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Bismillahirrohmanirohim
Assalamualaikum Warahmatullahi Wabarakatuh

Alhamdulillahirabbil' alamin, the 2nd International Conference's proceedings on "The Challenges of Managing Sustainable Development in Border Area in the Era of New Normal Era" collect 13 papers presented virtually on 18 September 2021. Fakultas Hukum Universitas Borneo Tarakan hosted the conference. The conference's particular feature was discussing various issues in the border area. We express our deep gratitude to the organizing committee, keynote speakers, and reviewers for their high dedication and continuing hard work along with the series of conference events until this proceeding publication. Special acknowledgment goes to the rector and the vice-rectors of Universitas Borneo Tarakan for their reliable support for this conference. We also thank all the participants and authors for taking the excellent opportunity to discuss and publishing their papers. A large number of people have to be appreciated for their contributions to the success of the 2nd ICBA 2021 and, finally, this proceeding publication. Hopefully, these proceedings will give the reader important information from different perspectives concerning the Border Area development.

Thank you and Wassalam

Editor

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A Model for Handling the Eradication of the Crime of Child Trafficking in Border Area

Alif Arhanda Putra

Faculty of Law, Universitas Borneo Tarakan

BACKGROUND

The provisions regarding the prohibition of trafficking in persons have been regulated in the Criminal Code (KUHP). Article 297 of the Criminal Code stipulates the prohibition of trafficking in women and minor boys and qualifies the act as a crime. Article 83 of Law Number 23 of 2002 concerning Child Protection stipulates the prohibition of trafficking, selling, or kidnapping children for oneself or sale. However, the provisions of the Criminal Code and the Child Protection Act do not formulate a strict legal definition of trafficking in persons. In addition, Article 297 of the Criminal Code provides sanctions thatare too light and not commensurate with the impact suffered by the victim as a result of the crime of trafficking in persons.

Protection of witnesses and victims is also an important aspect in law enforcement, which is intended to provide basic protection to victims and witnesses. Prevention and handling of criminal acts of trafficking in persons is the responsibility of the Government, Regional Governments, communities, and families. To realize comprehensive and integrated steps in the implementation of prevention and treatment, it is necessary to form a task force. The crime of trafficking in persons is a crime that does not only occur within one country but also between countries. Because children are an inseparable part of human survival and the sustainability of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to have the widest opportunity to grow and develop optimally, physically, mentally, and socially. For this reason, it is necessary to make efforts to protect

children's welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment.

Based on the background described above, the researcher will focus on researching the problem of how the model for handling the eradication of the crime of trafficking in children (TPPA) in border areas is? So the purpose of this study is to analyze the model for handling the eradication of criminal actsof trafficking in children in the border area.

LITERATURE REVIEW

The Crime of Trafficking in Persons (TPPO) is a crime that is considered new in the Indonesian legal system, even though the form of the act has been around for a long time. This is because the TIP Law has just emerged and is ratified by the government, namely Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

The TIP Law is an effort to provide legal protection, either directly or indirectly, to victims and/or potential victims so that they do not become victims in the future. In addition, the Indonesian government has recently ratified the United Nations Convention Against Transnational Organized Crime (United Nations Convention Against Transnational Organized Crime) into law. With the ratification of the UN Convention, it means that Indonesia has made efforts to prevent and combat the crime of trafficking in persons.[1]

By the provisions of Article 1 point, 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the definition or definition of trafficking in persons is The act of recruiting, transporting, harboring, sending, transferring, or receiving someone with the threat of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits, to obtain the consent of the person having control over the other person, whether carried out within countries or between countries, for exploitation or causing exploited people.

[1] Henny Nuraeny. 2016. *Tindak Pidana Perdagangan Orang dalam Perspektif Hak Asasi Manusia.* Rajawali Pers: Depok. Hal. 87

Likewise with Law Number: 23 of 2002 concerning Child Protection (as amended by Law Number 35 of 2014 concerning Amendments to Law Number: 23 of 2002 concerning Child Protection), Article 76F expressly states that everyone is prohibited from placing, allowing, committing, order or participate in the kidnapping, sale, and/or trafficking of children. The criminal threat for violating this article is imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 60,000,000, - (sixty million rupiah) and a maximum of Rp. 300,000,000, - (three hundred million rupiah).

Whereas Article 76I states that everyone is prohibited from placing, allowing, committing, ordering, or participating in economic and/or sexual exploitation of children, shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 200,000,000, - (two hundred million rupiah). Although the child protection law has regulated the sale and or trafficking of children and the exploitation of children, the law does not formulate a strictlegal definition of child trafficking.

Referring to Law Number 21 of 2007 concerning Eradication of theCrime of Trafficking in Persons, an act is categorized as a criminal act of trafficking in persons if it fulfills three main elements or components of the criminal act of trafficking in persons, namely: (i) action/activity, (ii) means and
(iii) the purpose or intent of exploitation.

Action/activity: the act of recruiting, transporting, harboring, sending, transferring, or receiving a person. By the provisions of Article 1 point 9, what is meant by recruitment is an action that includes inviting, gathering, bringing, or separating a person from his family. Meanwhile, delivery, in accordance withthe provisions of Article 1 number 10, is defined as the act of dispatching or anchoring a person from one place to another. A person said to have fulfilled the elements of an action or activity does not have to fulfill all the elements in this component, but it is sufficient if one of the components of the action/activity has been fulfilled.

Means: the threat of force, use of force, abduction, confinement, fraud,

deception, abuse of power or a position of vulnerability, debt bondage, orgiving payments or benefits despite obtaining the consent of a person having control over another person. Based on the provisions of Article 1 number 12 of Law Number 21 of 2007 concerning the Eradication of the Criminal Acts of Trafficking in Persons, what is meant by the threat of violence is any unlawful act in the form of words, writings, pictures, symbols or body movements, either with or without using appropriate means. Cause fear or curtail one's essential freedom.

Meanwhile, violence based on the provisions of Article 1 number 11 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, is defined as an act that is against the law, with or without using physical and psychological means that poses a danger to life, body, or results in the deprivation of independence. somebody.

Unlike the case with adult trafficking victims, in the event that the victims of trafficking in persons are children, then any act of recruitment, delivery, transfer, placement, or acceptance of a child with the intention of exploitation, is considered as trafficking in persons, even though by means such as (threats or the use of force or other forms of coercion, abduction, deception, fraud, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to obtain the consent of a person having control over another person) is not used, is already a form of trafficking in persons.

Purpose/exploitation: exploitation which means action with or without the consent of the victim which includes, but is not limited to prostitution; forced labor or services; slavery or slavery-like practices; oppression, extortion, exploitation of physical, sexual, reproductive organs, or unlawfully transferring energy or transplanting organs and/or body tissues or utilizing one's energy or ability by another party to gain material or immaterial benefits.

Government based on the law will give birth to a guarantee of protection of the basic rights of the community so that the interests between the government that exercise state power and the people as the subject of the state owner can always be compatible or in line. Therefore, the submission of the

concept of the rule of law as one of the legal foundations for governance plays a very important role, not only as a corridor (limit) for government actions or actions but also serves as a basic reference and benchmark for assessment in governance.[2]

Philipus M. Hadjon (1987:75) describes that in the Indonesian language literature, it is very popularly known as the use of the term "state of law". However, according to him, it is still not clear to us what the concept of the rule of law is and is often even confused or equated with the concept of the rule of law in the sense of "rechtstaat".

The existence of an Indonesian legal state-building as stated in our country's constitution has not fully clarified the conception of the rule of law adopted. Because, if this is done, of course, it will also clarify the basis or basic framework for the administration of our government which has often been felt to be not fully based on the conception of the rule of law. Although it has been emphasized that our country is a state of law and thus the administration of government must also be based on law, it is necessary to formulate what the elements are so that it will clarify the benchmarks or parameters on the side of our governing administration. In other words, the existence of elements of the rule of law in Indonesia can certainly be used as a basis for the government to exercise its power as well as a tool or means to evaluate or test all legal actions or actions it does.[3]

According to Sudargo Gautama, put forward 3 (three) characteristics or elements of the rule of law, namely:[4]

1. There are restrictions on state power over individuals, meaning that the state cannot act arbitrarily. State actions are limited by law, individuals have rights to the state or people have rights to rulers;

2. The principle of legality, every state action must be based on a law that has been held beforehand which must also be obeyed by the government or its

[2] Aminuddin Ilmar, 2013, *Hukum Tata Negara, identitas* Universitas Hasanuddin: Makassar, h. 55
[3] *Ibid.* h. 59
[4] Kamarta Sudarmono, *Negara Hukum dan Demokrasi*, Disampaikan Pada Seminar Nasional Aspek Negara Hukum dalam Berbagai Bidang Kehidupan Bernegara, Universitas Samratulangi, h.28

apparatus;

3. Separation of power, so that human rights are truly protected is by separation of powers, namely the body that makes laws and regulations, implements, and adjudicates must be separated from each other and not in one hand.

