Indonesia under the applicable law. As for marriage in the Civil Code Chapter IV concerning marriage, article 26, marriage is only seen from a civil perspective, which means that it is only valid if it fulfills the conditions stipulated in the Civil Code as follows: "*The law views the question of marriage only in civil relations.*" Meanwhile, the conditions in other articles only regulate age, parental consent, the period of second marriage for women, parental consent for minors, and other conditions that are not related to the mention of certain genders such as divorce and marriage agreements.¹³

Meanwhile, there is nothing in the KUHP that regulates LGBT marriage. The only article that comes close is Article 292 which states that: "*An adult who commits obscene acts with another person of the same sex, whom he knows or reasonably should presume is not yet an adult, shall be punished by a maximum imprisonment of 3 years.*"¹⁴ Basically, the article is against acts of sexual abuse that are specific to same-sex sexual abuse of minors or in the sense of immaturity. Meanwhile, same-sex marriage has not yet received legal certainty in the Criminal Code. In 2016 one of the groups against LGBT filed a *judicial review* at the Constitutional Court of the Republic of Indonesia (MK RI) in 2016 against an article in the Criminal Code. The petitioners requested that same-sex sexual offenses be expanded to include not only underage same-sex abuse, but also adult same-sex offenders. The purpose of this request is basically to criminalize LGBT offenders, because same-sex marriage is considered incompatible with the values and identity as a nation that believes in God Almighty.¹⁵ In the end, the application for *judicial review* was rejected by MK RI on the grounds that it was not its authority. MK RI only has the authority to negate an article in the law, while

¹¹ Fanny Priscyllia, "Perkawinan Sejenis Dalam Hukum Kodrat Di Indonesia," *Jatiswara* 37, no. 2 (2022): 152–62, <https://doi.org/10.29303/jtsw.v37i2.400>.

¹² Priscyllia.

¹³ "Kitab Undang-Undang Hukum Perdata Burgerlijk Wetboek," 2014, 1–549.

¹⁴ SH Solahuddin, "Kitab Undang-Undang Hukum Pidana, Acara Pidana & Perdata: KUHP, KUHAP & KUHPdt," 2008, 589.

¹⁵ Chalid and Yaqin, "Perdebatan Dan Fenomena Global Legalisasi Pernikahan Sesama Jenis: Studi Kasus Amerika Serikat, Singapura, Dan Indonesia."

the petition submitted intends to change or add to the sound of an article.¹⁶

LGBT Marriage from the Perspective of Jasser Auda's Systems Theory

Systems is an independent discipline made up of many subdisciplines. This theory is another branch of philosophy known as "anti-modernity". This approach criticizes modernity in a more contemporary way, in contrast to the way postmodernity theory does. In the epistemology of contemporary Islamic law, which uses Jasser Auda's systems philosophy, there are six features that will be used to measure and answer questions about the role of Maqashid al-Syariah in contemporary law-making practices. Systems theory is commonly used in juridical theory and practice for the sake of legal reform and existence. In this case, it will be represented in the legality of LGBT marriage in Indonesia in the perspective of Jasser Auda's system theory, which consists of six features, namely the *cognitive nature of the system (cognitive nature)*, *wholeness*, *openness*, *interrelated hierarchy*, *multidimensionality* and *purposefulness*,¹⁷ The following is the explanation:

1. Cognitive Disposition Features

Fiqh or any science requires human intervention. Islamic law (Fikih) is the result of human Ijtihad on the text, in an effort to uncover its hidden meaning and practical implications. Therefore, fiqh is called human cognition that is separate from divine revelation. The concept will be applied in making the law of LGBT marriage. In order to systematically separate the fiqh or cognition and the divine, it is necessary to describe the sources and relationships of the arguments relating to LGBT, namely with three classifications, namely the Koranic arguments, hadith and *urf*. There are several verses of the Qur'an that discuss LGBT. One of them is Surah Ash-Syu'ara: 165-166 which means:

"Why do you go to the male among men (to commit homosexual acts) and leave those (women) whom God has created to be your wives? You are (indeed) the transgressors."
(QS. Ash-Shu'ara' 26: Verses 165-166)

This verse describes the great evil of the luths, namely momosexual. They prefer to have sex with men rather than women. This is a despicable and ugly deviation, because Allah swt has created men and women and made it the nature of each of them to be attracted to each other and realize by breeding life with offspring as His wisdom and will. The inclination towards the opposite sex is one part of the general system of the universe. Homosexuality, on the other hand, does not realize any target and does not produce any goal as a fitrah. Such behavior is also not in line with the laws of the universe. It is something strange if one enjoys such a relationship. Therefore, there is no other way for them but to return to their normal and healthy nature and inclinations. Or else they will be destroyed.¹⁸

¹⁶ Chalid and Yaqin.

¹⁷ Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, pertama (Bandung: PT.Mizam Pustaka, 2015).

¹⁸ Syyid Quthb, *Terjemahan Tafsir Fi Zhilalil-Qur'an: Dibawah Naungan Al-Qur'an Jili 4*, ed. Abdul Aziz Salim Basyarahil and Hidayat Nur Wahid, 1st ed. (Jakarta: Gema Insani Press, 2002).

In addition, in Q.S Al-A'raf verses 84-80 which reads;

"And (We also sent) Lūth (to his people) (Remember) when he said to them: "Why do you do that faahisyah, which no one (in this world) has done before you?". Indeed, you go to men to release your lust (for them), not to women; rather, you are a transgressing people. His people said nothing but: "Expel them (Lūth and his followers) from your city; indeed they are those who pretend to purify themselves". Then We saved him and his followers except his wife; she was among those who were left behind. And We sent down upon them a rain (of stones); so see the end of those who sinned."

From the verse, it is clear that the deviation of fitrah in the story of the prophet Luth. So it is called the first human being to deviate very badly again dirty. In verses 80-81, it explains about the transgression by the people of the prophet Luth which greatly hurt Luth's heart, namely the act of transgressing Allah's *Manhaj*. Deviating from fitrah, and exceeding the limits in actualizing the gifts of Allah SWT to carry out the role of preserving life. But they vented it on not the place of reproduction, they vented lust with deviation. Furthermore, in verse 82 the people of the Prophet Luth showed another deviation in which they expelled Luth and his followers because they did not want to sink together in the limpur where the ignorant society flourished. Then in verses 83-84 explain the safety of the threat addressed to the people of sinners, by distinguishing between *manhaj* and creed. Then the wife of Prophet Luth was more inclined to the people who were destroyed so that they perished. They were destroyed with heavy rain accompanied by a whirlwind to purify the earth from the people they did.¹⁹

While in Q.S An-nisa verse 119 which reads:

"And I will surely mislead them, and I will awaken in them idle imaginations, and I will send them to cut off the ears of cattle, (and they will actually cut them off), and I will send them to change the creation of Allah, (and they will actually change it). Whoever takes the devil as a protector besides Allah, then indeed, he has suffered a real loss".

Shaitan openly declares that his intention is to destabilize the children of Adam. He gives empty dreams on a misguided path, with false pleasures and salvation from deliverance at the end of the journey. Among these misguided actions is to change Allah's creation and nature by cutting, changing and certain body parts. It is clearly described that Satan's actions towards his lovers are mere seduction.²⁰ The second classification is the Hadith of the Prophet. Besides being explained in the Quran, LGBT issues are also explained in the Hadith or sunnah. However, first it is necessary to know that the Hadith is distinguished based on the different types of actions of the Prophet according to its purpose, which is divided into three namely; *first*, the direct delivery of the message (treatise) by the Prophet, which is called al-Qarafi, 'actions in the capacity as a messenger' or referred to as *al-tasarruf bi-al-risalah*. *Second*, the Sunnah for specific purposes beyond the direct transmission of the message. These Sunnahs are to be understood and used in Islamic law according to the context. *Third*, the Sunnah in the field of decisions or daily actions which Ibn 'Assyria calls non-

¹⁹ Quthb.

²⁰ Quthb.

instructional purposes.²¹

Of the three types one part of the hadith is displaced and is not part of divine knowledge or revealed law. Category (c) is the part that was later excluded from jurisprudence. Hence the traditions that will be taken are categories (a) and (b) that deal with LGBT. The hadith narrated by At-Tirmidhi on this matter reads: "*Allah, the Almighty, will not look upon a man who has intercourse with another man (homosexual) or (has intercourse with) a woman from his anus.*" (HR Tirmidhi no. 1165).²² This Hadith explains that Allah dislikes homosexual behavior and sodomy. This Hadith is in line with the Hadith narrated by Ahmad: "*Cursed is the one who has intercourse with animals, cursed is the one who does the deeds of the people of Luth (peace be upon them). He said repeatedly, three times about liwath (homosexuality, the deed of Lot, peace be upon him).*" (HR. Ahmad).²³ Which this Hadith explains that Allah SWT will curse people who commit sexual deviations such as fucking animals and Liwath or homosexuality. Meanwhile in the narration of Baihaqi it reads; "*If my people have legalized five things, then they will be destroyed (1) if rebellion arises, (2) drinking alcohol, (3) men wearing silk, (4) and taking vomit, and (5) men are satisfied with men and women are satisfied with women (the spread of homosexuals and lesbians).*" (Reported by Baihaqi in Shu'abul Iman). This Hadith elaborates on the five things that lead to the destruction of a people, and one of them is the outbreak of homosexuality and lesbianism. The narration in Bukhari reads: "*Ibn 'Abbas (Radhiyallahu anhum) reported: Rasûlullâh Sallallahu 'alaihi wa sallam cursed men who resemble women and women who resemble men*" (HR. Al-Bukhâri).²⁴ This Hadith alludes to Transgender, where many men resemble women or vice versa. What is meant by the Hadith is the way of dressing, grooming, walking and talking. Including today's Transgender which is classified as complex because it changes the genitals and others through surgery. The Hadith in terms of sanad is classified as sahih because it has tsiqah narrators.²⁵

The third classification is in the aspect of urf or customs. Customs in Indonesia are historically based on strong cultural, religious and customary values, which generally recognize marriage as a bond between a man and a woman. This is the social norm that is firmly held in Indonesian society and all religions in Indonesia have a similar view of it. deviant behavior cannot be taken for granted.²⁶ In order to validate the entire cognition, the relationship between arguments with the specifications of sharia, fiqh, uruf, and kanun will be redrawn. It will be presented in

²¹ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

²² Muhammad Nashiruddin Al-Albani, "Shahi Sunan Tirmidzi - Seleksi Hadits Shahih Dari Kitab Sunan Tirmidzi," *Kitab Sunan Tirmidzi*, 2007, 1–933.

²³ Rahma Juwita, Kamarrudin, and Halumatussa'diyah, "Homoseksual Dalam Perspektif Tafsir Al Qur'an Al Adzim Karya IbnuKatsir Dan Al Azhar Karya Buya Hamka (Studi Komparatif Atas Penafsiran Qs. Al A'raf Ayat 80-84)," *Jurnal Dirasalah Al-Qur'an Dan Tafsir* 1, no. 1 (2022): 1–21.

²⁴ Muhammad Muhsin Khan, *Shahih Al-Bukhari: The Translation of The Meaning Op Sahih Al-Bukhari Arabic-English* (Riyadh: Darussalam, 1997).

²⁵ Juwita, Kamarrudin, and Halumatussa'diyah, "Homoseksual Dalam Perspektif Tafsir Al Qur'an Al Adzim Karya IbnuKatsir Dan Al Azhar Karya Buya Hamka (Studi Komparatif Atas Penafsiran Qs. Al A'raf Ayat 80-84)."

²⁶ Febby Shafira Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 2 (2022): 210–31, <https://doi.org/10.15294/ipmhi.v2i2.53740>.

a graph that reflects the cognitive character of the system as follows ;²⁷

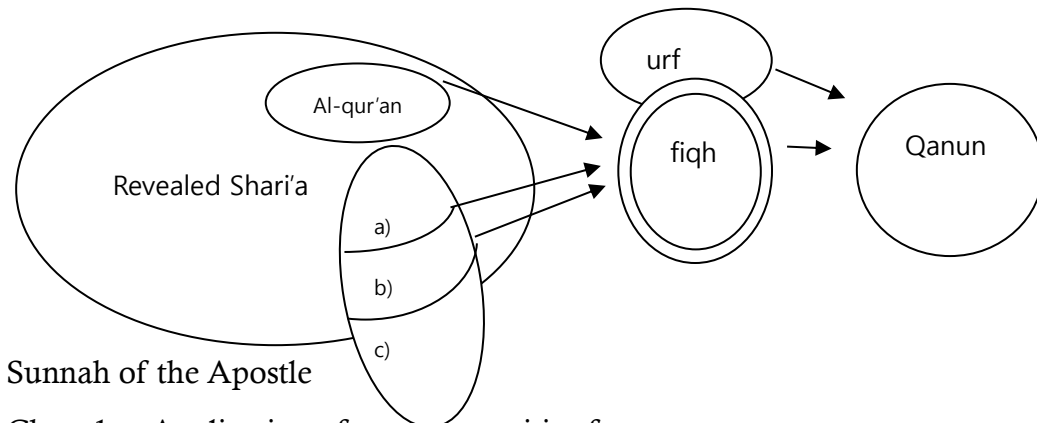


Chart 1. Application of system cognitive features

Based on the analysis of cognitive features of the system approach to the arguments have been traced, the conclusions are obtained; *first*, LGBT behavior is haram in Islamic teachings, and Allah cursed it because it is the behavior of the ignorant people of the prophet Luth. *Secondly*, in addition to LGBT behavior, having relations with animals and having sex with the wife from behind is an abominable act that logically violates and contradicts human instincts. *Third*, wearing clothes resembling that which is not its nature is haram and is the work of the devil.