The elements of the rule of law according to Friederich Julius Stahl are as follows:[5]

1. Recognition and protection of human rights;

2. The state is based on the trias politica theory;

3. The government is run based on the law; and

4. The state administrative court in charge of handling cases of unlawful acts by the government (onrechtmatige overheidsdaad).

RESEARCH METHODS

The type of research used is normative legal research, namely legal research methods to analyze the rule of law, legal principles, and legal doctrinesto answer legal issues that are the main problems in the research. In this type of research, the researcher examines and analyzes legal theories, legal principles, and what is written in the legislation (law in the book) and legal literature to answer the issues of this research, namely the approach to the prevention of trafficking crimes. children and the responsibility of the state, especially local governments in eradicating criminal acts of child trafficking in border areas.

In this study, the authors use several types of approaches to analyze existing problems to be able to answer the problems comprehensively, including:

1. The Statue Approach

The main thing in the statutory approach is that an understanding is needed in understanding the hierarchy and principles in statutory regulations. An understanding of the principles of laws and regulations is the main thing in this approach, which is then used as a basis or basis for analyzing laws and

[5] Abdul Latif, *Hukum dan Peraturan Kebijaksanaan* (B*eleidsregel*) *pada Pemerinthan Daerah*, Cetakan I, UII Press, Yogyakarta, 2005, h.15

regulations related to the problems discussed in this study, namely; the Criminal Code; Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons; Law Number 14 of 2009 concerning Ratification of Protocols to Prevent, React and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime; Law number 10 of 2012 concerning the Ratification of the Optional Protocol to the Convention on the Rights of the Child Regarding the Sale of Children, Child Prostitution, and Child Pornography; Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

2. The Conceptual Approach

The purpose of the researcher in the conceptual approach here is the researcher in examining the main issues in this research, departing or starting from the views and theories of criminal law and the crime of trafficking in children contained in the study of legal science.

3. The Comparative Approach

It should be emphasized that the author is conducting the research also uses a comparative approach, although this study it is not intended to completely compare a legal system as a whole. The comparative approach inthis study was carried out only as a tool by assessing and weighing the elements of the criminal act of trafficking in children regulated by the Criminal Code with Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Departing from the process of reviewing the comparison, it will be used as material for additional considerations or references in research.

As with normative legal research, legal research does not recognize the term data but uses the term legal material. The use of legal materials to analyze and discuss problems in this study uses primary legal materials, secondary legal materials, and the third, non-legal materials. Primary legal materials are legal materials that are authoritative, meaning they have the authority or are binding. Primary legal materials consist of legislation and or judges' decisions. The

primary legal materials in this study consist of, but are not limited to, namely:

- Criminal Code; Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons;
- Law Number 14 of 2009 concerning Ratification of Protocols to Prevent, React and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime;
- Law number 10 of 2012 concerning Ratification of the Optional Protocol to the Convention on the Rights of the Child Regarding the Sale of Children, Child Prostitution, and Child Pornography;
- Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Secondary legal materials are all publications on a law that are not official documents. These legal materials include, among others, textbooks, legal dictionaries, legal journals, comments on court decisions. Non-legal materials are materials other than primary legal materials and secondary legal materials. Non-legal materials can be in the form of books on political science, economics, sociology, philosophy, and as well as other writings as long as they are relevant to the research topic, to broaden the researcher's horizons.

The technique of collecting legal materials used is the study of literature study documents. Document studies are used by collecting legal materials such as statutory regulations, and relevant reading materials to obtain objective data related to this research problem.

The legal materials that have been collected are then processed and analyzed prescriptively using a deductive method, namely by analyzing legal materials and then systematically arranging them as an arrangement of legal facts to then be used as a basis for reviewing problem-solving from research[6], namely answering the model approach. Prevention and eradication of criminal acts of child trafficking in border areas.

[6] Mukti Fajar ND dan Yulianto Ahmad. 2013. *Dualisme Penelitian Hukum; Normatif dan Empiris*. Pustaka Pelajar: Yogyakarta. h 320.

All data obtained in the study were analyzed using qualitative analysis. After that, it is described by examining the existing problems, describing, describing, and explaining the problems related to the research. The use of descriptive methods is intended to obtain a good, clear picture and can provide detailed data to describe the realization of an approach to the prevention and eradication of the crime of child trafficking.

RESEARCH RESULT

Model for Handling the Eradication of the Crime of Child Trafficking in Border Area

Indonesia is a legal state in which every state administration, community, and the legal entity must comply with applicable law. However, in reality, many people violate the applicable laws and regulations. Rules that are violated can be classified as civil, administrative, or criminal. The community, person, or legal entity that commits a crime or violation in the field of criminal law is referred to as a crime which is an act related to crime. Public Understanding of the crime of trafficking in persons is closely related to legal awareness. Legal awareness is not only in the form of an understanding of the rules contained in positive law but rather on the implementation of these legal rules. Trafficking inpersons develops in conditions of people who have a weak economy, lack of religious or moral understanding with various modus operandi used.[7]

The law enforcement factor in applying the law on the eradication of trafficking in persons can also be an obstacle to eradicating the crime of trafficking in persons in border areas when compared to the number of police personnel on duty in border areas with the breadth and length of the border areas. The essence of criminal law policy is a comprehensive criminal law enforcement process, through the stages of formulation, application, and execution. The formulation stage is known as law enforcement in the abstract, which lays the basis and benchmarks for implementing concrete law

[7] Yonna Beatrix Salamor. (2018). *Penanggulangan Tindak Pidana Perdagangan Orang di Maluku*. Jurnal Muara Ilmu Sosial, Humaniora, dan Seni. Vol. 2, No. 2, Oktober 2018, h. 512

enforcement, namely the application stage and the execution stage.[8]

The tools used by the authorities to force the public to obey the regulations are also called the applicable sanctions, namely religious sanctions, moral sanctions, sanctions for those who violate decency and legal norms. A person who ultimately violates the rules or norms will be given sanctionscommensurate with the actions. For example, in the case of human buying and selling transactions, criminal sanctions are set out in articles 2 to 25 of Law Number 21 of 2007 and have explained in detail what actions are prohibited, as well as criminal sanctions that will be imposed. Following are some articles thatcontain prohibited acts and sanctions that will be applied.[9] The fundamental difference in the settlement of TIP/TPPA cases with other criminal cases is the treatment of victims. This is in accordance with the mandate of Article 28 of theTIP Law which stipulates that the procedural process starts from the investigation, prosecution, and examination in court, related to law enforcement against a criminal act of trafficking in persons/children based on the criminal procedural law unless otherwise stipulated in the TIP Law.

In the event that a witness and/or victim cannot be presented for examination at a court hearing related to a TIP/TPPA case, witness testimony can be given remotely through audio-visual communication devices (Article 34 of the TIP Law). During the process of investigation, prosecution, and examination in court, witnesses and/or victims have the right to: (1) be accompanied by an advocate and/or other required assistants (Article 35 of the TIP Law); (2) obtain information about the development of the case involving him. Information on the development of the case can be in the form of providing a copy of the minutes of each stage of the examination (Article 36 paragraph (1) of the TIP Law); (3) requesting the head judge at the trial to provide information before the court session without the presence of the defendant (Article 37 paragraph (1) of the TIP Law).

[8] Syarif Hasyim Azizurrahman. (2014). *Pembaharuan Kebijakan Pidana Kejahatan Perdagangan Orang*. Surakarta: Yustisia: Volume 3 Nomor 2, h. 96-97

[9] Indrawati. (2015). *Trafficking Kejahatan Terhadap Perempuan dan Anak-anak.* Jurnal Cakrawala Hukum, Vol.6, No.1 Juni 2015, h. 41

In the process of investigation, prosecution, and examination in a court of witnesses and/or child victims in the TIP case, it must be carried out with due regard to the best interests of the child by not wearing a toga or official attire (Article 38 of the TIP Law). The trial of TIP/TPPA cases to examine witnesses and/or child victims is carried out in a closed session and must be accompanied by parents, guardians, foster parents, advocates, or other assistants (Article 39 paragraph (1) and paragraph (2) of the TIP Law.