2. Wholness Feature

Islamic law must be seen as a whole with integrity, not as separate parts. Therefore, the application of Islamic law needs to be seen holistically and integrated. *Wholeness* is a revision of traditional ushul fiqh with its reductionist and automistic character (relying on one nash ignoring others). The solution that can be applied is to operate the thematic interpretation function without any restrictions on a particular verse.²⁸ In this study there are several verses of the Koran that talk about LGBT behavior. The legal basis will be a recommendation to fully analyze the position of LGBT. These verses will be analyzed systematically in order to obtain the interpretation and substance of the mission of a nash. The nash-nash are among others:

Table 1. Nash that Discusses LGBT

No	Surah	Translation
1.	QS Al-A'raf: 80	<i>"And (We also sent) Lot, when he said to his people, Why do you commit an abominable deed, which no one before you has ever committed."</i>

²⁷ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

²⁸ Mohammad Lukman Chakim and Muhammad Habib Adi Putra Habib, "Kesetaraan Gender Dalam Fikih Perempuan Perspektif Maqasid Syariah Jasser Auda," *MAQASHID Jurnal Hukum Islam* 5, no. 1 (2022): 47–60, <https://doi.org/10.35897/maqashid.v5i1.831>.

2.	QS Al-A'raf: 81	<i>"Indeed, you have lusted after men instead of women. You are indeed a transgressing people."</i>
3.	QS. An-Naml 27: 54	<i>"Indeed, you have lusted after men instead of women. You are indeed a transgressing people."</i>
4.	QS. An-Naml 27: 55	<i>"Why do you go to men to fulfill your desires, and not to women? Indeed, you are a people who do not know (the consequences of your actions)."</i>
5.	QS. Asy-Syu'ara' 26: 165	<i>"Why do you go to the male among men (to commit homosexual acts)"</i>
6.	QS. Asy-Syu'ara' 26: 166	<i>"And have you forsaken those (women) whom God created to be your wives? You are (indeed) transgressors."</i>
7.	QS. Al-A'raf 7: 83	<i>"Then We saved him and his followers, except his wife. She was among those who were left behind."</i>
8.	QS. Al-A'raf 7: 84	<i>"And We showered them with rain (stones). So, see what will be the end of those who sinned."</i>
9.	QS. Al-'Ankabut 29: 28	<i>"And (remember) when Lot said to his people, You are really doing a very abominable deed (homosexuality) which none of the people before you has ever done."</i>
10.	QS. Al-'Ankabut 29: 29	<i>"Is it proper for you to go to men, to rob and to do evil in your meeting places? So the answer of his people was none other than to say, Bring upon us the punishment of Allah, if you are of the righteous".</i>
11.	QS. Hud 11: 78	<i>"And his people soon came to him. And they had always committed abominable deeds. Luth said, "O my people, these are my daughters, they are more pure for you, so fear Allah and do not dishonor my name against my guests. Are there none among you who are clever?"</i>
12.	QS. Az-Zariyat 51: Ayat 34	<i>"marked from your Lord to (destroy) those who transgress"</i>
13.	QS. Al-Qamar 54: 33	<i>"The people of Lot also rejected the warning"</i>
14.	QS. An-Nisa' 4: 119	<i>"And I will surely mislead them, and I will awaken in them empty dreams, and I will send them to cut off the ears of cattle, (and they will actually cut</i>

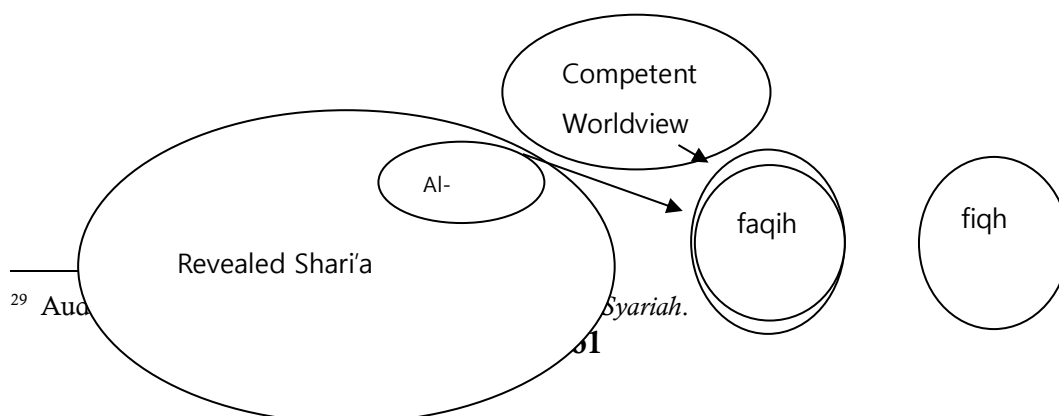
them off), and I will send them to change the creation of Allah, (and they will actually change it)." Whoever takes the devil as a protector besides Allah, then indeed, he has suffered a real loss."

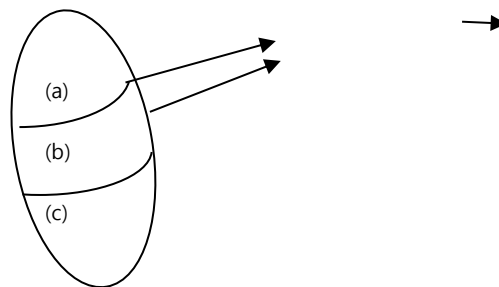
From the verses that have been collected related to LGBT can be divided into three categories. The first category is al-A'rāf : 80 al-A'rāf : 81, al-Naml : 54, al-Naml : 55, ash-Syu'ara : 165 and ash-Syu'ara : 166 explains the form of lesbian and gay behavior which is an abominable act (*fashiyah*), exceeding the limit and bringing bad consequences. Meanwhile, the second category is al-A'rāf : 83 al-A'rāf : 84 al-'Ankabūt : 28 al-'Ankabūt : 29 Hūd : 78 Ae-Dzariyat : 34 al-Qamar : 33 . Verses that discuss the punishment and punishment of lesbian and gay offenders in the form of punishment given to the people of Luth who transgressed and Allah's promise to destroy the people of Luth. The third category is Q.S al-Nisā' : 119 which discusses the prohibition of transgendering, where changing Allah's creation is a misguided act and Allah will give a real loss. From the thematic interpretation, it can be concluded that the LGBT (*Lesbian, Gay, Bisexual, and Transgender*) act is prohibited because it is an act of *mungkar*, exceeding the limits and can bring Allah's punishment.

3. Openness Feature

The *openness* feature is used to compare outside thoughts in the system. This is because the closure to other ideas is a door to ignorance, thus making thinking frozen and undeveloped. As for the mechanisms used towards openness and self-reform, there are two mechanisms expected in Islamic law, in order. *First*, Changes in law with changes in *worldview* (*worldview*) cognitive character of a *fakih* . *Second*, 'philosophical openness', both of which are proposed as mechanisms for self-renewal in the Islamic legal system.²⁹

Changes in law with changes in *worldview* or cognitive disposition of a *fakih* can be described as follows;





Sunnah of the Apostle

Chart 2. Competent worldview change position

The worldview in the chart is shaped by what is around. Whether in terms of religion, knowledge, environment, scientific matters and so on.

The case of LGBT marriage, when viewed openly from the perspective of religion, legislation and human rights (HAM) recognized in Indonesia can be said to be counter and some do not have clear legal certainty. As explained earlier, Islamic teachings do not recognize LGBT marriage because it is considered a deviation, as well as other religions recognized in Indonesia. Meanwhile, from a human rights perspective, Indonesia is a country that recognizes human rights as the existence of a nation that must be respected. Chapter XA of the 1945 Constitution is a special chapter that regulates human rights in Indonesia. In addition, Indonesia also recognizes the UDHR 1948 (*Universal Declaration of Human Rights* 1948) which is the highest international human rights instrument. However, when it comes to LGBT, the behavior is considered deviant so it cannot be taken for granted. There are many fundamental reasons for people to reject this deviation, both on the basis of religion, and culture.³⁰

The 1948 UDHR does not essentially specify that marriage and sexual orientation should be male and female or vice versa; however, it does not necessarily mean that the behavior of LGBT people should be permitted or supported. In addition, the 1948 UDHR, article 29, paragraph 2, sets limits. The UDHR guarantees the right of everyone to practice and believe in their religion. This is in line with national laws, such as Article 28J (2) of the 1945 Constitution of the Republic of Indonesia, Article 69 (1), and 73 of Human Rights Law No. 39/1999, which stipulate that everyone who has human rights must also respect the human rights of others. These restrictions include maintaining the security and public order of a democratic society as well as meeting the moral, ethical, and orderly requirements of community, national and religious life. Legislation prohibits marriages that are recognized as legally entered into as per Article 28B of the 1945 Constitution of the Republic of Indonesia, and marriages may only be entered into by a man and a woman as per Marriage Law No. 1/1974. However, there is generally no national law that defines LGBT behavior as a criminal offense, although it does not endorse it either.³¹

The context of human rights protection for LGBT in Indonesia is only the protection of their human rights in the form of guarantees in the health aspect in

³⁰ Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia."

³¹ Dhamayanti.

order to recover and get out of the disease, not protecting their orientation because LGBT is considered a disease, as also stipulated in Article 25 UDHR 1948.³² In terms of health, a number of studies have suggested that LGBT people are dangerous because they are more at risk of health problems other than sexually transmitted diseases, both physically and mentally than heterosexuals. In addition to the dangers of sexual deviance, LGBT people in general are also higher in terms of drug abuse, alcohol abuse and the tendency to use cigarettes or even experience depression and suicide compared to heterosexual individuals.³³ In addition, based on the 2010 UNAIDS report, LGBT actors are one of the groups most at risk of HIV, which is around 7.3%, prostitutes around 4.9%, and injecting drugs around 9.2%, being the second highest after injecting drugs.³⁴

Meanwhile, the second renewal in the openness of Islamic legal theory is philosophical openness which in this case will adopt the openness of Ibn Rushdi (*everroes*) in philosophical investigations. This selection is because it is considered more suitable for the Islamic legal system to maintain its self-renewal.³⁵ Ibn Rushdie (*everroes*) emphasized a very open stance towards human knowledge. According to him, apart from the Quranic command to Muslims to reason and think about God's creation, *everroes* emphasized the importance of the benefits of philosophical reasoning based on common sense 'regardless of the religion of the bearer.'³⁶

The ultimate goal of Islam is right knowledge and right action. In the scope of LGBT has been explained earlier in the Qur'an and hadith, that the forms of LGBT acts should be shunned because it is forbidden by Allah SWT. Not only that, philosophically, human nature is to like the opposite sex, this is in order to continue the offspring and maintain human existence on earth. So this prohibition is because logically the act is despicable, it violates normal human nature and is a dirty act because without disgust it involves the dirtiest areas of humans so that according to research it is more susceptible to disease.

4. *Interrelated Features (Interrelated Hierarchy)*

Systems have a hierarchical structure, in which a system is built up and smaller sub-systems under it. The interrelationship can determine the goals and functions to be achieved. The *Interrelated Hierarchy* feature provides improvements to two dimensions of *Maqashid Shariah*. The first dimension improves the reach of *Maqashid* and the second improves the *Maqashid* of the person covered by *Maqashid*. In improving the range of *Maqashid*. *Maqashid* is developed from concrete to

³² Marwah Nazria N Harahap, Risky Munthe, and Marzuki Manurung, "Kasus LGBT Dalam Negara Dan Perspektif Alquran & Tafsir Surah Al A'raf Ayat 80," *Hijaz: Jurnal Ilmu-Ilmu Keislaman* 1, no. 4 (2022): 11–14, <https://doi.org/10.57251/hij.v1i4.452>.

³³ Hasnah Hasnah and Sattu Alang, "Lesbian, Gay, Biseksual Dan Transgender (Lgbt) Versus Kesehata: Studi Etnografi," *Jurnal Kesehatan* 12, no. 1 (2019): 63–72, <https://doi.org/10.24252/kesehatan.v12i1.9219>.

³⁴ Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia."

³⁵ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

³⁶ Jasser Auda, *Maqasid Al-Shari'ah As Philosophy Of Islamic Law A System Approach* (Washington DC: Internasional Institute of Islamic Thought (IIIT), 2016).

comprehensive modern *Maqashid*. Jasser Auda classifies the *Maqashid* hierarchy into three parts. First, *maqashid ammah* is a general and universal goal in sharia law, such as justice, equality, tolerance, and comfort. These sharia *maqashids* fall under the emergency category if they fall under the traditional *maqashids*. Second, *maqashid khassah* are objectives related to matters of knowledge. Third, *maqashid juz'iyah* are objectives that contain the benefits or wisdom underlying a particular legal text. These goals are interrelated and support each other in a harmonious placement.³⁷

Maqashid ammah is a traditional *maqashid* included in the *daruriyat* category, which means it refers to human survival. So this is in line with one of the important purposes of marriage, which is to preserve offspring and human survival. To achieve this, marriage must be between heterosexual couples, because homosexual or LGBT marriages do not produce offspring. Meanwhile, from the aspect of *maqashid khassah* on LGBT marriage can not be justified either, because many chapters of science that contradict it. One of them is found in article 3 of the Codification of Islamic Law (KHI) which reads "that the purpose of marriage is to create a family of *sakina, mawadda, and warahmah*. So the purpose of marriage will not be realized in LGBT marriage. In general, the above rejection of LGBT marriage is in line with *maqashid sharia* marriage (*maqashid an-nikah*) there is a primary (*daruriyah*), namely *hifdzu al-nasl* whose application is to protect offspring and family. Then the *maqashid sharia* of secondary marriage (*hajiyah*), to create a family that is *sakinah, mawaddah wa rahmah*. While the tertiary (*tahsiniyah*) is to fulfill human biological and psychological needs, because every human being actually lives in pairs.³⁸

The second dimension is the improvement of the range of people covered by the *maqashid*. If the traditional *maqashid* is individualized, then the hierarchy-interrelated feature is a contemporary *maqashid* theory that provides a public and social dimension. It has also been previously explained in the openness feature, then after everything is interconnected with each other, the implication is that *maqashid* can reach the community, nation and the interests of humanity in general. For example, in the classical *maqashid sharia* function, the protection of religion *hifdz an-din* (protection of religion) is changed to *hifdz al-huriyyah al-i'tiqad* (protection of freedom of belief). This public *maqashid* is the priority when dealing with individualized matters. As in the case of LGBT marriage in the name of freedom of expression, so it must be tolerated. The Indonesian state upholds tolerance, accepting differences, but not deviations. LGBT cannot be seen as a form of deviation of personal problems (*privacy*), but seen as a social phenomenon or social deviation because it is contrary to the norms prevailing in society.