Victims of human trafficking go through very horrific things. Human trafficking has a very negative impact on the lives of the victims. Not infrequently, this negative impact leaves a permanent impact on the victims. Ironically, the human capacity to endure extreme suffering and the deprivation of their rights are exploited by their "traffickers" to trap the victims into continuing to work. They also gave empty hope to the victims to be free from the bondage of slavery.[10]

Witnesses and/or people who have experienced human buying and selling transactions will be examined even without the presence of the defendant (Article 39 paragraph (3) of the TIP Law). Witnesses and/or people who have experienced buying and selling transactions will be identified, carried out other than before the court with the help of a sound recording device or videorecording device, and carried out before an authorized official, in this case, an investigator or public prosecutor (Article 40 paragraph (1)) and paragraph (2) of the TIP Law).

Even without the presence of the actor or perpetrator or in this case, the defendant can be sentenced and announced by the public prosecutor with a court announcement, local government office, or notified to his family or proxies (Article 42 of the TIP Law). This is intended to: (1) enable the fleeing defendant to be aware of the verdict; (2) give additional punishment to the defendant in the form of "injury to the good name" or the defendant's uncooperative behavior in the legal process.

[10] Adityo Putro Prakoso. (2018). *Masalah Perdagangan Orang yang Sering Dijumpai di Indonesia*. Semarang: Jurnal Ilmiah Ilmu Hukum QISTIE (Volume 11 Nomor 1), h. 34-35

The most basic content and as the main point in the Law on the Juvenile Criminal Justice System (UU SPPA) is a strict regulation regarding restorative justice and diversion in law enforcement (judicial settlement). This restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not retaliation (Article 1 point 6 of the SPPA Law).

Meanwhile, diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system (Article 1 point 7 of the SPPA Law). This diversion is important because Article 6 of the SPPA Law states that the goal to be achieved is to achieve peace between victims and children; resolve child cases outside the judicial process; prevent children from deprivation of liberty; encourage people to participate; instill a sense of responsibility in children.

The concept of diversion and restorative justice is in line with the spirit of child protection as regulated in Article 1 number 2 of the UUPA which can be understood as a form of effort to protect children's rights so that they can live, grow and develop, and participate actively in society in accordance with the dignity and worth of children. can be protected from physical violence as well as differences or exclusion.

Efforts to eradicate the criminal act of trafficking in persons require good cooperation between the government, local governments, communities, and families. The government and local governments are required to make policies, programs, activities, and allocate budgets to carry out prevention and handling of trafficking in persons. In order to effectively implement the prevention and eradication of the criminal act of trafficking in persons, the government of the Republic of Indonesia is obliged to carry out international cooperation, whether bilateral, regional, or multilateral. In addition to cooperation at the government level, the community should also participate in assisting efforts to prevent and

handle victims of the crime of trafficking in persons.[11]

For the purpose of handling victims of TIP/TPPA, the government is obliged to open the widest possible access for community participation, both nationally and internationally in accordance with the provisions of the prevailing laws and regulations, laws, and international customs (Article 61 of the TIP Law). To carry out their participation, the community has the right to obtain legal protection (Article 62 of the TIP Law). Community participation must be carried out responsibly (Article 63 of the TIP Law).

- Health Rehabilitation

Based on the explanation of Article 51 paragraph (1) of the TIP Law, restoration of physical and psychological conditions is carried out for people or especially children who have experienced violence in the act of buying and selling human beings. This recovery aims to: safely facilitate and provide medical protection to people who have experienced acts of human buying and selling transactions; Help improve the condition of the bodies of people or children who have experienced acts of human buying and selling transactions.

Health rehabilitation efforts for victims of TIP are included in the large group of Efforts for Prevention and Handling of Violence against Women and Children (PP KtP/A) and TIP by involving various cross-programs based on health service standards. The Ministry of Health sets Health Service Standards for Victims of Violence Against Women and Children (KTPA) and TIP in health service facilities (Fasyankes), including:[12]

1. Promotive and preventive – (a) Communication, Information, and Education (KIE),

(b) counseling, and (c) family and community empowerment;

2. Curative – (a) medical examination (history and physical examination),

(b) mental status examination, (c) supporting examination, (d) medical management, and (e) medicolegal;

[11] Siti Nurhayati. (2015). *Aspek Hukum Perlindungan Saksi dan Korban Perdagangan Anak.* Kudus: Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam (Volume 6, Nomor 1), h. 92

[12] Laporan Tahun 2018 Sekretariat Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang. *Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang,* h. 23

3. Rehabilitation – (a) restore the body's biological functions, (b) prevent further physical and mental disorders, (c) treat psychological problems of victims and perpetrators, and (d) psychosocial;

4. Referrals – multisectoral and multidisciplinary networks.

- Social Rehabilitation

Social rehabilitation is a recovery from disorders of social mental conditions and the return of social functioning so that they can carry out their roles again naturally both in the family and in society.

- Repatriation of Victims

The repatriation or return to their place of origin is carried out for people or children who have experienced acute trauma or have experienced acts of human buying and selling transactions. The return or return to the place oforigin is carried out safely and provides certainty to anyone to safely arrive and arrive at the destination as a form of fulfilling the rights of the child as a form of fulfillment of principal rights. This is as mandated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

- Legal Aid Services

Based on the Regulation of the State Minister for Women's Empowerment and Child Protection of the Republic of Indonesia Number 22 of 2010 concerning Standard Operating Procedures for Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons, repatriation ofvictims and/or witnesses of TIP/TPPA, the purpose of legal assistance is to provide fulfillment of rights -basic rights for witnesses and/or people who have experienced human buying and selling transactions.

CONCLUSIONS AND SUGGESTIONS

Based on the results of the research and discussion of the formulation of the research problem that the model of the approach to preventing the crime of trafficking in children is to be known, the conclusion is that the model for handling the eradication of criminal acts of child trafficking in Indonesia,

especially in border areas, is health and mental rehabilitation for victims of criminal acts of trafficking in persons, especially children who experience trauma and the application of law as well as the provision of strict sanctions for perpetrators who are proven to have committed criminal acts of trafficking in persons, especially children in an organized manner; Blocking or closing of dangerous sites that are vulnerable to being used as media for trafficking in persons, especially children as commercial sex workers; and socialization of the flow of distribution of workers abroad legally through the Ministry of Manpower of the Republic of Indonesia or the local Manpower Office.

The research suggestion is the need for cooperation between government agencies, communities, and non-governmental organizations (NGOs) in preventing and eradicating criminal acts of trafficking in persons, especially children, in all transactions in border areas. In addition, the establishment of the Task Force for the Prevention and Handling of Crime in Persons has implications for the number of criminal cases of trafficking in persons (children).

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LEGAL REVIEW OF THE PRACTICE OF ROUNDING THE SELLING PRICE OF FUEL OIL (BBM) AT TARAKAN CITY GAS STATIONS

Wiwin Dwi Ratna F, S.H., M.Hum;
Nurzamzam, S.H., M.H;
Baharuddin, S.H

Faculty of Law, Universitas Borneo Tarakan

ABSTRACT

This research is based on a problem in which a selling rounding practice occurred at SPBU Tarakan City, the practice is not in accordance which what was already determined in-laws and regulations. The mentioned problem was outlined in two formulations of the problem such as; 1) form of practice of selling rounding practice of fuel oil which happened at SPBU Tarakan City? 2) Laws protection for consumers toward selling rounding practice at SPBU Tarakan City
?. this research used the normative research method by using conceptual approach and laws approach. Furthermore, the collection of legal materials techniques used are in the form of literature study and interviews with sources of legal materials in primary laws form and secondary laws form. The result of this research obtaining that selling rounding practice is not a prohibited action because it has been set in the laws and regulations, but if the action is not in accordance with what has been settled in the laws, then the action can be changed into an action that is against the law that caused a loss for the consumers. The protection that consumers will be getting is contained in a few laws and regulations that is the Code of Civil Law, Consumer protection law, and Regulation of the Minister of Trade. A businessman has the obligation of the action done by the employees from doing their jobs as employees.

Keywords: BBM, consumer, rounding, Protection, gas station

A. INTRODUCTION

1. Background

In everyday life, people realize it or not that people often interact with each other to fulfill their respective needs. To achieve good relations in society, people need various kinds of guidelines or rules. These guidelines or rules are referred to as norms or rules. One of these types of rules is the rule of law[1]. To meet the needs of his life, everyone will make various efforts. One of the efforts made by everyone in fulfilling the necessities of life is by making buying and selling transactions[2]. When making a sale and purchase transaction there will usually be a

[1] Winarno Yudho and Heri Tjandrasari, "The Effectiveness of Law in Society," Journal of Law & Development 17, no. 1 (2017): 57, https://doi.org/10.21143/jhp.vol17.no1.1227.