5. Multi-dimensionality feature

A system does not emerge as a single entity, but rather is the result of multiple dimensions that are cohesively interconnected. The system is formed by various

³⁷ Badrud Tamam and Risna Ismawati, "Tradisi Larangan Nikah Ngalar Ngulon Di Daerah Purwoharjo Banyuwangi Perspektif Teori Sistem Jasser Auda," *Jurnal of Islamic Family Law*, 2022, 101–25.

³⁸ Muhamad Taufiq, "Nikah Sirri Perspektif Maqashid Syariah," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, no. 2 (2019): 114, <https://doi.org/10.19105/al-manhaj.v1i2.3138>.

dimensions that are interrelated with each other. Because this system covers a wide range of aspects, Islamic law can be likened to a system. The Quran and Hadith as the main texts in Islam, of course, include elements of universal values. These values are very varied and cover various dimensions of life, such as worship, technology, natural environment, social life, justice, and so on.³⁹

Philosophical investigation, meanwhile, is popular with the tendency to think in one or two dimensions. Conflicting ideas and tendencies are sometimes seen from only one dimension. This makes arguments appear contradictory, rather than complementary. This causes conflicts to end in *zero-sum games*, rather than *win-win games*. Phenomena and ideas in popular investigations are often expressed in dichotomous terms, making them seem contradictory, such as religion/science, empirical/rational, collective/individual, and so on. Dichotomies pay attention to only one factor, while they may be complementary in other dimensions.⁴⁰

Related to LGBT religiously has been explained that LGBT can not be justified. Based on thematic studies also found the conclusion that LGBT is haram, scholars of the four madhhabs also agreed without any difference that homosexual behavior is a great sin, because it is against nature. Meanwhile, not only in religion, scientifically LGBT behavior is not a genetic fact but because of the environment so that it can be treated with therapy. Then the fact that LGBT people are more susceptible to infectious diseases such as HIV, anal cancer and so on is very dangerous for survival.⁴¹

Empirically, LGBT people generally reject such behavior as not in line with norms and destructive to generations. However, this does not contradict the ratio. To continue the life of mankind need heterosexual relationships, because homosexuals can not get offspring, logically it is also not possible genetic factors, because if that is the case, then the person concerned may not be born in the world. As for adopting children as a form of realist thinking, then this is not normalistic, in the long run the generation will continue to decline. So the realist and the normalist in order to support each other then remain with heterosexual relationships. Meanwhile, LGBT is universally and collectively against fitrah, specifically and individually dangerous for survival. Even in the dimension of reason and material, LGBT is contrary to common sense. Therefore, based on various relevant dimensions, LGBT is not relevant.

6. Purposefulness Feature

The system must have a clear output. This output can be divided into two, *goal* and *purpose*. A good system can be judged by its purpose, although it is done in various ways. The previous five features of *cognitive nature*, *wholeness*, *openness*, *interrelated hierarchy*, *multidimensionality*, and then purposefulness are interconnected and cannot be separated. All other features are made to support purposefulness in the Islamic legal system as a fundamental feature in the system of thought. Therefore, the validation of *ijtihad* must be determined based on the level of achievement of the

³⁹ Mohammad Lukman Chakim and Habib, “Kesetaraan Gender Dalam Fikih Perempuan Perspektif Maqasid Syariah Jasser Auda.”

⁴⁰ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

⁴¹ Dhamayanti, “Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia.”

intent and purpose.⁴²

With regard to LGBT marriage, based on cognitive system analysis of the arguments that have been traced, it is found that let alone perform LGBT marriage, LGBT behavior is also a forbidden act because it includes acts beyond the limits, contrary to instinct and violate nature. This is in line with the next feature, namely openness (*wholeness*), which by using thematic interpretation method produces three groups of verse categories, including; first, the verses that explain the form of *Lesbian* and *Gay* behavior as an abominable act (*fashiyyah*), beyond the limits and bad consequences (al-A'rāf : 80 al-A'rāf : 81, al-Naml : 54, al-Naml : 55, ash-Shu'ara : 165 and Shu'ara : 166). Second, the verses that discuss the punishment and doom of *Lesbian* and *Gay* offenders in the form of destruction (al-A'rāf : 83 al-A'rāf : 84 al-'Ankabūt : 28 al-'Ankabūt : 29 Hūd : 78 Ae-Dzariyat : 34 al-Qamar : 33). Third, the verses that prohibit transgender because it is the work of the devil.

The *openness* of religions in Indonesia does not recognize LGBT marriage. As for human rights recognizing freedom, the 1948 UDHR does not specify that sexual orientation or marriage must be male and female or vice versa. However, the UDHR has restrictions on the practice of religion and it is specifically contained in the marriage law in Indonesia. Then according to research in the health aspect, sexual deviant behavior is more susceptible to infectious diseases. While philosophically it violates human nature and includes dirty deeds.

The sub-systems are *interrelated* (*Interrelated Hierarchy*) with each other both in terms of the range of maqashid, and the range of people covered. In the range of maqashid, LGBT marriage does not support maqashid ammah or khassah and is not in line with maqashid sharia marriage. Then on the range of people covered by the case of LGBT marriage is not only a matter of individual sexual deviation, in general it is a social deviation. While in multidimensionality by taking from the entities of the opposite dimensions of both religion and science, empiric and ratio, realist and normalist, universal and collective, as well as intellectually and materially, it is concluded that lgbt marriage is irrelevant. Therefore, in order to achieve the general benefit of humanity based on systems analysis, the best marriage is heterosexual marriage, not homosexual marriage.

Conclusion

In general, marriage laws in Indonesia only recognize the marriage of a man and a woman. This is stated in Article 1 paragraph 1 of the 2019 Marriage Law which only recognizes heterosexual marriages, because they must follow the teachings of their respective religions. As for the marital status of LGBT, there are no specific rules governing either the Marriage Law, the Civil Code (KUHPperdata) or the Criminal Code (KUHP). The Criminal Code only regulates the crime of same-sex abuse, not homosexual relationships. In the perspective of system theory Jasser Auda LGBT marriage in Indonesia is forbidden. The results of the analysis of six features of the system, namely; first *cognitive* (*cognitive* nature) found that LGBT marriage is forbidden because it violates nature, human instinct, and is the work of the devil. In the feature of *wholeness*, it is also forbidden because it is an abomination, exceeds the limit, and brings punishment. As for the *openness* feature, LGBT marriage is harmful

⁴² Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

to religion, society, health, and various other fields. Then on the *Interrelated Hierarchy* feature, LGBT marriage is not in accordance with maqashid al-ammah, khassah and juz'iyah and the position of humans as social creatures, which is contrary to the norms. While in the multidimensionality feature (*multidimensionality*) all dimensions support each other to prefer heterosexual marriage not homosexual. Then as for the last, namely goal-oriented (*Purposefulness*) in general for the sake of the benefit, it rejects LGBT marriage and remains in heterosexual marriage.

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Saving the Chinese Ghosts Overseas: A Study of the Yogacara Ulkā-mukha Ritual in Thailand

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Abstract:

Currently, the most common methods of preserving spiritual practices related to supernatural beings from foreign lands involve conducting religious ceremonies and invoking nearby spiritual entities. This study aims to explore the spiritual significance and function of the Yogacara Ulkā-mukha ceremony in redeeming Chinese spirits residing abroad. The research design employs a phenomenological methodology, involving nine monks in Thailand as participants. Data were collected through in-depth interviews and participant observation, followed by thematic analysis to identify the challenges and deeper meanings associated with performing the ritual. The study reveals three key findings: first, the Yogacara Ulkā-mukha ritual embodies the concept of Buddhist compassion and the duty to rescue wandering souls seeking peace; second, it addresses the adaptation and challenges of maintaining tradition and cultural heritage in a modern context; and third, it highlights the power of intention and prayer in transcending spatial and temporal boundaries. These findings are further elaborated upon in the conclusion. Furthermore, the study suggests the development of a ritual adaptation model that incorporates technology to enhance the participation of overseas Chinese communities in preserving their spiritual traditions.

Keywords: Chinese Ghosts; Ghosts overseas; Yogacara Ulkā-mukha Ritual.

Introduction

Yogacara Ulkā-mukha is a Buddhist ritual that originated in the Yogacara school of the Mahayana tradition. Its primary objective is to rescue wandering ghosts. The ritual consists of a series of ceremonial acts and devotional prayers that monks perform to alleviate the suffering of these souls and assist them in achieving enlightenment. The ceremony, which reflects the intricate relationship between the Chinese Mahayana Buddhist tradition and Thailand's predominate Theravada Buddhist culture, was adopted and refined by the Chinese population residing abroad. Gunawan (2020) argues that the research on Yogacara Ulkā-mukha offers a unique

perspective on the dual functions of this religious ritual as a spiritual practice and a method of preserving cultural and religious identity in a diverse society.

In the past, research has concentrated on Chinese rituals' economic, social, and cultural aspects. Nevertheless, research on specific aspects of religious traditions, such as Yogacara Ulkā-mukha, is highly restricted. For example, Tan's (2012) research prioritizes the economic function of Chinese communities but neglects to investigate their religious components. Lim (2014) also investigates cultural acculturation but refrains from addressing the adaptation of religious rituals, including Yogacara Ulkā-mukha. Wong (2018) examines the identity of Chinese ethnicity in Thailand, emphasizing social and political aspects and a disregard for the relevance of religious rituals.

Meanwhile, Nai's (2015) research concentrates on historical aspects and disregards religious rituals. Chiu's (2017) research examines the relationship between Mahayana and Theravada Buddhist traditions in Thailand but does not explicitly address Yogacara Ulkā-mukha. Therefore, there is still a significant demand for research focusing on religious rites. Conversely, the ritual of saving ghosts overseas that has been established thus far has been limited to prayer activities and ascending requests to spiritual entities, all of which need a comprehensive comprehension of the fundamental cultural and spiritual context. Lee (2015) emphasizes this practice's ritualistic and religious features in many studies but needs to investigate how this ritual adjusts to contemporary social and cultural dynamics, neglecting its adaptive nature. Most studies, including Chen (2018), have focused on the historical and traditional aspects of the ritual of the saving of spirits, completely disregarding the impact of globalization and changing times on the ritual's implementation and significance in the contemporary context. This research assumes that ritual practices remain stagnant even though their ability to adapt to social and cultural change significantly influences rituals' continuity.

In addition, the current rituals are limited to the local context, whereas Chinese Ghosts Overseas poses more intricate difficulties (Perera, 2001; Li, 2017; Chen, 2018; Li, 2020; Leong, 2022). The Chinese diaspora encounters challenges in preserving cultural customs and conducting communal ceremonies. Prior research, like the works of Chen (2018) and Li (2020), primarily examined the execution of rituals within the country or the Chinese community residing in the local area. According to Chen's (2018) study, traditional rituals like Yogamah Ulkā-Mukha help bring peace to the wandering soul within the local community. Nevertheless, this study does not investigate the potential modifications of the ritual to accommodate Chinese Ghosts residing in foreign countries. Li (2020) also emphasized the significance of rituals in preserving cultural identity in the face of modernization. However, she did not offer guidance to communities dispersed globally. This research is crucial for comprehensively examining the role of rituals, specifically in the context of the "Saving Chinese Ghosts Overseas" initiative.

Although prior research on Yogamah Ulkā-Mukha ceremonies and Chinese Ghosts Overseas has provided valuable insights, there are still numerous significant limitations. Tan (2012) examines the commercial influence of the Chinese population in Thailand; however, he neglects to consider their religious and spiritual aspects. Lim (2014) focused on the interaction between the Chinese and Thai groups and their cultural assimilation; it did not particularly mention the modification of

religious ceremonies like Yogamah Ulkā-Mukha. Wong (2018) examines the social and political aspects of Chinese ethnic identities in Thailand; however, the contribution of religious rituals to the preservation of cultural identity is not extensively investigated. Although Nai (2015) provides a historical view of the influence of the Chinese in Thailand and migration, this research is retroactive. It does not go into the modern dynamics of religious practices. Nevertheless, this research does offer a historical perspective. The interaction between Buddhist Mahayana and Theravada traditions is only briefly emphasized in Chiu (2017), with Yogaman Ulkā-Mukha being one of the only mentioned activities.

Furthermore, Wong's (2018) study underscores the significance of ethnic identification within the Chinese minority in Thailand. However, it fails to address the function of religious rites, such as the Ulkā-Mukha Yogamah, in upholding that identity. Wong focuses on social and economic issues, whereas religious rituals neglect spiritual dimensions. Religious rituals are crucial in sustaining and reinforcing cultural identity within numerous diaspora cultures. Tan (2012) likewise encounters comparable constraints since the emphasis on the economic impact of the Chinese population takes precedence over the significant parts of their religious practices. This phenomenon leads to a knowledge gap about the interconnectedness and dynamics of ethnic and religious identities within the Chinese diaspora in Thailand.

In addition, Chiu (2017) examines the interplay between the Buddhist Mahayana and Theravada traditions in Thailand but briefly analyses how the ulkā-mukha yoga rite is incorporated into the everyday religious observance of the Chinese community. Chiu's research primarily examines the theological and philosophical elements of the two Buddhist traditions without linking them to specific practices like ulkā-mukha. While offering valuable historical information, the Nai research conducted in 2015 is insufficient for comprehensively examining the development and adaptation of these religious practices in contemporary settings. This vacuum underscores the necessity for further comprehensive and up-to-date research on how Ulkā-Mukha Yogamy ceremonies assist the Chinese population in preserving their cultural identity amidst societal and environmental transformations in Thailand. This research aims to address the knowledge gap and offer a comprehensive understanding of the significance of religious rituals in the Chinese diaspora. This research explores two primary questions. First, it seeks to understand the meaning of spirituality and examine the role of the Yogacara Ulkā-mukha ritual in the redemption of Chinese ghosts living overseas. Second, it investigates the challenges faced by the Ulkā-mukha Yogacara ritual in a modern context, particularly in preserving cultural traditions amidst evolving societal dynamics. These questions aim to provide a deeper insight into both the spiritual significance and the practical hurdles encountered in maintaining this traditional practice.

This research uses a phenomenological research design to understand the experiences and meanings felt by the Chinese community in Thailand in carrying out the ritual of the ulkā-mukha. The ritual is usually held around the 15th Day of every Lunar July, during the Ghost Festival, under the collective sponsorship of the Chinese faithful. The well-off Chinese Families occasionally sponsor it on the last day of the functioning for their loved ones. On average, the ritual costs 50,000 Thai bahts

(approximately 1,600 USD), including the material offerings to the monk performers, their lay associates, and the expense of the decorative settings. The Ulkā-Mukha Yogamyān ceremony must be conducted with utmost devotion and dedication to facilitate the wisdom spirits to escape their suffering and attain tranquillity. A monk, under the tutelage of a master, reads the sacred silk to commence the ceremonial procession. This silk reading aims to summon and seek guidance from spiritual entities. This mission is of utmost importance in "Saving the Chinese Ghosts Overseas" since it guides the wandering spirits of the Chinese people in another dimension towards safety.

During the ritual, the spirits are presented with symbolic offerings, such as food and incense. This offering symbolizes reverence and magnanimity toward famished spirits, contributing to their acceptance and gratitude. In this context, the offering is of great significance because it satisfies wandering spirits' spiritual and material needs, thereby facilitating their attainment of tranquillity and contentment in different dimensions. Music and chanting are indispensable components of this ceremony. A reverent and profound atmosphere is established by incorporating sacred music and silk melodies, thereby facilitating the development of a stronger spiritual connection among participants. Music is capable of fostering spiritual communication between the human domain and supernatural entities, as well as calming the senses and emotions of individuals.

The ritual of water conditioning was at its zenith when the master of ceremonies performed it. The subsequent action is to sprinkle sacred water on all individuals and objects, serving as a symbolic cleansing and a blessing. Furthermore, it is purported that this water can assuage the spirits and provide relief. This technique is thought to aid in purifying the soul and preparing it for the subsequent, calmer existence. After completing all the rites, the community recites the closing prayer to express their best wishes to the spirits. After the ceremony, all the participants joined for a shared dinner. Sharing a meal not only serves as a ceremonial framework but also emphasizes the support and companionship within a community. This procedure demonstrates the community's unwavering support for spirits, ensuring their eternal significance and ultimate importance. It is essential to complete this duty to maintain communication with the deceased individual.

Nine individuals, including monks, actively engaged in the practice of ulkā-mukha rituals, participated in this investigation, primarily from Jin Nikāya. Purposive sampling was employed to select participants, with the primary criteria being active engagement and detailed knowledge of the ritual. Nine participants will be interviewed to attain data saturation.

The data of the participants is displayed in Table 1 below.

Table 1. List of interviewees

Name	Role
Bsc	Head of ritual Yogacara Ulkā-mukha
Sch	monks from Jin Nikāya
Zh	monks from Jin Nikāya
Phra	monks from Jin Nikāya
Xus	monks from Jin Nikāya

Xng	monks from Jin Nikāya
Why	monks from Jin Nikāya
Pn	monks from Jin Nikāya
LnY	monks from Jin Nikāya

Data is gathered via comprehensive interviews and active observation. Semi-structured in-depth interviews were conducted to assist in analyzing comprehensive material. Researchers are actively involved in conducting participatory observations, carefully observing every aspect of the ritual activities and the actions that take place. Prior to conducting interviews and observations, written consent was obtained from all participants to ensure the ethics of data collection and anonymity.

The primary instrument of this research is the semi-structured interview guide developed to investigate the experiences and meanings that participants associate with the *ulkā-mukha yogkau*. This interview guide includes open-ended questions encouraging participants to provide further details about their experiences and perspectives. Table 2 displays the theme and interview queries in great detail. Additionally, researchers employ reflective journals and field recordings to capture their observations and reflections during the data collection. Furthermore, in order to facilitate data analysis, visual documentation, such as photographs and videos, will be implemented.

Table 2. Themes and questions

Themes	Questions
Perceptions	What emotions do you experience while performing <i>ulkā-mukha yogamy</i> rituals?
Spiritual meaning and the role of Yogacara	What is your interpretation of the spiritual significance of the <i>Ulkā-Mukha Yogaman</i> ritual?
<i>Ulkā-mukha</i> ritual	How is it possible for the <i>ulkā-mukha</i> ritual to rescue Chinese ghosts that are located abroad?
Perceptions	Following the <i>ulkā-mukha yogamy</i> ritual, how do you feel?
Challenge	In order to execute <i>ulkā-mukha yoga</i> rituals in the contemporary era, what are the primary obstacles you perceive?

Thematic analysis, which entails the subsequent procedures, is implemented for data analysis: Initially, interview data and observation recordings are transcribed verbatim. The researchers analyzed the transcript in the second step to identify the initial themes. Furthermore, researchers carry out data classification by discerning text fragments that are relevant to the existing topics. Furthermore, the main themes are determined by classifying these identifiers into a more general category. Furthermore, an in-depth understanding of the meaning and relevance of the *ulkā-mukha* rite for the Chinese minority in Thailand is achieved by examining these issues in the context of relevant theory and literature. Triangulating data and member verification are employed to ensure the dependability and accuracy of study findings.

Result and Discussion

Yogacara Ulkā-mukha Ritual in Saving the Chinese Ghosts Overseas

In particular, the Ulkā-Mukha Yogamy Ritual is a religious practice in the Mahayana Buddhist tradition intended to preserve the spirit of the *Gingyan* or 'hungry specter' using the passage of *Yogelau*. In order to alleviate the suffering of the souls and facilitate their attainment of enlightenment, monks execute a series of petitions and practices. This ritual is essential for preserving Chinese cultural and religious identity in Thailand, where Theravada Buddhist traditions are the predominant religion. It also functions as a spiritual practice. Gunawan (2020) posits that the Chinese community maintains its beliefs through religious practices, which indicates the complex interplay between the Buddhist traditions of Ma-Hayana and Theravada, represented by the adaptation of this ritual.

The Ulkā-Mukha Yogamy ritual has been adapted and adopted by the Chinese community in Thailand, illustrating the complex interplay between two distinct Buddhist traditions. Despite the significant influence of the Buddhist Theravada Buddha, the Chinese community continues to protect its religious practices to preserve its cultural heritage, as emphasized by Tan (2012). Additionally, Lim (2014) demonstrates that cultural acculturation occurs when the Chinese community simultaneously adapts to a diverse array of social and religious environments while preserving the fundamental components of its traditions.

The Ulkā-Mukha Yogaman ritual maintains the cultural and religious identity of the Chinese society in Thailand, in addition to functioning as a spiritual practice. The Chinese community's ethnic and religious identities are frequently interconnected and reinforced through distinct religious customs, according to Wong (2018). The relationship between the Mahayana and Theravada Buddhist traditions can be interpreted as a form of cultural diplomacy in which the Chinese community employs their religious rituals to engage with and assimilate into the local community, according to Chiu (2017).

While numerous studies have examined the impact of Chinese culture in Thailand, there remain deficiencies in the research about the adaptation and distinct functions of religious rituals like *Yogamah Ulkā-Mukha*. Tan (2012) and Wong (2018) primarily examine the economic and social dimensions of Chinese society, whereas Lim (2014) and Chiu (2017) place greater emphasis on cultural exchanges without delving into the specific theological parts of religious rites. Nai (2015) offers a significant historical viewpoint but does not address the current dynamics of the ritual's modification. This gap highlights the necessity for conducting a more comprehensive investigation of the functioning of the *Yogamah Ulkā-Mukha* rite in a contemporary setting, as well as its role in preserving the cultural identity of the Chinese population in Thailand.

The Spiritual Significance and Role of the Yogacara Ulkā-mukha Ritual in Redeeming Chinese Ghosts Overseas

This study highlights the profound spiritual importance and significant role of the *Yogacara Ulkā-mukha* ritual in the effort to rescue wandering souls or ghosts within the Chinese community of Thailand. The ritual's somber performance of reciting sutras, making symbolic sacrifices, and conducting the water benediction

ceremony demonstrates its spiritual importance. Each level of the ritual provides a unique and harmonious spiritual aspect to provide peace to restless souls. Upon the researcher's inquiry, "What emotions do you undergo during the execution of the Yogacara Ulkā-mukha ritual?"

"I experience a profound sense of tranquility each time I engage in this ritual. I am of the opinion that the spirits of our ancestors will achieve tranquility following this ritual. Furthermore, I experience a stronger sense of connection with my fellow community members. The act of praying together and coming together as a group helps to strengthen our sense of unity". (BSc)

The Yogacara Ulkā-mukha ritual is firmly grounded in the Mahayana tradition of Buddhism and carries substantial spiritual importance for the Chinese community. Monk Zh, who took part in the Yogacara Ulkā-mukha ritual, answered the researcher's question about its spiritual importance:

"The Buddha's compassion for all beings, including lost souls, is embodied in this ritual. We extend our gratitude to Buddha and the bodhisattvas for accepting these petitions from their followers and for granting them mercy" (Zh)

The purpose of this ritual is to guide wandering souls toward liberation through reciting prayers and mantras and offering sacrifices. According to the researchers, "How do you respond to the Yogacara Ulkā-mukha ritual?" Unveiling the Biku Phra:

"Following my involvement in this ceremonial practice, I experienced an enhanced sense of connection to the teachings of Buddha and a heightened awareness of the significance of karma and virtuous actions in my existence." (Phra)

Numerous participants reported experiencing a sense of tranquillity and serenity after having participated in the ritual. Monk Pn stated:

"I experience a greater sense of tranquillity and security each time I engage in the ritual. I think the spirits we assist and our ancestors experience the same tranquillity". (Pn)

The findings from these interviews indicate that the ritual's spiritual potency has psychological and emotional impacts, illustrating how religious practices can provide emotional and mental assistance to the community. However, the ritual serves as both a spiritual exercise and a communal effort to save the lost souls, who are thought to be suffering the repercussions of their previous wrongdoings. Monk Xng responded to the researcher's inquiry regarding the Yogacara Ulkā-mukha ritual's ability to rescue overseas Chinese ghosts:

"The Yogacara Ulkā-mukha ritual is a profound spiritual practice intended to provide tranquillity to the spirits without a place in the afterlife." Traditionally, this ritual is conducted in the ancestral land, where the spirits of the ancestors are invoked, and offerings and prayers are offered to assist them in achieving peace. Nevertheless, the challenge arises when discussing wandering spirits that have dispersed abroad, or "Chinese ghosts overseas," and how to connect with this ritual despite their distance from their ancestral homeland."

Furthermore, he included:

"The power of sincere intention and prayer enables this ritual to communicate with these

spirits. We are of the opinion that thoughts and prayers possess the capacity to transcend the confines of time and space. There is a concept in Yogacara that all beings are interconnected in a single universal consciousness. Consequently, we can attract these spirits to receive the benefits of this ritual by performing it properly and with sincere intentions, despite the fact that they are located abroad, as is the case in the local context".

The Yogacara Ulkā-mukha ceremony also enhances the cohesion of the Chinese community in Thailand. Individuals actively participating in this event have a strong relationship and experience a heightened sense of interconnectedness. Additionally, they experience a sense of connection with their forebears. Engaging in communal practices such as reading prayers, making offerings, and dining together fosters unity and cohesion. The results of this study suggest that the Yogacara Ulkā-mukha ritual serves as a technique to enhance social connections within the community, extending beyond its spiritual purpose of saving ghosts overseas.

Additionally, the research revealed that engaging in the ritual had a beneficial effect on the psychological and emotional well-being of the individuals. Several participants expressed a sense of tranquillity, security, and a strong bond with their forebears following their involvement in the ceremonial practice. These emotions aided in managing sentiments of bereavement and unease while fostering a sense of camaraderie in daily existence. The favorable effects indicate that the Yogacara Ulkā-mukha rite holds significant importance in the life of the Chinese population in Thailand. Moreover, the study emphasizes that the ability to adjust and introduce new ideas in the execution of the ritual is crucial for ensuring the long-term viability of the tradition in contemporary times. Innovative and all-encompassing strategies can surmount obstacles like the waning enthusiasm of the younger generation and societal expectations. For instance, providing education and outreach initiatives that emphasize the significance of the ritual might enhance comprehension and reverence among the broader community, fostering a more supportive atmosphere for conserving the tradition.