[2] Akbar Sabrani, "Price Rounding in Sale and Purchase Transactions at Minimarkets," Journal of Islamic Economic Law 4, no. 1 (2020).

price provision. The inclusion of the nominal price of an item should meet the element of justice, but in reality in society there are still buying and selling practices that do not pay attention to the element of justice. buying and selling practices that do not pay attention to the element of justice will cause one party to suffer losses. This can be seen in the practice of rounding off the selling price of Fuel Oil (BBM) which is often encountered when making buying and selling transactions at Public Fuel Filling Stations (SPBU).

The practice of rounding prices has basically been regulated in the regulation of the Minister of Trade Number 35/M-DAG/PER/7/2013 concerning the inclusion of prices for goods and tariffs for traded services. Based on theinitial survey carried out, that the author carried out full tank refueling, the refueling machine showed a nominal amount of Rp. 25,748.00, and Rp. 24,750.00, but the employees of the gas station rounded up the nominal and asked the consumer to pay Rp. 26,000. .00, and Rp. 25,000.00. Based on this case, it is known that the business actor has rounded the price with a nominal amount of Rp.
252.00 and Rp. 250.00. Business actors also do not inform consumers about the implementation of price rounding. This action to round the price is carried out if the consumer makes a cash payment. Based on this case, it was found that there were things that were regulated in the legislation that were not carried out by the gas station business owner in carrying out business activities. Not many consumers know about the price rounding done by gas station employees so that ittends not to be a problem by the community, this has become a habit.

Based on the background of the problem above, the writer is interested in conducting research with the title "" ***LEGAL REVIEW OF THE PRACTICE OF ROUNDING THE SELLING PRICE OF FUEL OIL (BBM) AT TARAKAN CITY GAS STATIONS***"

2. Problem Formulation
    1. The form of the practice of rounding the sale price of fuel oil that occurs at the Tarakan City gas station?

2. Legal protection for consumers against the practice of rounding the selling price of fuel oil at the Tarakan City gas station?

B. RESEARCH METHOD

The type of research used in this research is normative legal research. The normative legal research method can be interpreted as legal research at the level of norms, rules, principles, theories, philosophies, and legal rules in order to find solutions or answers to problems in the form of legal vacuums. , norm conflict, or norm ambiguity. The problem approach used is the statutory approach and the conceptual approach. The techniques of collecting legal materials used are library research and interviews, while the legal materials used consist of primary legal materials and secondary legal materials. The analysis of legal materials used in this study is qualitative analysis, namely the analysis of legal materials by describing quality data in the form of sentences that are orderly, coherent, logical, non-overlapping, and effective, thus facilitating interpretation and understanding the results of the analysis.

C. THEORY FRAMEWORK

1) Overview of Consumer Protection Law

Consumer is a term that arises from a word that is consumer, the word has a meaning that is the opposite of producer. Which means that a consumer is everyone who consumes or uses an item[3]. Based on article 1 number 2 of the Consumer Protection Law, it is explained that consumers are people who use goods or services found in the community, the use of these goods includes personal interests, family, other people or other living creatures, the use is not intended to be traded. Consumer protection is a word to be used in describing the provision of legal protection to consumers in an effort to fulfill their life needs from various things that can cause harm or all things that are detrimental[4].

2) Overview of Buying and Selling

[3] Zulham, "Consumer Protection Law" (Jakarta: Kencana, 2013).p.15
[4] ibid

Sale and purchase as stated by Salim H.S is an act carried out by two parties who are the seller and the buyer to enter into an agreement[5]. Article 1457of the Civil Code explains that buying and selling will occur if there are two parties who bind themselves to each other in the sense that one party binds himself to provide goods or services while the other party binds himself to pay forgoods or services according to the agreement.

3) Overview of Fuel Oil (BBM)

Based on Law No. 22 of 2001 concerning Oil and Natural Gas, it is explained that fuel oil is fuel that is obtained and produced from petroleum. SPBU is a distribution agency built on a plot of land and has gas station facilities with designs, designs, and technical specifications that have been approved by Pertamina. The station is a facility provided by several companies engaged in processing and producing fuel oil. The station is intended for residents to make it easier for residents to fulfill their daily needs that require fuel for vehicles and other equipment that use fuel[6].

D. DISCUSSION

1. The form of the practice of rounding off the selling price of fuel oil (BBM) that occurs at the Tarakan City gas station.

Most of the buying and selling transactions that occur at gas stations are carried out by employees who are tasked with serving consumers who fill up with fuel oil (BBM). Gas station employees will fill up fuel according to consumer demand at a price that has been determined by the government through Ministerial regulations. Based on the author's observations, it was found that the practice of price rounding carried out by gas station employees occurred when the consumer filled the tank in full. Consumers who ask for full tank refueling, employees will fill it up without fixing the price or amount of money, the amount of price that must be paid by the consumer will be determined by the refueling machine. in a transaction that occurs at a gas station when a consumer asks to fill up with a full

[5] Salim H.S, "Contract Law Theory and Techniques for Drafting Contracts", Jakarta, Sinar Grafika, 2003, p 49.

[6] Risdiyanta, "Dissecting Public Fuel Filling Stations (SPBU) in Indonesia," Technology Forum 04, no. 3 (2014): 43–52.

tank of fuel, the refueling machine will show the nominal price to be paid by the consumer, in the event that the nominal rupiah contains a fraction smaller than Rp. 1000 then the gas station employee will round up the nominal. The rounding off of the nominal value made by the gas station employee can harm the consumerbecause the consumer is asked to pay more than the price stated in the refueling machine.

Based on information from one of the gas station owners in Tarakan City who did not want to be named, he explained that if there was a rounding off of prices, it should be the customer or consumer who had to ask for the change. The owner of the gas station also said that usually customers or consumers only class their change when it amounts to 100 to 200 rupiah. The owner of the gas station also said that the reason for rounding up prices was to speed up the service for filling the fuel so that consumers don't have to wait too long for their money to be returned.

Based on the experience and observations of the author, the author performs refueling at three different gas stations. From the author's observations,it was found that there was one gas station that rounded prices while based on information obtained from the community, there were residents who claimed to have experienced and witnessed the practice of rounding prices that occurred at a gas station in the city of Tarakan. From the observations and information obtained, it can be said that there are several gas stations that practice price rounding.

The practice of rounding prices has basically been regulated in Article 6 paragraphs 3 and 4 of the Regulation of the Minister of Trade of the Republic of Indonesia NUMBER 35/M-DAG/PER/7/2013 concerning the inclusion of prices for goods and tariffs for services traded, in that article it is explained that " (3) in the event that the price of goods and/or service tariffs contains nominal fractions that are not circulating, business actors may round off the price of goods and/or service tariffs by taking into account the nominal rupiah in circulation. (4) the rounding as referred to in paragraph 3 shall be informed to the consumer at the time of the payment transaction". According to the author, based on the

explanation of Article 6 paragraph (3), it is stated that business actors can only round off prices if the nominal amount of the price they want to be rounded up is not in denominations of money or nominal rupiah in circulation, for example Rp. 1, Rp. 15 and Rp.35.

Based on the provisions of the article, the author is of the opinion that the practice of price rounding is an act that is justified if it is carried out in accordance with the applicable rules. Based on the information obtained from the people who did the refueling, it was found that the SPBU employees did not provide any information to the public regarding the rounding off of prices. Business actors should carry out or carry out their business activities in accordance with the applicable rules and not conflict with the applicable laws.

2. Legal protection for consumers against the practice of rounding fuel prices that occur at gas stations.

a. Unlawful acts that occur at gas stations

Acts against the law (onrechtmatige daad) are listed in Article 1365 of the Civil Code[7]. The article explains that acts that violate the law and can harm others are required to compensate for the losses due to their actions according to Rosa Agustina to fulfill an act referred to as being against the lawrequires the following conditions: Not in accordance with the legal obligations of the perpetrator, Not in accordance with the subjective rights of others, Noin accordance with decency, Contrary to propriety, thoroughness and prudence[8].

The practice of rounding off prices by SPBU employees is not in accordance with the Regulation of the Minister of Trade of the Republic of Indonesia No. 35/M-DAG/PER/7/2013 concerning the inclusion of prices for goods and services traded. Based on this, the author argues that the gas station has committed acts against the law and resulted in losses for consumers.

b. The responsibility of business actors for the actions of employees.

[7] Abdul Halim Barakatullah, "Legal Protection System Framework for Consumers in Indonesia", Nusa Media, Bandung, 2017, p.26.

[8] Rosa Agustina, "Actions Against the Law", Post Graduate UI, Jakarta, p.117.

Article 1367 of the Civil Code explains that each person is not only responsible for his own actions, but is also responsible for the actions of otherswho are under his responsibility or actions caused by goods that are under his control. The article also mentions 3 forms of responsibility in certain relationships described in paragraphs (2, 3 and 4), namely:

1) Parents and guardians are responsible for losses caused by their children or children who are under their responsibility who are not yet adults and live in the same place.
2) Employers and people who give responsibility to others to represent their interests, have responsibility for actions that have been carried out by their employees or servants in carrying out their work, there are actions that cause harm to other parties.
3) School teachers and head craftsmen are responsible for the actions of students and craftsmen that cause harm to others while in or under their supervision.

Based on the provisions of the article, the author argues that in a company, the business actor or business owner has responsibility for errors oromissions that have been made by employees that cause harm to others if the employee does so in order to carry out his duties as an employee. Article 1367 paragraph (5) of the Civil Code explains that the liability mentioned above will end if parents, guardians, school teachers and head craftsmen can provide evidence that the act cannot be prevented as they should be responsible. The provision does not specify any limitations or exclusions of liability for employers and persons assigning responsibility to others to represent their interests. Based on these restrictions which have been regulated in article 1367 of the Civil Code clearly shows that employers and people who give responsibility to others to represent their interests still have responsibility for errors and omissions committed by workers or employees.

3. Forms of legal protection for consumers who are harmed based on Law No. 8 of 1999 concerning consumer protection.

Legal protection is a procedure to protect consumers listed in the law to prevent violations or things that can harm the interests of consumers[9]. The author argues that the purpose of consumer protection is not only to provide welfare for consumers but also to provide benefits and awareness to business actors. One of the consumer protection efforts listed in the consumer protection law is the provision of prohibitions against business actors. Based on Law no. 8 of 1999 concerning consumer protection, there are several forms or legal protection efforts provided for consumers.

1) Prohibited actions against business actors.

Prohibitions against business actors have been regulated in Article 8 to Article 17 of Law No. 8 of 1999 concerning consumer protection. Based on the problems examined, the authors found that the practice of price rounding that occurred at gas stations had basically violated the provisions regarding the prohibition for business actors as described in article 8 paragraph (1) letter (a) which explained that the prohibition of producing or trading goods and services that does not meet or does not comply with the required standards and is not in accordance with the provisions of the legislation. The practice of rounding up prices at gas stations is not in accordance with the provisions stipulated in the regulation of the Minister of Trade concerning the inclusion of prices for goods and services traded, so based on this, it is clear that this has violated the provisions prohibited for business actors as described above. The number of provisions regulated on prohibitions for business actors is a form or effort to provide protection for consumers from unilateral actions by business actors that can be detrimental.

2) consumer dispute resolution.

dispute resolution for consumers has been regulated based on chapter 10 of Law no. 8 of 1999 concerning consumer protection. Based on article 45 paragraph (1) which explains that the consumer who feels aggrieved can

[9] Dianee Eka Rusmawati, "Legal Protection for Consumers in E-Comece Transactions", Fiat Jutitia Journal of Legal Studies Vol.7 No. 2, 2013 p.198

file a lawsuit either in the general court or through the party authorized to resolve the consumer dispute. Based on the article, it is known that efforts to resolve disputes for consumers can be through the courts or through settlements outside the court. Settlement of disputes in court will be carried out in the scope of the general court. Dispute resolution outside the court will be carried out by the Consumer Dispute Settlement Agency (BPSK). Submission of claims due to consumer losses carried out by business actors can be carried out by several parties as described in Article 46 paragraph (1) in the form of:

a) a consumer or heir concerned who is harmed.
b) A group of consumers who have the same interests.
c) A non-governmental consumer protection agency that meets the requirements, namely in the form of a legal entity or foundation, which in its articles of association clearly states that the purpose of establishing the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association.
d) The government and/or related agencies if the goods and/or services consumed or utilized result in large material losses and/or no small number of victims.

There are exceptions if the lawsuit is filed by a consumer group, non-governmental organization or government, the lawsuit can be submitted to the general court. This is as explained in article 46 paragraph (2) of the law. Based on this, it can be interpreted that dispute resolution outside the court will be carried out if the plaintiff is a consumer and not a consumer group, non-governmental organizations and the government. Based on the case studied, the authors argue that consumers who have felt harmed by the business owner if they want to file a claim or lawsuit can go through the court if the lawsuit is carried out jointly or a group of people who feel aggrieved and can also be carried out outside the court if the lawsuit is only filed in court. submitted by a consumer.

3) Consumer Dispute Settlement Agency (BPSK).

The Consumer Protection Act provides an alternative way, namely through dispute resolution carried out outside the court[10]. The consumer dispute settlement agency is an agency in charge of handling and resolving disputes between business actors and consumers, this is in accordance with the sound of article 1 paragraph (11) of the consumer protection law in conjunction with article 1 paragraph (5) of the Minister of Trade Regulation Number 72 of 2020 concerning the Settlement Body Consumer Disputes. The duties and authorities of BPSK are contained in Article 9 paragraph (2) of the Regulation of the Minister of Trade Number 72 of 2020.

4) Sanctions

a) Administrative sanctions

Administrative sanctions are regulated in Article 60 of the Consumer Protection Act. These provisions explain the authority of BPSK to impose administrative sanctions on business actors who have violated Article 19 paragraph (2) and paragraph (3), Article 20,Article 25, and Article 26. a maximum of Rp. 200,000,000.00 (two hundred million rupiah).

b) Criminal sanctions

The criminal sanctions imposed on parties who violate the provisions of the Consumer Protection Act can be divided into two, namely the main crimes as regulated in articles 61 and 62 while additional penalties are regulated in article 63 of the law. The main crimes described in article 62 are divided into two types of grouping of violations, namely in article 62 paragraph (1) which reads "business actors who violate the provisions referred to in article 8, article 9, article 10, article 13 paragraph (2), article 15 , Article 17 paragraph (1) letters a, b, c and e, paragraph (2), and Article 18 shall be sentenced to a maximum imprisonment of 5 years or a maximum

[10] Abdul Halim Barakatullah, "Legal Protection System Framework for Consumers in Indonesia", Nusa Media, Bandung, 2017, p.110.

fine of Rp. 2,000,000,000.00 (two billion rupiah)" . Whereas inarticle 62 paragraph (2) it reads "business actors who violate the provisions as referred to in article 11, article 12, article 13 paragraph (1), article 14, article 16, and article 17 paragraph (1) letters d and f, imprisonment for a maximum of 2 years or a fine of Rp. 500,000,000.00 (five hundred million rupiahs)". Furthermore, in paragraph (3), explaining the loss resulting in serious injury, permanent disability or death will apply in accordance with the applicable provisions. in the Criminal Code (KUHP).

c) Additional penalties

Provisions regarding additional penalties or additional penalties can be found in article 63 of the criminal consumer protection law in the form of confiscation of certain goods, announcement of judges' decisions, paying compensation, termination of an activity that causes consumer losses, mandatory withdrawal of goods that have been circulating and revoking business permit.

Based on the provisions regarding sanctions that have been regulated in the Consumer Protection Act, business actors may be subject to sanctions in accordance with Article 62 paragraph (1) for violating the provisions of Article 8 paragraph (1) letter (a) concerning prohibited acts for business actors. Business actors may be subject to sanctions in the form of imprisonment for a maximum of 5 years or a fine of a maximum of Rp. 2,000,000,000.00 (two billion rupiah).

E. CONCLUSIONS AND SUGGESTIONS

Based on the background and discussion above, the authors conclude:

1. The practice of price rounding that occurs at the Tarakan City gas station is carried out by the employees of the gas station. The price rounding is done if the consumer asks for full tank refueling, this happens because the price listed when filling the full tank will be automatically written in the refueling machine. The practice of rounding off prices is not in line with the things that have been regulated in the Regulation of the Minister of

Trade of the Republic of Indonesia NUMBER 35/M DAG/PER/7/2013 concerning the inclusion of prices for goods and tariffs for services traded.