Challenges Faced by the Ulkā-mukha Yogacara Ritual in the Modern Context and the Preservation of Cultural Traditions

Currently, it is difficult for the Chinese population in Thailand to practice the Yogacara Ulkā-mukha rite. The younger generation, in particular, has seen profound changes to their way of life and thought processes due to industrialization and globalization. It is concerning that younger people are losing interest in traditional ceremonies. Many individuals are forsaking their traditional customs, favoring modern lifestyles and mainstream culture. Moreover, the migration and urbanization processes are causing the breakdown of traditional communities, presenting difficulties in carrying out these rituals collectively and consistently. A key concern arose from the younger demographic's apparent disinterest in the Yogacara Ulkā-mukha ceremony. A considerable portion of young folks in the Chinese community consider this ceremony to be inconsequential to their modern lives. The researcher asked, "What are the main difficulties you see in implementing the Yogacara Ulkā-mukha ritual in the present time?" Biku LnY expressed:

"Some young people think these traditions are irrelevant to modern life and have gone the way of the dodo. They participate in more modern activities and show an increased

interest in technology" (LnY).

"Keeping the younger generation interested is the main obstacle. They are generally more focused on their professional obligations and the fast-paced lifestyle of urban regions. Many people no longer live near temples, so they rarely take part in rituals. We strive to actively involve them via social media; nevertheless, the results remain less than ideal". (LnY)

Another problem is that globalization and modernization have made people less interested in traditional ways of doing things. Younger people often feel disconnected from their ancestors' traditions and ways of life because they are exposed to more global culture and technology, as Monk Sch mentioned:

"It is more likely that younger people will spend their time on social media and video games than they will be to learn about our civilization's cultural practices and customs. There is a possibility that these traditions will no longer be practised". (Sch)

Despite various challenges, specific communities have endeavored to adapt the Yogacara Ulkā-mukha ritual to suit the present-day and specific local circumstances better. Monk Xus declared:

"We endeavor to integrate contemporary aspects into this tradition, such as utilizing technology to distribute information about the ritual and engaging the younger generation by means of social media". (Xus)

The forthcoming challenge concerns assimilating this customary practice in foreign nations. When asked about the incorporation of this ritual in other nations, Monk Nhy stated:

"The main obstacles are the cultural differences and the scarcity of traditional ritual materials commonly found in Asia. It is possible that some countries will not be able to access certain offering materials. Not only that, but we also tell you how to use other materials that have the same spiritual importance. It is also hard to ensure that the ritual happens at the right time for people in different time zones. It is especially hard to do when the ritual involves people from communities across several countries."

Furthermore, he underscored the significance of intention and mindfulness in executing the ritual. The implemented modifications are separate from the spiritual essence of this ritual, as the primary aspect resides in the intention to rescue these spirits and grant them serenity. This ritual is versatile, and as long as it is carried out with sincere intentions, the results will remain reliable.

The difficulties of modifying Buddhist rituals when conducted in foreign countries were emphasized in interviews with Monk Nhy. The main challenges faced are cultural differences and the limited availability of ritual resources, typically more accessible in Asia. For example, certain religious practices may not be available in specific nations, requiring practitioners to use alternatives that convey similar spiritual importance. Coordinating the timing of the ritual to accommodate different time zones, especially when it involves communities spread across multiple countries, is also challenging. Monk Nhy emphasized that the ritual's most crucial elements are intention and awareness, regardless of the challenges. The intrinsic spiritual nature of the ritual remains unaffected by the adjustments made to suit the specific local

circumstances. Monk Nhy claimed that the ritual is flexible and that as long as it is carried out with genuine intentions, it will successfully achieve its intended spiritual goal of bringing peace to the souls involved.

The significance of spirituality and the function of rituals in the saving of ghosts

The findings of this inquiry suggest that the *ulkā-mukha* Yogamy ceremony has a profound spiritual importance and plays a significant role in maintaining the tradition of traveling within the Chinese minority in Thailand. This rite represents the community's duty to help spirits who have lost their way to finding peace and the kindness of Buddhism. This finding aligns with Wong's (2018) viewpoint, which emphasizes the importance of religious rituals in strengthening ethnic and spiritual identity and providing emotional support to individuals. Furthermore, this inquiry established that engagement in this ceremony strengthens the cultural identity of the Chinese community, acts as a prompt of customary principles, and assists in safeguarding cultural legacy amid modernization. Furthermore, Lim's (2014) study on cultural acculturation supports the idea that religious and cultural activities are crucial in maintaining ethnic identity among diaspora communities.

Moreover, it is infeasible to overlook this rite's psychological and emotional repercussions. Chiu's (2017) study demonstrates the substantial impact of religious rituals in promoting psychological tranquillity and offering mental assistance, as seen by the participants' accounts of experiencing serenity and security after engaging in the ritual. Because it entails incorporating a spiritual framework and acknowledging the value of that framework in one's day-to-day existence, this ritual is an excellent approach for reducing feelings of worry and grief. The study, however, sheds light on the challenges encountered while attempting to keep the interest and involvement of the next generation in this cultural heritage. Due to the impact of global culture and modern technologies, many young individuals need help understanding the significance of traditional rituals. Zhang (2019) suggests that maintaining this event in the future will pose more significant difficulties due to waning interest among younger individuals in conventional religious practices. The community's ability to integrate while preserving its uniqueness is highlighted by the contextualization of rituals in different social settings and the modification of rituals to make them more relevant for the younger generation. This supports Xie's (2020) claim that cultural practices remain relevant in the modern period by being innovative and adaptable.

The process of adapting and facing problems in preserving tradition and cultural legacy within a contemporary context.

The study's findings indicate that the *Ulkā-Mukha* Yogamah ceremony, which has been modified, is confronted with many problems. However, these findings also highlight the determination of the Chinese community in Thailand to maintain its cultural history and traditions. The younger generation sees this age-old rite as outdated and unnecessary in light of the changes brought about by industrialization and globalization, posing a substantial danger to its continuation. In a study conducted by Zhang (2019), it was discovered that younger generations place greater importance on global culture and state-of-the-art technology than historical religious rituals. It provides additional evidence that Zhang's conclusions are accurate. However, the research demonstrates how communities use their imaginations to

identify solutions and adapt to these challenges. For instance, the community utilizes technology and social media to communicate information regarding rites and extend invitations to young people. It is consistent with Xie's (2020) perspective, which emphasizes the importance of innovation in preserving cultural traditions in the present day. Technology broadens the target audience and increases the appeal of rituals for the younger demographic.

Additionally, this revelation illustrates that adaptation involves modifications to how rituals are performed and the methods of educating and enlightening individuals about the importance of this cultural practice. The long-term sustainability of rituals is significantly influenced by education and counseling. Lim (2014) found that cultural education is crucial for Diaspora communities to maintain their ethnic identity. Based on the findings, a good education can help people appreciate and learn about other cultures. Other than that, there is social and cultural pressure from the neighboring community, which might need to understand and value this ritual more. This statement corroborates the findings of Wong (2018), which indicate that the dominant culture can influence the cultural practices of minority groups. However, the community can foster the development of a more all-encompassing and encouraging atmosphere by enhancing comprehension and admiration from the broader community by implementing appropriate counseling.

Moreover, the ritual adaptation process indicates the community's capacity to assimilate while maintaining its identity. It demonstrates the adaptability and cultural fortitude of the Chinese minority in Thailand when confronted with social and cultural transformation. The ability to adapt and maintain one's significance is the most critical aspect in maintaining cultural traditions over time, according to Chiu (2017). The community can maintain relevance to the modern world while preserving its cultural heritage through suitable adaptation. Additionally, this study shows that participating in this event helps the Chinese community feel more connected to their culture, keeps traditional values alive, and protects cultural artifacts from the effects of modernization. Consistent with other studies, this finding highlights the importance of religious and cultural pursuits in maintaining ethnic identity in the diaspora (Lim, 2014). Engaging in community rituals fosters the preservation of traditional beliefs, strengthens ancestry bonds, and enhances mental health and emotional well-being. According to Chiu (2017), religious practices facilitate the resolution of loss and suffering by providing psychological relaxation, emotional support, and a spiritual framework.

The capacity of the intention and supplication to transcend the confines of space and time

Even though the entities are located abroad, the Yogamah Ulkā-Mukha ritual can still be used to contact them. The spiritual benefits of the ulkā-mukha yoga ritual are believed to penetrate the limits of space and time through the sincere intentions and prayers offered. It allows spirits to receive the benefits of the ritual, regardless of their location. It is consistent with the Buddhist tradition that the mind and intention significantly influence the spiritual world. For instance, Faure's (1996) research on the function of prayer in Buddhist rituals underscores the importance of genuine and in-depth intentions to ensure the efficacy of prayer, even in a long-distance setting. This intention is regarded as a conduit between the spiritual and physical realms,

enabling communication with entities in other dimensions.

In another context, Smith (2007) researched the Ritual of Soul Summons in various spiritual traditions and discovered that the spiritual effects of the petitions offered can be bolstered by the collective intentions of the community performing the ritual. It demonstrates that the ritual is contingent upon the focused intentions and physical or location-based actions. In the instance of Ulkā-Mukha, the spiritual energy generated by the strong intentions of participants, despite their geographical separation, is sufficient to reach and offer calm to spirits far from their ancestral land. Additionally, this discovery is corroborated by a study conducted by Gyatso (2010) on meditation and intention in Tibetan Buddhism. The study asserts that sincere intentions in rituals and meditation can influence the spiritual world without being constrained by physical boundaries. Therefore, this study's findings confirm that the Yogamah Ulkā-Mukha ritual can go beyond the limitations of place and time through the influence of purpose and prayer. Furthermore, it may be adapted to establish a connection with spirits in the Chinese diaspora residing in foreign countries.

Conclusion

This study explores the significance of the Ulkā-mukha Yogacara rites and the challenges encountered in their implementation in Thailand. The research reveals three key findings: the adaptation and difficulties in preserving cultural traditions in modern society, and the powerful impact of intention and prayer that transcends spatial and temporal boundaries. These findings indicate that the execution of this rite in foreign countries can be enhanced through the active involvement of younger generations and the use of technology, despite various contemporary challenges such as logistical constraints and cultural shifts. Moreover, the Ulkā-mukha Yogacara ceremony has proven effective in bringing peace to wandering spirits, despite the barriers of distance and time, due to the strength of the intentions and prayers embedded within the ritual. Therefore, this study emphasizes the importance of preserving traditional ceremonies while incorporating innovative elements to ensure that spiritual and cultural traditions remain relevant and significant in an era of globalization. The research suggests that the Chinese diaspora could benefit from developing a more comprehensive adaptation strategy and utilizing technology to preserve their spiritual heritage

Patents

Author Contributions: The primary author, Wenchen DU, is responsible for Conceptualizing research concepts and designs, collecting data via comprehensive interviews and observations, and analyzing the collected data. The author also contributes to preparing the original draft in writing. Yaoping Liu, as the second writer and corresponding author, is responsible for validating the content, writing the review, and editing it. The third author, Metteyya Beliatte, is responsible for managing and coordinating the research activity planning and execution and acquiring funding. They collaborate in the completion of the text before its submission for publication. All contributors have perused and approved the ultimate iteration of the manuscript.

Funding: This research received no external funding

Institutional Review Board Statement: The study was conducted by the Declaration of Helsinki and approved by the Institutional Review Board (or Ethics Committee) of the Institute of Science Innovation and Culture, Rajamangala University of Technology Krungthep, Thailand (date of approval: August 12, 2024)

Informed Consent Statement: Informed consent was obtained from all subjects involved in the study.

Data Availability Statement: The data presented in this study are available on request from the corresponding author due to privacy and ethical restrictions

Acknowledgments: We are sincerely grateful to all who contributed to this investigation, especially the nine monks from Jin Nikāya who generously contributed to this research.

Conflicts of Interest: The authors declare no conflicts of interest.

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Factors Influencing Employee Engagement in E-Business

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Abstract:

With the rapid growth of the e-business sector, employee engagement has become essential for organizational success, customer satisfaction, and corporate reputation. This study aims to examine the impact of demographic variables on employee engagement and explore how salary fairness, employee innovation behavior, and corporate social responsibility (CSR) influence cognitive, affective, and behavioral engagement among employees in China's e-business sector. A quantitative analysis was conducted using data collected from 400 e-business employees. Descriptive statistics, including frequency and percentage, and inferential statistics, such as independent sample t-tests, one-way ANOVA, LSD post-hoc analysis, and multiple linear regression, were applied at a 0.05 significance level. The results show that gender, age, educational background, and work department do not significantly affect employee engagement. However, monthly income does lead to differences in engagement levels. Furthermore, salary fairness, employee innovation behavior, and CSR were found to significantly influence cognitive, affective, and behavioral engagement, with salary fairness having the strongest impact on cognitive and overall engagement. In contrast, CSR had the greatest effect on affective and behavioral engagement. Detailed recommendations are provided to enhance employee engagement in the e-business sector.

Keywords: E-business; salary fairness; employee innovation behavior; corporate social responsibility; employee engagement.

Introduction

Employee engagement is of paramount significance for success and sustained growth. In the current business landscape, especially within e-business, employee engagement influences an organization's performance and shapes customer experiences and corporate reputation. E-businesses are typically in highly competitive markets, where success hinges on employee innovation, commitment, and active participation. Therefore, comprehending the factors that affect employee engagement in e-business is paramount. Past research has underscored the positive correlation between employee engagement and an organization's profitability, customer satisfaction, and employee retention. However, the unique nature of e-business may lead to some distinctive influencing factors. For instance, e-business often requires employees to possess innovative capabilities to adapt to rapidly

changing market demands. Additionally, employees' work in e-business may involve online interactions with customers and partners, impacting their affective and behavioral engagement.