2. Legal protection for consumers for losses due to the actions of business actors is based on unlawful acts carried out by business actors. Based on the provisions of Article 1367 of the Civil Code, business actors have responsibility for negligence committed by their employees who are carrying out their duties. Business actors have violated the provisions regarding prohibited actions for business actors as stated in Article 8 paragraph (1) letter (a) of Law No. 8 of 1999 concerning consumer protection. Consumers can file or choose to file a lawsuit either through court or out of court, namely through BPSK. Business activities that are contrary to the provisions of Article 8 paragraph (1) letter (a) may be subject to criminal sanctions in accordance with the provisions of the Consumer Protection Act.

Based on the conclusions above, my suggestions:

1. The consumer protection law does not explain the responsibility of the perpetrator or business owner for the actions of employees that harm consumers so that according to the author this is also a deficiency of the consumer protection law in Indonesia. According to the author, this is necessary because it involves the activities of business actors who run their business not personally or directly, but with support from their employees.
2. Based on the rounding of prices that have been carried out by business actors, they should have a plan regarding the funds obtained from the results of the rounding of prices. Business actors must convey information regarding price rounding to consumers and ask for consumer approval before making the rounding of prices. gas station business actors should also provide cashier machines that are capable of serving consumers to further facilitate the process of returning consumers' money, both in large and small amounts.

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JURIDICAL REVIEW ON THE IMPLEMENTATION OF CRIMINAL SANCTIONS FOR INDONESIAN CITIZENS WHO ARE DEPORTED *REGARDING OVERSTAY* BY THE MALAYSIAN GOVERNMENT

Mansyur S.H., M.H,
Liza Shahnaz, S.IP., M.HSC., M.H
Norhanisawati,S.H

Faculty of Law, University of Borneo Tarakan, Jalan Amal Lama Number 1, Tarakan City, North Kalimantan

Abstract

Malaysia is one of the leading destination countries for making a living for Indonesian migrant workers. The proximity of the region and the similarity of culture are the main reasons. Unfortunately, this development also had other impacts, which resulted in the deportation of Indonesian migrant workers. This study aims to find out about applying criminal sanctions for Deported Indonesian citizens due to overstaying in Malaysia—specifically related to (1) criminal sanctions applied to Indonesian citizens deported due to overstaying by the Malaysian Government; (2) Forms of legal protection for deported Indonesian citizens due to overstaying by the Malaysian Government. This study uses the Legislative Approach, Conceptual Approach, and Comparative Approaches. The data used in this study consists of primary data and secondary data. The results of this study indicate that: first, Malaysia made a policy that took effect on August 1, 2002, where the Immigration Act A 1154 of 2002 stated that the guilty would receive sanctions in the form of imprisonment for a maximum of 5 (five) years, a fine of a maximum of RM 10,000 and a caning sanction of use rattan a maximum of 6 times. Second, legal protection for Indonesian migrant workers has been regulated in Law Number 18 of 2017, protecting work, namely administrative protection, and technical protection while working. Protection is carried out by recording, supervising, and providing facilities for fulfilling rights and the settlement of legal cases. While post-employment, the state protects in facilitating the return to the area of origin. However, there are deviations in the provision of protection so that there are several cases of migrant workers not getting the rights following the mandate of the law.

Keyword (s): Criminal Sanctions, Legal Protection, Overstay Indonesian Workers.

A. BACKGROUND

Malaysia is one of the countries that has good relations with Indonesia so that it is often referred to as a neighboring country, so the two countries are referred to as allied countries that have so many similarities in terms of history, culture and social population. As a result of this equation, it hasprovided many contributions and benefits to the bilateral relations between thetwo countries. Cooperation in various fields is a form of bilateral relations in terms of economic, social and cultural aspects so that the two countries often

use this equation to resolve a problem in the good ties between the two countries and become a motivation to choose a peaceful path to resolve the problems they face.[1]

Disturbance that often causes cracks in good relations between Indonesia and Malaysia is the problem of illegal migrant workers. Until now, the state of employment in Indonesia is very worrying because the unemployment rate is still high. One of the problems that occurred precisely in 2020, the Royal Malaysian Government carried out a whitening in the sense of deporting illegal Indonesian citizens even those who had official documents but had expired en masse or on a large scale. From this incident, it can be seen that thecomplexity of the issue of migrant workers in Indonesia is partly due to the lack of adequate protection from those responsible and this issue is also an international issue because of the relationship between the sending country (Indonesia) and the receiving country (Malaysia).[2]

Nunukan Regency is known as one of the border areas which is directly adjacent to Tawau Sabah Malaysia and is a place return of job seekers. Indonesian migrant workers have both illegal and legal ways and various reasons and purposes to get through border areas. Due to this problem,causing many violations, such as entering a country without valid documents or having documents but having exceeded the stipulated time (*overstay)* whichwill have an impact on most of these job seekers having to be sent home or deported to the nearest *entry point*.[3]

While migration is a phenomenon that is increasing from time to time, at this time another phenomenon that is no less interesting and very significant can affect bilateral relations between the two countries, where so many Indonesians prefer to live in Malaysia with limited restrictions. time has run

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[1] Pristika Handayani, *Bilateral Agreement between Indonesia and Malaysia Against Indonesian Migrant Workers (TKI),* Lex Journalica Vol. 11 No. 1, Faculty of Law, University of the Riau Islands, 2014, p. 30.

[2] Zulfikar Judge, *Legal Protection for Indonesian Migrant Workers Abroad,* Lex Journalica Vol. 9 No. 3, Faculty of Law, Esa Unggul University Jakarta, 2012, p.171.

[3] Liza Shanaz and Nurzamzam, *Legal Protection of the Rights of Indonesian Citizens Deported Under the Manpower Law,* Vol. 2, Borneo Law Review Journal, Tarakan, p. 172.

out. This causes Indonesian migrant workers to have violated the conditions that have been set so that it can result in the deportation of a person. The number of Indonesian citizens that continues to grow every year has overwhelmed the Royal Malaysian Government, resulting in controversial policies in which the Malaysian government chose to deport Indonesian migrant workers.

Deportation itself can be said to be a unilateral action by the expelling country against foreigners or people who are not citizens of its country by expelling them from their territory whose presence is not desired at all and because their presence has penetrated into the territory of a country with a bad background and has the potential can affect the good ties between the two countries or it can be interpreted as a concern if the person can commit a crime/crime.

The increase in the number of illegal Indonesian citizens is alleged to have led to a high level of crime. Therefore, the governmentThe Kingdom of Malaysia devised a strategy to sterilize its country from illegal workers by carrying out mass expulsions to their home countries. This prompted the Malaysian royal government to issue an Immigration Deed known as the Immigration Regulation 1959/1963 which was changed to Immigration Deed A 1154 of 2002 which is also the latest Malaysian Immigration Act and has been in effect since August 1, 2002. Immigration Act 1959/1963 which contains conditions and sanctions that will be imposed on foreign arrivals whocannot show formal requirements such as passports or visas will be subject to punishment in the form of imprisonment, fines or caning.[4]

Based on the background of the problems that have been stated above, several formulations of the problem are formulated as follows:

1. Criminal sanctions applied to Indonesian citizens who were deported for *overstay* by the Malaysian Government.

[4] Dicky Desfari, *Enforcement of the New Immigration Law in Malaysia and Its Implications for Indonesian Manpower Policy*, Thesis (S1), Pasundan University, 2018.

2. A form of legal protection for Indonesian citizens who were deported due to *overstay* by the Malaysian Government.

B. RESEARCH METHODS

Research is the English language of research. The word *research* consists of the words *re* (return) and *to search* (search) so the meaning of the word *research* means looking back.[5] A research activity based on certain thoughts, methods and systematics with the aim of studying one or more certain legal phenomena by analyzing them, this is the opinion expressed by Soerjono Soekanto.[6]

1. Research Type

This scientific work uses a normative legal research type, which is carried out by conceptualizing law as a norm including values, positive law and international law in order to obtain the rule of law, legal principles and legal doctrine to answer the legal issues being faced.

2. Problem Approach

The approach that the author uses is the first, namely the Legislative Approach which is carried out by examining regulations that are continuous with the legal issues that the author is researching. Second Conceptual Approach is used because the authors did not move from the existing regulations, which is done by studying the views and doktrim in the science of law, in this case I hope to find new ideas or ideas that gave birth to a legal sense, the concept of law and the principle of legal which has relevance to the issue and as a basis for making a legal argument in solving the issues at hand. The three *Comparative Approaches* are carried out by comparing the same regulations between Indonesia-Malaysia regulations related to immigration, while the use of this approach is to see the differences and similarities between the regulations of the two countries.

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[5] H. Zainuddin Ali, *Legal Research Methods,* Sinar Graphic, Jakarta, 2009, p.1.
[6] Soeryono Soekanto, *Introduction to Legal Research,* UI Press, Jakarta, 1981, p.43 .