Over the past decade, China's e-business industry has experienced unprecedented explosive growth, quickly becoming one of the largest e-business markets in the world. According to data from the China E-commerce Research Center, China's e-commerce transaction volume reached 40 trillion yuan in 2023, accounting for over 50% of the global e-commerce market. This remarkable growth is mainly attributed to the widespread internet adoption, the extensive use of mobile payment tools, and significant improvements in modern logistics and distribution systems. China's major e-business platforms include Alibaba, JD.com, Pinduoduo, and Suning.com. These platforms are not merely venues for product transactions; they also provide various services, such as financial services, cloud computing, and big data analytics, forming a complex ecosystem. For example, Alibaba offers payment solutions through its subsidiary Alipay and cloud computing services through Alibaba Cloud; JD.com not only holds a significant position in the e-business sector but has also made substantial investments in fintech and logistics technology.

Within these e-business platforms, employee engagement is crucial in enhancing service quality, innovation capability, and customer satisfaction. Highly engaged employees typically exhibit higher job satisfaction, stronger organizational commitment, and better job performance, which translates into increased productivity, reduced employee turnover, enhanced customer satisfaction, and driving innovation. Therefore, understanding and improving employee engagement is essential for a company's internal management and external competitiveness. Factors influencing employee engagement include the work environment, compensation and benefits, and career development opportunities. Key elements such as a comfortable workspace, a friendly team atmosphere, competitive compensation, comprehensive benefits, transparent career development paths, and training opportunities are essential for employee engagement. By providing these supports, companies can attract and retain high-quality employees and enhance their work motivation and satisfaction, thereby laying a solid foundation for the sustained development of the e-commerce industry. (Erisman, P. 2017).

Hence, this study explores the factors influencing employee engagement in e-business platforms. The study focuses on salary fairness, employee innovation behavior, and corporate social responsibility to understand how they affect employees' cognitive, affective, and behavioral engagement. By delving into these factors, we can provide targeted management recommendations to enhance employee engagement on e-commerce platforms, strengthening an organization's competitiveness and sustainability.

Hence, this study explores the factors influencing employee engagement on e-commerce business platforms. This study focuses on factors such as salary fairness, employee innovation behavior, and corporate social responsibility to understand how those factors affect employees' cognitive, affective, and behavioral engagement. By delving into these factors, recommendations can be provided to enhance employee engagement on Chinese e-business, thereby strengthening business competitiveness and sustainability.

The study focuses on understanding the various factors that shape employee

engagement in e-business environments, with a specific emphasis on the role of demographic variables and internal organizational factors. The research is driven by two primary questions. First, it seeks to determine how demographic variables such as gender, age, educational background, monthly income, and department of work impact employee engagement in e-businesses. Second, it examines the extent to which internal factors, including salary fairness, employee innovation behavior, and corporate social responsibility (CSR), influence cognitive, affective, and behavioral aspects of employee engagement. The objectives of the research align with these questions, aiming to investigate how individual characteristics affect employee engagement, and to explore how internal factors shape various dimensions of engagement. To address these objectives, the study proposes several hypotheses, including that demographic differences significantly affect employee engagement (H1), and that internal factors, such as salary fairness, employee innovation, and CSR, have a substantial influence on cognitive (H2), affective (H3), behavioral (H4), and overall employee engagement (H5) in e-businesses.

The following research framework is designed to provide a structured approach, offering insights into how both demographic and internal factors interact to shape employee engagement within the e-business sector.

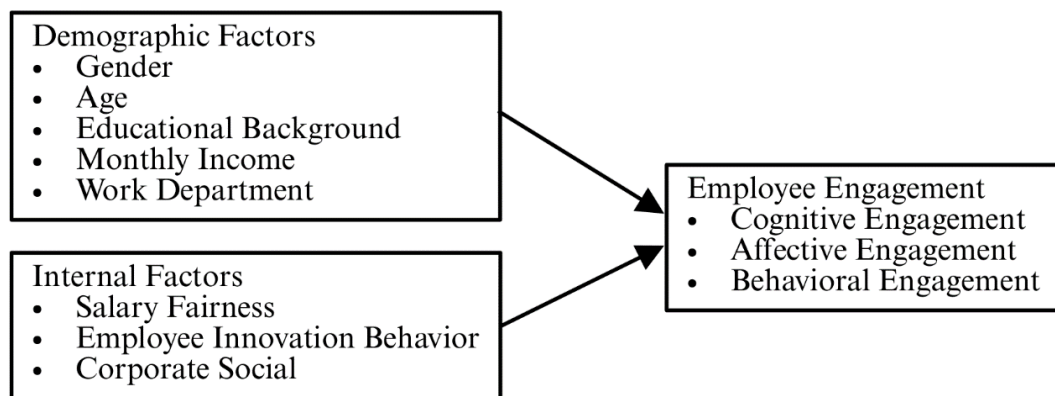


Figure 1. Research Framework

This study aims to assess the demographic factors that affect employee engagement in E-business and examine the influence of salary fairness, employee innovation behavior, and corporate social responsibility on cognitive, affective, behavioral, and employee engagement in E-business. The conceptual framework was developed based on employee engagement, including cognitive, affective, and behavioral engagement. The demographic factors include gender, age, educational background, monthly income, and work department. Data were collected from employees who work in e-business in China. The sample size was 400, calculated using Cochran's formula. The questionnaires were distributed online using an internet platform, Questionnaire Star (a link to the questionnaire was sent to the target group through social media platforms such as WeChat and QQ, and respondents could directly click on the link to answer the questionnaire). The convenience sampling method was conducted to collect data. To ensure the quality

and confidence of the questionnaires, the content validity test using Item Object Consistency (IOC) by 3 experts in the human resource field. The reliability test using Cronbach's alpha coefficient (α) for salary fairness, employee innovation behavior, corporate social responsibility, cognitive engagement, affective engagement, and behavioral engagement was 0.933, 0.875, 0.931, 0.928, 0.914, and 0.945. The reliability coefficients were greater than 0.7, indicating the questionnaire has good reliability. Statistics used to analyze data were independent sample t-test, One-way ANOVA, and Multiple linear regression at the statistically significant level of 0.05.

Result and Discussion

Employee Engagement Definition

In recent years, various organizations have increasingly focused on employee engagement levels because these levels significantly impact employee job performance. The importance of engagement to employees lies in the fact that work is a significant part of their lives and substantially influences their well-being. Clack, L. (2021) pointed out that work affects an individual's quality of life and physical and mental health. Most people rely on work to make a living, making work more of a responsibility than a choice. However, while we cannot choose whether to work, we can choose how to work. Thus, individuals' feelings and work experiences vary greatly; some see work as monotonous and merely a way to pass the time, while others see it as a means of self-realization (Zhang, 2019).

The dimensions of employee engagement

Previous research on employee engagement has mainly focused on job engagement while neglecting organizational engagement. However, organizational engagement, as a work attitude, can directly impact performance more than related concepts like organizational commitment and identification. Individual investment in an organization's behavior, cognition, and emotions, like job engagement, can influence employee performance. Saks (2019) was the first to distinguish between job and organizational engagement in the context of employee engagement. It conducted empirical research to analyze their impact on antecedent and outcome variables. Saks's research validated the model distinguishing between job and organizational engagement, demonstrating that job engagement is influenced by factors such as job characteristics and organizational support and, in turn, affects organizational commitment, organizational citizenship behavior, and turnover. Organizational engagement, like job engagement, is influenced by these antecedent variables and affects most outcome variables.

Employee Engagement Theory

Engagement is classified into 3 categories: social, affective, and intellectual (Singh & Sant, 2023). Intellectual involvement comprises carefully examining the task and how to better it; affective engagement entails being pleased with one's work; and social engagement entails actively finding opportunities to convey work-related improvements with co-workers. Both research and theory support the importance of effective engagement (Jiang & Shen, 2023). Cognitive engagement refers to the

cognitive resources an individual invests in their work, such as focus, concentration, and engrossment. By maintaining this cognitive focus, individuals can better accomplish their tasks, improving efficiency and quality. Mendoza-Silva (2020) identifies "absorption" as a representative variable for measuring cognitive engagement, emphasizing the state of being highly focused and immersed in work. Affective engagement pertains to the emotional resources an individual invests in their job, such as enthusiasm, joy, and positive emotions. Russell and Barrett (1999) introduce the concept of "core affect" as a representative variable for affective engagement, highlighting the fundamental emotional responses experienced by individuals in their work. Affective engagement can enhance work motivation and job satisfaction, thereby improving performance. Behavioral engagement refers to the physical resources an individual invests in their work, such as the intensity and density of energy expended. Brown and Leigh (1996) developed the concept of "work intensity" as a representative variable for behavioral engagement. Behavioral engagement reflects individuals' physical effort and energy in their tasks, directly impacting efficiency and task completion.

The relationship between CSR and employee engagement in E-business

Corporate Social Responsibility (CSR) has emerged as a crucial element in modern business practices, influencing various aspects of organizational performance. In the context of e-business companies, CSR plays a significant role in shaping employee engagement. This research examines how CSR initiatives impact employee engagement levels, affecting overall company performance and success. CSR refers to a company's commitment to ethical practices and contributions to economic development while improving the quality of life of its workforce, their families, the local community, and society. For e-business companies, CSR can include sustainable business practices, ethical sourcing, community engagement, and environmental initiatives. Employees are increasingly valuing CSR as a core component of their work environment.

According to Glavas (2016), employees who perceive their company as socially responsible are more likely to exhibit higher levels of engagement. This is because CSR aligns with their values, providing them a sense of purpose and fulfillment in their work. CSR initiatives create a positive work environment, a significant driver of employee engagement. When companies invest in CSR, they demonstrate a commitment to ethical behavior and social welfare, fostering employee trust and loyalty (Brammer, Millington, & Rayton, 2007). This positive perception can increase job satisfaction and motivation, as employees feel proud to be associated with a responsible organization. CSR activities focusing on employee well-being, such as fair wages, health benefits, and professional development opportunities, directly impact employee morale.

Kim et al. (2010) indicate that employees who benefit from their company's CSR policies are likelier to stay with the company longer, reducing turnover rates and fostering a stable workforce. For e-business companies, retaining experienced employees is crucial for maintaining continuity and expertise in a rapidly evolving industry. E-business companies that engage in community and environmental initiatives can significantly enhance employee engagement. Erisman (2017)

described that employees participating in company-sponsored volunteer programs and environmental projects report higher engagement and job satisfaction. These activities allow employees to make meaningful contributions beyond regular job duties, enhancing their overall work experience. Amazon has implemented various CSR initiatives aimed at sustainability and community support. These initiatives include reducing carbon emissions, promoting renewable energy, and supporting local communities through charitable donations and volunteer programs. As Kordab et al. (2020) noted, these efforts have improved Amazon's public image and boosted employee engagement by fostering a culture of responsibility and community involvement. Alibaba's commitment to CSR is evident in its environmental sustainability projects and philanthropic efforts. The company's programs focus on reducing environmental impact, supporting education, and promoting social welfare. These initiatives have increased employee engagement, aligning employees with Alibaba's mission to create positive social change (Zhang, 2019).

Descriptive statistics

The analysis results in Table 1 reveal that the sample is fairly balanced in gender, comprising 189 males (47.3%) and 211 females (52.8%). Regarding age distribution, most respondents were aged 26 to 35, the largest group at 43.0%. Meanwhile, the participants' education levels vary, with a significant portion having undergraduate degrees (53.8%). For monthly income, the result reveals that the largest proportion of respondents earn between 5,001 and 7,000 yuan monthly (45.3%). Lastly, the department in which respondents work, most of them work in the production department, constituting the largest group at 26.3%, followed by the sales department at 22.8%.

Table 1. Descriptive statistics of the demographic factor

Variables	Classification	Frequency	Percentage
Gender	Male	189	47.3
	Female	211	52.8
	Total	400	100.0
Age	18-25 years old	37	9.3
	26-35 years old	172	43.0
	36-45 years old	98	24.5
	46-55 years old	62	15.5
	More than 55 years old	31	7.8
	Total	400	100.0
Educational Level	Diploma	79	19.8
	Undergraduate	215	53.8
	Postgraduate	77	19.3
	Others	29	7.3
	Total	400	100.0

Variables	Classification	Frequency	Percentage
Monthly Income	Less than or equal to 3000 yuan	44	11.0
	3001-5000 yuan	98	24.5

	5001-7000 yuan	181	45.3
	More than 7000 yuan	77	19.3
	Total	400	100.0
	Sales department	91	22.8
Work department	Financial department	54	13.5
	Human resource department	61	15.3
	Research and development department	66	16.5
	Production department	105	26.3
	Others	23	5.8
	Total	400	100.0

Table 2 displays the descriptive statistics of the respondents' opinions on independent factors, including salary fairness, employee innovation behavior, and CSR. The results reveal that the respondents' opinions on those variables were neutral. Salary fairness was ranked top, followed by CSR and employee innovation behavior. Overall, while employees generally have a neutral view of these factors, there is potential for improvement in each area to boost overall employee satisfaction and engagement.