3. Source of Legal Material

In order to be able to solve legal issues and at the same time provide prescriptions about what is needed. Sources of legal materials are divided into 3 (three) namely primary legal materials and secondary legal materials and tertiary legal materials.

a. Primary legal materials are the main binding legal materials and consist of basic norms or rules, statutory regulations, uncodified legal materials, jurisprudence, treaties and other legal materials that are still valid as positive law. In this study, the authors use primary legal materials, namely Indonesian instruments and Malaysian instruments.
b. Secondary legal materials are in the form of data obtained from books, journals, articles, theses, theses and research reports that are correlated with this research as a supplement to primary data. In this study, the authors obtained data regarding the number and causes of the deportation of Indonesian citizens from the Nunukan Immigration Office.
c. Tertiary legal materials are supporting materials from primary and secondary legal materials which are carried out by providing understanding and understanding related to other legal materials.

4. Legal Material Analysis

This study uses qualitative analysis which is carried out in several steps, namely, first to identify legal issues and all things that are not relevant in order to determine the legal issues to be solved. Both legal materials and if deemed relevant, non-legal materials are also collected. Then the third examines the legal issues to be solved based on the collected legal materials. Then the fourth draws a conclusion in the form of an argumentation that answers the legal issue and the fifth

provides a prescriptive based on the arguments that have been built in the conclusion.[7]

C. THEORETICAL FRAMEWORK / REVIEW OF HERITAGE

1. Overview of Criminal Law

Criminal law is interpreted as a rule that regulates crimes and violations of the public interest and that action will be subject tocriminal sanctions, namely suffering, this opinion is the opinion of Sudarsono.[8] While criminal acts are actions that are prohibited by regulations and will be subject to sanctions in the form of certaincrimes for people who violate the prohibition.

A crime has elements and is divided into 3 (three) namely:

a. The existence of an act which means that an act can be said to be an act that is prohibited by national law if the action is carried out by the perpetrator has not been regulated in a regulation, then the action can be subject to criminal sanctions;
b. Conducted against the law, namely the act is done contrary to the applicable legal rules;
c. There is no justification, if an action that is against the law has justification, it can be categorized as not a criminal act even though the action is in accordance with the elements in the regulations and is against the law.[9]

2. Overview of Indonesian Citizens

Citizens are a basic element and the main element in a country's territory so that it can foster reciprocal relations between the community and the state in the form of rights and obligations. because of this, it can be seen the position of a person in 4 (four) things as follows:

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[7] Peter Mahmud Marzuki, *Ibid,* h.35
[8] PAF Lamintang, *Fundamentals of Indonesian Criminal Law,* PT. Citra Adya Bakti, Bandung, 1997, p. 181.
[9] I Made Widnyana, *Principles of Criminal Law,* PT. Fikahati Aneska, Jakarta, 2010, p. 57.

a. Positive Status: That is the status in which the state has an obligation to distribute rights to the community to demand positive actions from the state for security of birth and mind, independence;
b. Negative Status: That is the status where the state will guarantee tothe people that the state has no authority to interfere with the basic rights of its citizens, the participation of the state is limited, this is dueto prevent arbitrary actions from the state. However, the state can violate these rights if under certain circumstances and if the policy is shown to be in the public interest;
c. Active Status: That is the status in which a country gives up rights to people who are citizens of its citizens in their participation in the government system;
d. Passive Status: That is the status where the obligation for the community has been given by the state to obey and obey all the orders of the state.[10]

3. Overview of International Law

International Law, which is a collection of rules that mostly regulates the rules and principles that must be obeyed by countries or subjects of international law and their relationship to one another, is the opinion of Ivan A. Shearer.[11]

International Relations can be said to be a discipline, namely a relationship or behavior, both relations between governments and countries and with individuals who are part of the International Community. International relations are not only focused or focused on relations between people and countries, but also with factors which are also an essence of international relations.[12]

[10] Sapriani and Aditia Syaprillah, *State Science*, Deepublish, Yogyakarta, 2017, p.36.
[11] Jawahir Thontowi and Pranoto Iskandar, *Contemporary International Law*, Refika Aditama, Bandung, 2006, p. 4.
[12] Indo Maritim, *International Relations, Definitions According to Experts*, 2021 accessed via https://indomaritim.id/jualan-internasional-definisi-menurut-para-ahli/, dated June 18, 2021.

International relations are no longer focused on issues related to the *power of international migration* . Since the increasing interaction between actors with interests, the geographical boundaries are becoming increasingly unclear. Migration or people's emigration is getting easier, especially in border areas, namely Nunukan Regency which is also one of the areas that is easy to access by many people when traveling to Malaysia. Due to this, the problem of international migration in general is now focused on the existence of legal and illegal immigration.

4. Overview of Indonesian Migrant Workers

Article 1 paragraph (2) of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers states that Indonesian Migrant Workers are both male and female and both those residing in Indonesia and living with Indonesian migrant workers abroad. Meanwhile, Indonesian migrant workers are said to be illegal if someone is *Illegal Stay*, namely someone who has a valid immigration permit but the validity period has expired or *overstayed*, *Illegal Entry is* someone who goes to a country illegally or uses documents or travel documents or fake visas or *Illegal Entry and Illegal Stay* : i.e. a person either entered or his presence is not valid.[13]

5. Overview of Immigration

The Latin word *"migration"* is a term for migration which means the movement of people between countries. The term initially only looked at the aspect of the displacement of people without looking at other aspects. While the Latin *migratio* is a term from Immigration which means the migration of a person from one country to another. Etymologically the terms emigration, immigration and

[13] Chandra G Silalahi, *Handling Indonesian Illegal Workers To Malaysia (Case Study: Illegal Workers From North Sumatra Via Tanjung Balai From 2012-2016,* Thesis, University of North Sumatra, 2017, pp. 90-91.

transmigration come from Latin, namely *migration* which means the migration of people from one region to another, both near and far.[14]

The function and role of Immigration is basically universal, namely carrying out traffic control of people entering and leaving the territory of a country. Naturally, this is done on the basis of an immigration policy, namely a regulation from a country that has been set or outlined by the government in accordance with applicable legal provisions.[15]

Immigration crime is an act committed intentionally in the form of a crime and immigration violation which is threatened by criminal law. Immigration law enforcement, both preventive and repressive in the territory of the Republic of Indonesia, is pursued by means of immigration action.[16]

Basically, apart from being an international and transnational crime and being carried out in an organized manner, seen in the practice of supervision, transnational criminals are always found who falsify immigration documents or residence permits. In addition, immigration crimes are also very detrimental and endanger the community so that severe criminal threats are needed in order to provide a deterrent effect for foreigners and Indonesian citizens.

Law Number 6 of 2011 concerning Immigration in Article 117 regulates immigration violations because the proof is easy. The types of violations that are often carried out by Indonesian citizens are: Misuse of their residence permit such as working using a visa or visit visa, entering a country using a fake visa or passport, using a false identity to apply for a passport and being involved in a trade syndicate network. man.

The definition of deportation is a forced act to remove foreigners from an area. The problem that often steals the attention of Indonesian

[14] Jazim Hamidi and Charles Christian, *Immigration Law for Foreigners in Indonesia*, Sinar Gradika, Jakarta, 2015, p.105.
[15] M. Iman Santoso, *The Role of Immigration in the Context of Economic Improvement and Maintaining a Balanced National Defense*, Thesis, Krisnadwipayana University, Jakarta, 2004.
[16] Bambang Hartono, *Law Enforcement Efforts Against Criminal Acts of Immigration Vol.3*, Faculty of Law, University of Bandar Lampung, Lampung, 2013, p.64.

migrant workers in Malaysia is deportation. Where deportation is an act of expelling a foreigner out of the territory of a country on the grounds that the presence of the foreigner is not desired by the country concerned and essentially expulsion is not a punishment, but an administrative act which is an order from the government that stipulates the foreigner to leave. territory of his country.[17]

6. Overview of the Legal Protection of Indonesian Migrant Workers Exceeding the Limit of Stay

The word *overstay* comes from the English *"over"* which means more than or exceeded, while the word *"stay"* means to stay, settle orride. So it can be concluded that the word *"overstay" is* defined as stayingfor more than the period written in the visa so that it will result in expulsion. Indonesian Migrant Workers who are said to be *overstayed* if they stay in a country beyond the period specified in the passport or visa do not extend the permit, the length of the stay permit period for Indonesian migrant workers is usually for 2 years such as the period of the work contract. Indonesian migrant workers have 14 (fourteen) days to remain in the country and then must leave the country after the time has expired, unless the migrant workers get a new visa or work permit.