Table 2. Descriptive statistics for independent variables

Independent Factors	Opinion Level: Frequency(Percent)								
	1	2	3	4	5	\bar{X}	S.D.	Rank	Meaning
Salary fairness	8 2.0%	220 55.0%	72 18.0%	84 21.0%	16 4.0%	2.70	0.955	1	Neutral
Employee innovation behavior	52 13.0%	159 39.8%	88 22.0%	85 21.3%	16 4.0%	2.64	1.077	3	Neutral
Corporate Social Responsibility	24 6.0%	190 47.5%	85 21.3%	84 21.0%	17 4.3%	2.70	1.004	2	Neutral

Table 3 reveals that employees generally perceive their engagement levels as "neutral." Cognitive engagement, which involves employees' mental investment in their work, has a mean score of 2.63 with a standard deviation of 1.002. This suggests that while employees moderately engage cognitively, there is a reasonably consistent response distribution. Cognitive engagement ranks third among the evaluated aspects, highlighting its significant role in employee engagement. Affective engagement, which refers to the emotional attachment employees feel toward their work, has a mean score of 2.71 and a standard deviation of 0.986. This indicates a neutral level of affective engagement, with slightly more variation in responses than cognitive engagement. Affective engagement ranks second, suggesting that fostering emotional connections with work could be an area for improvement.

Table 3. Descriptive statistics for employee engagement

Employee Engagement	Level of Opinion Frequency and Percent					Mean	SD	Meaning	Rank
	1	2	3	4	5				

Cognitive	27 6.8%	205 51.3%	71 17.8%	82 20.5%	15 3.8%	2.63	1.002	Neutral	3
Affective	19 4.8%	195 48.8%	84 21.0%	86 21.5%	16 4.0%	2.71	0.986	Neutral	2
Behavioral	8 2.0%	193 48.3%	87 21.8%	95 23.8%	17 4.3%	2.80	0.966	Neutral	1
Overview of Employee Engagement	2 0.5%	167 41.8%	167 41.8%	49 12.3%	15 3.8%	2.77	0.812	Neutral	

Inferential Statistics

The independent sample t-test and one-way ANOVA were used to test hypothesis 1: the difference in demographic factors, including gender, age, educational background, monthly income, and department work, affect employees' engagement in e-business differently. According to the results in Table 9, gender, age, educational background, and work department have no significant effect on employee engagement in e-business. However, the difference in monthly income significantly affects employee engagement in e-business at the statistically significant level of 0.05. The pairwise mean comparison of each group is shown in Table 5. Therefore, the study shows that monthly income plays a significant role in affecting employee engagement in e-business. In contrast, gender, age, educational background, and work department did not significantly affect this study.

Table 4. Summary results of the differences in demographic factors affect the employee's engagement in e-business differently

Demographic factors	Result Employee's engagement	
Gender	-	t(398) = 0.124, p = 0.901
Age	-	F(4,395) = 1.539, p = 0.190
Educational background	-	F(3,396) = 0.906, p = 0.438
Monthly Income	-	F(3,396) = 3.618, p = 0.013*
Work department	-	F(5,394) = 2.078, p = 0.067

Post hoc analysis using LSD was conducted to explore pairwise differences further, as shown in Table 5. The results indicated that the monthly income group " $\leq 3,000$ " and group "3,001-5,000 RMB" showed a significant difference in mean test scores ($p = 0.002$), while monthly income group " $\leq 3,000$ " versus group "5,001-7,000 RMB" ($p = 0.046$) and monthly income group " $\leq 3,000$ RMB" versus group " $>7,000$ RMB" ($p = .010$) and the other groups the difference of mean values did not reach the significance level.

Table 5. The pairwise comparison of the different monthly income group that affects employees' engagement in e-business

Monthly income	Mean Difference (I-J) Group J
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	Mean	<=3,000 RMB	3,001-5,000 RMB		5,001-7,000 RMB	>7,000 RMB
Group I			3.05	2.38	2.65	2.47
<= 3,000RMB	3.05	-	.668 (0.002*)		.399 (0.046*)	.578 (0.010*)
3,001-5,000 RMB	2.38		-		-0.269 (0.072)	-0.090 (.619)
5,001-7,000 RMB	2.65				-	.179 (.269)
> 7,000 RMB	2.47					-

Table 6 demonstrates the multiple linear regression analysis results to evaluate the influence of internal factors, including salary fairness, employee innovation behavior, and CSR, on cognitive, affective, behavioral, and employee engagement. These results indicate that salary fairness, employee innovation behavior, and CSR have a positive relationship with employee engagement, cognitive, affective, and behavioral engagement with a multiple correlation (R) of 0.679, 0.562, 0.589, and 0.579 and able to predict the value of the analysis equation equal to 45.70%, 31.10%, 34.20%, and 33.0% accordingly.

Table 6: The analysis results of internal factors influence employees' engagement and all variables

Model	R	R ²	Adjusted R ²	Std. Error of the Estimate
Cognitive engagement	0.562	0.316	0.311	0.832
Affective engagement	0.589	0.347	0.342	0.800
Behavioral engagement	0.579	0.335	0.330	0.790
Employees' engagement	0.679	0.461	0.457	0.598

Predictors: (Constant), salary fairness, employee innovation behavior, CSR

Table 7 shows the prediction equation for the influence of internal factors on employee engagement and all variables towards employees in E-business. The results suggest that as perceptions of salary fairness, employee innovation behavior, and CSR increase, so does employees' engagement in e-business. Among the three variables, salary fairness has a higher influence on cognitive and employee engagement, while CSR has a higher influence on effective and behavioral engagement.

Table 7. Summary of forecasting equations

Hypotheses	Forecasting Equations
H ₂ : Internal factors influence cognitive engagement in e-business.	$Y_1 = 0.802 + 0.340X_1 + 0.181X_2 + 0.161X_3$
H ₃ : Internal influence affective engagement in e-business.	$Y_2 = 0.829 + 0.234X_3 + .219 X_2 + .250X_1$

H ₄ : Internal factors influence behavioral engagement in e-business.	$Y_3 = 0.997 + 0.306X_3 + 0.227X_1 + 0.138X_2$
H ₅ : Internal factors influence employees' engagement in e-business.	$Y_T = 0.975 + 0.282X_1 + 0.221X_3 + 0.166X_2$

$X_1 = \text{Salary fairness}$, $X_2 = \text{employee innovation behavior}$, $X_3 = \text{CSR}$

The findings demonstrate that no significant difference between males and females affects employees' engagement differently in e-business, which does not comply with Hanggarawati and Kismono (2022). As mentioned by Eagly & Wood (2016), from the traditional perceptions related to social roles based on gender, males are expected to take a more active role in the domain of work while females are in the household domain. However, Zhang & Li (2020) described that in recent years, the Chinese government has launched various initiatives to promote women's employment and entrepreneurship. These efforts aimed to reduce gender gaps in economic participation and empower women economically. The findings of this study can be explained by the fact that, with the efforts to reduce the gender gap and the high competition in e-business in China, males and females are under pressure to work at the same level. Therefore, there was no significant difference in employee engagement. In practical terms, this means that, within the scope of this study, gender does not play a significant role in influencing employee engagement levels. Organizations can reasonably expect similar engagement levels from both male and female employees.

When investigating the impact of age groups on employee engagement, the analysis revealed that the differences in age groups did not exhibit significant differences in employee engagement. This may be caused by the fact that the age grouping in the questionnaire was not distributed according to age group generation; therefore, the results cannot clearly show employee engagement. As described by Hanggarawati and Kismono (2022), younger generations may experience more stress or burnout. As a result, the younger generation would have less work engagement than the older generation. Age grouping in this research is mainly in Generation Y, and this generation's characteristics are valued work-life balance, confidence, tech-savviness, and results orientation. The disadvantages of this group are a lack of patience and frequent job changes, which affect employee engagement. This finding is particularly important for organizations that tailor engagement strategies to specific age demographics. It may indicate that younger employees have unique needs or preferences regarding engagement initiatives.

The study explored whether education background and work department affect employee engagement. However, all p-values related to education backgrounds and work department were greater than 0.05, signifying no statistically significant differences in engagement based on educational attainment and work department. This implies that an employee's level of education and work department do not appear to be a determining factor in their engagement level within the context of this study.

The finding demonstrates that the difference in monthly income affects employees' engagement differently, which complies with the variable "salary fairness"

has a positively significant influence on employees' engagement, which is supported by varieties of research such as Meng & Wu (2015) that the procedural fairness of merit pay has positive effects on employees' relationships with job engagement. Paul and Criado (2020) mention that all dimensions of salary satisfaction are significantly positively affected by job engagement. Baqir et al. (2020) mention that compensation procedural fairness and employee engagement have significant effects on employee performance.

This research demonstrated that salary fairness, employee innovation behavior, and CSR influence employees' engagement. However, salary fairness has the highest influence on cognitive and employee engagement. In contrast, CSR appears to be the highest influence of affective and behavioral engagement in the E-business sector. Employee engagement is one of the organizational assets that employees have high loyalty to, thus providing an agile way of working (Alayón, 2022). Employee engagement significantly impacts employee performance (Ahmad, 2021), and good employee performance will benefit e-business. Businesses should pay attention to salary or compensation fairness to support employee engagement. Even though Generation Y prefers changing jobs, they also focus on innovations and forms of technology.

Conclusion

This study reveals that gender, age, educational background, and work department do not significantly impact employee engagement in China's e-business sector. While previous research suggested that gender and age might play a role, this study shows that both male and female employees, as well as different age groups, exhibit similar levels of engagement. However, monthly income was found to significantly affect engagement, with salary fairness emerging as a key driver. Employees who perceive their salaries as fair tend to have higher levels of cognitive and overall engagement. Additionally, internal factors such as employee innovation behavior and corporate social responsibility (CSR) play a crucial role in shaping employee engagement. Salary fairness was shown to have the strongest impact on cognitive and overall engagement, while CSR had the highest influence on affective and behavioral engagement, indicating that non-financial factors are essential for fostering deeper emotional and behavioral connections with employees. These findings suggest that to improve employee engagement, e-businesses should focus on ensuring salary fairness, promoting innovation, and strengthening their CSR initiatives. Moreover, engagement strategies should be adapted to meet the specific needs of different demographic groups, particularly in terms of generational preferences. This comprehensive approach will help sustain high levels of engagement and contribute to better organizational performance.

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doi:10.1016/j.chieco.2020.10143

Implementation of the Village Fund Program to Improve Community Welfare from a Positive Legal Perspective

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Abstract:

Village communities urgently need the implementation of the village fund program that is realized to finance the government, community development, village development, and empowerment of village communities. This study aims to explain the village fund program implemented and its obstacles in improving community welfare in Sambirejo Village, Gampengrejo District, Kediri Regency from the perspective of Law Number 6 of 2014 concerning Villages. The research method used is empirical juridical research. Based on the results of the research conducted, it is known that the implementation of the village fund program has been running well and in accordance with the Village Law. This is evidenced by the communication between the Village Government and the community in accordance with article 26 paragraph (1), article 80 paragraph (1), article 82 paragraph (4), and article 46 paragraph (2) of the Village Law, all village apparatus are in accordance with the provisions of articles 33 and 48-50 of the Village Law, village development is also in accordance with article 81 paragraph (1) of the Village Law. The obstacles faced by the village government are: the community has not implemented article 68 paragraphs (1) and (2) of the Village Law properly, program reporting has not been systematic, the gradual disbursement of village funds has caused development to be delayed, and many residents have not understood village funds.

Keywords: Village Fund; Community Welfare; Law

Introduction

The smallest picture of the legal population that has existed for a long time, then coexisted together with the origin of the nation, and ended up becoming a component of the Indonesian nation's life system is the village. The state needs policies that aim to clarify functions and citizenship and strengthen the position of village communities. In order to organize and organize the village, the government issued Village Law Number 6 in 2014. The enactment of the Village Law is expected to strengthen the form of the unitary state of the Republic of Indonesia. 74,958 villages throughout Indonesia will receive around one billion rupiah in village development funds under the Village Law. Villages that have village resources have a very good opportunity to manage their affairs, carry out development to improve the welfare and quality of life of their people. With the village fund, villages that have various natural resources are also expected to be able to take care of their own affairs, including regulating the village economy and village

property. Village funds can provide opportunities for communities to build their villages and eliminate the perception that development only occurs in urban areas.¹

Village funds are projected to be distributed evenly between villages in 2023, with a budget range of IDR 1.1 billion to IDR 1.3 billion per village. This amount comes from 8.1 percent of central regional transfer funds. In the presentation of the 2023 State Revenue and Expenditure Budget (RAPBN), the government has budgeted IDR 70 trillion. According to the Ministry of Finance (Kemenkeu), this amount increased by 3.09% compared to 2022, which was IDR 67.9. One trillion The amount of village subsidies budgeted is equivalent to 2.28 percent of the government spending target of Rp3,061.2 trillion. The funds are then divided equally so that each village receives more than Rp. 1 billion per year. In 2023, village funds will be directed more to economic revitalization, improving human resources, and accelerating the alleviation of extreme poverty. This assignment also aims to overcome problems from several topics ranging from stunting, village economic development, the implementation of cash labor-intensive to disaster management. Although the value is quite large, village leaders who are members of the Indonesian Village Government Association (Apdesi) asked President Joko Widodo (Jokowi) to increase the village money again. They did not hesitate to demand that the village allowance be increased to 10% of the state budget. Since 2015, the government has allocated a budget of Rp538 trillion to distribute money to villages. In fact, this village fund helps many villages in Indonesia. But in reality, there are problems in its use. Luthfy Latief, Head of the Ministry of Villages, Development of Disadvantaged Regions and Facilitation of the Use of Migrant Village Funds, stated that in 2023 there will be several problems in the use of village funds, namely planning, budgeting, management, and reporting in village financial management. Another problem, although negotiations have been carried out, the use of village funds is considered not to meet the needs of the community. and the rules for the use of village funds have changed a lot, causing confusion in village government.²

If referring to the 2023 State Budget, village funds should reach IDR 306 trillion.³ The Village Fund Allocation (ADD) of Kediri Regency increased by 10.34% from IDR 337.5 billion in 2022 to IDR 372 billion in 2023. The Kediri State Treasury Service Office (KPPN) is responsible for the distribution of village funds in 2023. On 07.02.2023, out of 343 villages in Kediri Regency, only four villages received the first phase of non-BLT village fund distribution and the first quarter BLT village fund.⁴ In this study, the researcher chose a research location in Sambirejo Village, Gampengrejo District, Kediri Regency. In the initial observations made by the researcher, it has been found that the Village Funds that have been received by the Sambirejo Village government are quite large, namely Rp. 799,036,000.00 and the Village Fund Allocation (ADD) of Rp.

¹ Heru Cahyono and Nyimas Latifah Letty Aziz, *Village Fund Management: A Study from the Side of Democracy and Village Government Capacity*, (Jakarta: LIPI Press, 2020). 1-7

² Grahana Mediatama, "Hingga 2023, Masih Ada 4.850 Desa Tergolong Sangat Tertinggal," kontan.co.id, diakses 4 September 2023, <https://nasional.kontan.co.id/news/hingga-2023-masih-ada-4850-desa-tergolong-sangat-tertinggal>.

³ Mendes, "37 Percent of Village Funds in 2023 Used for Human Resources Development," *Republika Online*, accessed August 7, 2023, <https://republika.co.id/share/rz0wzf451>.

⁴ thejavapost.id, "Kediri Regency Village Fund 2023 Experiences a 10.34 Percent Increase," *East Java News* (blog), accessed February 8, 2024, <https://www.thejavapost.id/dana-desa-kabupaten-kediri-2023-alami-kenaikan-1034-persen/>.

416,096,000.00 in 2023. Previous research that supports the research conducted by the researcher is:

1. Research by Andi Pitono and Kartiwi⁵ in 2021 entitled "*The Impact of Village Funds on Community Welfare in Cileles Village, Jatinangor District, Sumedang Regency*" explained the impact of village funds to improve the economy of the community in Cileles Village, Jatinangor District, Sumedang Regency.
2. Research by Muhaimin⁶ in 2020 entitled "*Reconstruction of the Use of Village Funds to Realize the Welfare of the Village Community*" explains the comparison between Law Number 6 of 2014 and Law Number 32 of 2004 to realize community welfare.
3. Research by Arzat Lamber, Lisbeth Lesawengen, and Evelin Kawung⁷ in 2022 entitled "*Village Fund Management in Improving Community Welfare in Kuma Village, South Essang District, Talaud Islands Regency*" explains the management of village funds using structural functional theory.
4. Research by Nety Hermawati⁸ in 2019 entitled "*Implementation of Village Law Number 6 of 2014 in Village Fund Management*" explained the processing of village funds and this research focused on the comparison of village resource management in East Lampung.
5. Research by Shendik Widianoro⁹ in 2020 entitled "*Optimizing the Allocation of Village Funds in Infrastructure Development as an Effort to Improve the Welfare of the Sumberdadap Village Community*" explains the allocation of village funds that are focused on the development of village infrastructure to improve the welfare of the village community.

The purpose of the research conducted by the researcher is to explain the implementation of the village fund program to improve community welfare in Sambirejo Village, Gampengrejo District, Kediri Regency, from the perspective of Law Number 6 of 2014 concerning Villages and to find out the obstacles faced by the village government in the management of village funds to improve community welfare in Sambirejo Village, Gampengrejo District, Kediri Regency, from the perspective of Law Number 6 of 2014 About Villages.

Method

⁵ Andi Pitono and Kartiwi "The Impact of Village Funds on Community Welfare in Cileles Village, Jatinangor District, Sumedang Regency" *Journal of Government Empowerment Development*, Vol. 6 No. 1 (2021), 33-56. <https://doi.org/10.33701/j-3p.v6i1.1534>

⁶ Muhaimin, "Reconstruction of the Use of Village Funds to Realize the Welfare of Village Communities." *De Jure Journal of Legal Research* Volume 20, Number 4, December 2020, 557-572. <http://dx.doi.org/10.30641/dejure.2020.V20.557-572>

⁷ Arzat Lamber, Lisbeth Lesawengen, and Evelin Kawung, "Village Fund Management in Improving Community Welfare in Kuma Village, South Essang District, Talaud Islands Regency," *Scientific Journal Society* vol. 2, No. 3 (July 7, 2022), <https://Ejournal.Unsrat.Ac.Id/V3/Index.Php/Jurnalilmiahsociety/Article/View/41863>.

⁸ Nety Hermawati, "Implementation of Village Law Number 6 of 2014 in Village Fund Management, *Istinbath: Law Journal*, Volume 16 Number 1 (2019), 1-15 <https://doi.org/10.32332/istinbath.v16i1.1259>

⁹ Shendik Widianoro, "Optimizing Village Fund Allocation for Infrastructure Development as an Effort to Improve the Welfare of the Sumberdadap Village Community," *Meta-Juridical Journal* 3, No. 2 (September 20, 2020), <https://Doi.Org/10.26877/M-Y. V3i2.6557>.

This study uses an empirical legal research method. This method is intended to understand the law practically and examine the implementation of the law in the context of society.¹⁰ The approach used in this study is the Sociology of Law approach. This method is intended to analyze the interactions and reactions that occur when the norm system functions in society. In addition, it is also known as the sociological method of law, which includes the construction of community behavior that is recognized, formally regulated, and given social legitimacy.¹¹ The data sources used in this study are primary data sources in the form of data obtained from the field or from the original source directly, through interviews with respondents or interested parties who can provide relevant information about the problem being researched. And secondary data is data that has been processed previously and obtained from literature studies and documentation studies. The data collection method was carried out by interviews, observations, and documentation.

Result and Discussion

Implementation of the Village Fund Program to Improve Community Welfare in Sambirejo Village Perspective of Law No. 6 of 2014 concerning Villages

The implementation of the Village Fund Program is regulated in Law Number 6 of 2014 concerning Villages. Especially in article 26 paragraph (1), article 80 paragraph (1), article 82 paragraph (4), and article 46 paragraph (2) of Law Number 6 of 2014 concerning Villages. In this article, there is an aspect that is the fulcrum of the implementation of the village fund program, namely the communication aspect. This is in line with the theory of Geoge C Edward III which explains that communication is the key to an implementation. Based on the results of interviews with resource persons, there is a fact that communication between the village government and the village community in Sambirejo Village, Gampengrejo District, Kediri Regency has been going well. This is evidenced by the existence of a deliberative forum made by the village government and attended by community representatives, village officials, and BPD then continued with the submission of community aspirations about problems that arise in Sambirejo Village, after finding problems that must be handled immediately, the village government conducts MUSRENBANGDES (Village Development Plan Deliberation) and the preparation of APBDes and RAB. All development plans or programs funded by village funds are submitted by the village head to all village communities either directly or indirectly.

Then there are other articles that regulate the implementation of the Village Fund Program in the Village Law, namely article 33, article 48, article 49, article 50, article 80 paragraph (1), and article 93 paragraph (1) of the Village Law. This is also in line with the theory of Goege C Edward III regarding the aspect of resources. According to Goege C Edward III, the influence of Implementation is resources. Based on the results of interviews, the resources in the Sambirejo Village office are in accordance with the Village Law. This can be proven from the recruitment of village heads who have complied with article 33 of the Village Law and the recruitment of village officials who are in

¹⁰ David Tan, "Legal Research Methods: Exploring and Reviewing Methodologies in Conducting Legal Research," *Nusantara: Journal of Social Sciences* 8, No. 8 (December 28, 2021): 2463–78, <https://doi.org/10.31604/jips.v8i8.2021.2463-2478>.

¹¹ Muhaimin, *Metode Penelitian Hukum*, (NTB: Mataram University Press, 2020). 87 <https://id.zlibrary-asia.se/book/19217997/c84306/metode-penelitian-hukum.html>.

accordance with articles 48 to 50 of the Village Law. To facilitate the performance of the village government, the village head divides this village apparatus into village secretary, village treasurer, kasi, and kaur. Before implementing the Village Fund Program, the village government first makes a plan so that the program is on target. All village development and development plans have been listed in the APBDes and the Village Government Work Plan. Then the head of Sambirejo village formed a team first and gave authority to carry out the program funded by village funds. The selection of teams is also not done arbitrarily, but must be in accordance with the qualifications needed in the implementation of the program.

When associated with the concept of disposition in policy implementation, the results of this study show that the Sambirejo Village government has given a good implementation attitude, full of commitment, and is willing to succeed the Village Fund Program. This implementation activity is supported by all aspects of the village government, starting from village officials, LPM, BPD, PKK, youth organizations, community leaders and all the people of Sambirejo village. The attitude given by all aspects of the village can be the capital of the Sambirejo village government in preparing itself if it gets village funds from the central government.

To implement a policy, it must meet a requirement. The Sambirejo village government itself has met the requirements in carrying out a policy from the village fund program in its work area effectively. Proof of this readiness is: *First, the structure of the Sambirejo village government is in accordance with article 5 of the Kediri Regent Regulation Number 9 of 2017 concerning the Organizational Structure and Work Procedures of the Village Government.*¹² Because the Sambirejo village government already has a village head, a village secretary, and other parts such as kaur and kasi. The structure has also been adapted to Law Number 6 of 2014 concerning Villages. *Second*, with the existence of BPD as a competent representative of the village community, it is hoped that the village government can be implemented properly and effectively. It can be concluded that the use of village funds is in accordance with the Standard Operating Procedures (SOP) because the village head who regulates all the priorities for the use of village funds has gone through village deliberations first.

Obstacles to the Management of Village Funds to Improve Community Welfare in Sambirejo Village, Gampengrejo District, Kediri Regency Perspective of Law No.6 of 2014 concerning Villages

Desa Sambirejo tidak memiliki masalah mengenai struktur hukum di desa. Faktor penghambat implementasi program dana desa di desa sambirejo dijabarkan sebagai berikut:

1. The condition of force majeure affected by the Covid-19 outbreak in Sambirejo Village is hampered in the implementation of the Program funded by village funds. This caused a change in the initial planning of the village government, the village funds that were originally for the construction of public facilities were diverted to funds used to handle the Covid-19 virus outbreak. As the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 6 of 2020 concerning Amendments to the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and

¹² Article 5 of the Kediri Regency Regent Regulation (PERBUP) Number 9 of 2017 concerning the Organizational Structure and Work Procedures of the Village Government.

Transmigration Number 11 of 2019 concerning the Priority Use of Village Funds in 2020.¹³ The impact of the outbreak is still being felt by the Sambirejo Village government in 2023 because the funds are still aimed at recovering after the Covid-19 outbreak and have not continued the village developments that were delayed previously.

2. The disbursement of village funds is carried out in stages, making plans that were previously planned to be delayed in their work. This setback is caused by the funds needed to complete the development are not disbursed. As a result, construction projects are delayed and cannot be completed because funds are not available to complete the construction.
3. The disbursement of village funds is carried out in stages, making plans that were previously planned to be delayed in their work. This setback is caused by the funds needed to complete the development are not disbursed. As a result, construction projects are delayed and cannot be completed because funds are not available to complete the construction.
4. The management of reports from programs funded by village funds is problematic due to an unsystematic documentation process. Documentation is not done by the same person but by many people or alternately, so that when conducting the village fund accountability report, the village treasurer feels confused because the documentation file is missing. In addition, the rules regarding the preparation of village fund reports have changed, making village officials confused in making the report.
5. Many village people do not understand village funds. This is due to the low level of education of the Sambirejo village community, the Sambirejo Village community is mostly elderly and children, and the understanding of the Sambirejo Village community about the village fund is lacking due to the lack of community experience regarding the implementation of the village fund program. Many people only represent their RT to residents who always participate in development funded by village funds without wanting to know about the program. With the existence of this village fund, it has an impact that occurs in Sambirejo village, the impact is divided into visible impacts and invisible impacts, namely: (1) Visible impact, village infrastructure facilities that are increasing both in terms of completeness and quality, Because the village government builds a place to sell, the residents' economic access becomes better, and with this village fund program, many new jobs have emerged in the village. (2) The invisible impact, the improvement of human resources (HR) in Sambirejo Village, gampengrejo District, Kediri Regency, the welfare of the village community can be achieved, and BUMDes become more developed.

Conclusion

Based on the perspective of Law No. 6 of 2014 concerning Villages, to ensure the successful implementation of the village fund program, it must comply with the articles regulated and stipulated by the Indonesian government. The implementation of the village

¹³ Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 6 of 2020 concerning Amendments to the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 11 of 2019 concerning the Priority Use of Village Funds in 2020.

fund program in Sambirejo Village is in accordance with the applicable laws and regulations in Indonesia, especially Law Number 6 of 2014 concerning Villages. From the results of the researcher's interviews with the speakers, they stated that the implementation of the village fund program has gone well, this can be proven from the communication between the Village Government and the community in accordance with article 26 paragraph (1), article 80 paragraph (1), article 82 paragraph (4), and article 46 paragraph (2) of the Village Law, all village apparatus are in accordance with the provisions of articles 33 and 48-50 of the Village Law, village development is also in accordance with article 81 paragraph (1) of the Village Law. The impact of this village fund program is the direct and indirect impact felt by the entire community and village government after the village fund program.

The obstacles faced by the Sambirejo village government in the implementation of the village fund program are the condition of force majeure affected by the Covid-19 outbreak, the disbursement of village funds is carried out in stages, making plans that were previously planned to be delayed in their implementation, lack of community involvement in the supervision of the implementation of the village fund program, the management of reports from programs funded by village funds is problematic due to an unsystematic documentation process, and Many village people do not understand village funds.

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