Legal protection is the protection of the dignity and worth as well as the recognition of basic human rights possessed by legal subjects based on legal provisions from arbitrariness. Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection. This can be realized in various forms, namely through the provision of medical service compensation restitution and legal assistance.[18]

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[17] Sri Setianingsih Suwandi, *An Overview of Deportation Issues From an International* Law Viewpoint , Journal of Law & Development, 1977, p.83.

[18] Soerjono Soekanto, *Introduction to Legal Research*, University of Indonesia, Press, Jakarta, 1986, p. 133.

What is very important and the main thing to do is to regulate the protection of workers at the time the work agreement is born, due to legal protection when the rights of Indonesian Migrant Workers cannot be granted or if the migrant workers face legal problems, especially criminal charges. In protecting migrant workers, the construction of work agreements plays an important role, especially the clauses of the work agreement.[19]

In order to provide protection for migrant workers, especially those who are *overstayed*, it is necessary to implement it according toregulations, both national law and international law. Protection for Indonesian workers is regulated in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and provides protection during the pre, during and post-placement periods.

D. DISCUSSION OF RESEARCH RESULTS AND ANALYSIS

1. Application of Criminal Witness Against Indonesian Citizens who were Eported Related to *Overstay* by the *Malaysian* Government

In the mid-1970s there was an increase in the arrival of migrant workers, resulting in a big issue. Then from that the implications of demography with the arrival of Indonesian citizens are interrelated with bilateral relations. The arrival of illegal Indonesian migrant workers is seen as a process that has an impact, which is a problem in the economic and socio-cultural fields between countries. If it can be assessed, the achievement of this level of condition depends on the arrival procedure as well as the status of the foreign worker.

In 1999 the Indonesian-Malaysian government made various efforts to prohibit the entry of illegal Indonesian migrant workers into Malaysia. One way is by signing the 1994 Medan Agreement, however,in essence the agreement did not get the results expected by both parties and even this agreement did not achieve the desired result, namely to stop

[19] Arief Wisnu Wardhana, *Agreements on Indonesian Workers Working Abroad and Legal Protection,* LEX LIBRUM, Junal Ilmu Hukum Vol. 6 No.2, 2020, p. 174-187.

the flow of illegal migrant workers from continuing to recruit illegally. Therefore, the government of the Kingdom of Malaysia has taken further action, namely in 2000 with the Malaysian government carrying out Operations / Raids of Bina I, Operations / raids of Bina II as well as Operations or raids of Bina III by spending nearly RM 92.2 million to deport migrant workers Illegal and these costs do not include the costs of migrant workers while in prison.[20]

Seeing this condition, the government of the Kingdom of Malaysia decided to make changes to its regulations known as the Immigration Deed 1959/64 which then enacted the 2002 Immigration Deed concerning sanctions to be imposed on foreign workers living in Malaysia unofficially, both corporal punishment and fines. The Malaysian royal government realizes that the punishment to be imposed is quite severe, therefore Malaysia has made a policy by providing opportunities for unlicensed migrants (PATI) to leave or to process residence requirements documents such as work visas or passports if they wish to remain in Malaysia for a period of time. for 4 months.

The 2002 Immigration Deed was legally enforced on August 1,2002. With the enactment of this deed, the Am Movement Police (PGA), Justice and Immigration conducted a PATI raid, which is one of the steps taken by the Kingdom of Malaysia in supporting the policies that have been made. The Immigration Deed or Malaysian immigration regulations provide sanctions for PATIs caught in the raid, so they must be willing if they are threatened with a fine of RM. 10,000,- and/or imprisonment for5 years and caning or in Malaysian language 6 times.[21]

As it is known that the Royal Malaysian Government has made changes from the Malaysian Regulations related to Immigration, namely the Immigration Deed 1959/1963 to Deed A 1154 of 2002 which in this deed provides more severe sanctions for illegal workers, bosses and for

[20] Dicky Desfari, *Ibid*, h. 30.
[21] Dicky Desfari, *Ibid*, h. 38.

those who protect or protect them. provide a lift for PATI in Malaysia. There are several forms of sanctions for the perpetrators, including material sanctions in the form of fines, while physical sanctions in the form of confinement and whips/sebat using rattan. Based on the Immigration Deed 1959/63 (Deed 155) explains that foreign tourists often make mistakes such as:

a. Section 6 (3) Immigration Deed 1959/63 : Entry into Malaysia Illegally or Without Permission i.e. A foreigner or non-Malaysian citizen residing in his country may be interpreted as entering illegally if; Failed or unable to show passport/travel document/official permit if requested and Passport or visa or travel document does not have an entry stamp. Mistakes for entering illegally result in penalties: Sanski fine up to RM. 10.000.00, - (ten thousand Malaysian ringit) or sanction in the form of imprisonment or imprisonment for a maximum of 5 (five) years or both of the said sanctions and may be imposed a maximum of 6 (six) times of sebatan or kompaun up to RM. 3,0000.00;
b. Overstay or Exceeding the Time Limit that has been determined (Section 15(4) Immigration Deed 1959/63) i.e. Staying or residing in Malaysia after the expiration date when the visit is over or canceled. Due to this, it can carry a penalty, namely a maximum fine of RM 10,000.00, or a maximum imprisonment of 5 (five) years or both or Kompaun up to RM 3,000.00, -. Therefore, all foreign travelers are reminded to leave before fitting visit ends or ends;
c. Making, falsifying or transferring an endorsement or document, namely Whoever commits, falsifies or scans an endorsement or a document used as a Visa, Permit, Pass or Eligibility under this Deed is in violation of Section 55D of the Immigration Deed 1959/63. Resulted in a penalty on Section 55D of Immigration Deed 1959/63 (Deed 155), namely a minimum fine of RM. 30,000.00 and

imprisonment for a minimum of 5 years and a maximum of 10 years and should also be punished with a maximum of 6 strokes.[22]

Based on the Immigration Deed 195/63 (Deed 155), it has been explained in detail related to the criminal sanctions that can be imposed on people who are not Malaysian citizens who commit immigration crimes, from several sanctions which are stated to contain sebat sanctions or what is known as caning in Indonesia. . Where this sanction has received criticism from various countries because the impact is felt so powerful and is the second toughest sanction after the death penalty. Especially for the case of *overstay* in this Deed it is not statedthat the guilty can be subject to cebat sanctions but in practice the punishment is also imposed on people with *overstay* status . In this case, the guilty party may be subject to sebatan due to seduction or demands from the Public Prosecutor.

Sebat punishment is a punishment that has been stipulated in the rule of law in Malaysia, which is the second most serious after the death penalty. The thin type of rattan will not cause damage to the body but will cause more pain. While whipping using a thick rattan more than five times can have an impact in the form of numbness from the back down and difficult to heal. Because the effect of whipping is so powerful, the Malaysian government has taken a policy to exclude the punishment for: Women because whipping for women can damage internal organs and can cause disruption of the pregnancy system, Men aged fifty years and over, people who are declared sick by medical personnel and people who are insane.

The mechanism for implementing the caning punishment on the day of execution of the caning is carried out, the inmates who have been sentenced to caning will be subjected to a medical examination. The prisoners will be arranged in a row in a special place that cannot be seen

[22] https://www.imi.gov.my/portal2017/index.php/ms/perkhidmatan-utama/requirements-kedalam-ke-malaysia/error-often-dilaku.html . Diakes 01 May 2021.

by other prisoners. The Prison Director will supervise the execution of the caning, together with a medical officer and a prison official. Care must be taken not to make mistakes in carrying out sentences for innocent prisoners. The Prison Director will read out the sentence that has been handed down to the inmate, the Prison Director will ask the prisoner to make an appeal or request, in that case the caning sentence will be postponed until a decision on the appeal is made.

Prisoners are in a naked condition after conducting a medical examination, except for using an apron tied to the waist which is used to cover the part. When rattaning, the hands and back are tied to an "A" shaped frame. The head is under a cross bar of wood so that the body bends. The executor must be qualified and recognized with a certificate. In carrying out their duties, the executor is not allowed to rush. Prison officials are tasked with ensuring that prisoners are not rattaned more or less than those sentenced by the Court. Next, the executor will start by holding the rattan horizontally above his head. The surrounding conditions at the time of the execution of the sentence were very quiet. When he is ready, he will release his left hand and then swing the rattan towards the prisoner's back as hard as possible to get a very powerful impact. Executors need to ensure that the end of the rattan is used for whipping prisoners. Previously, the rattan was soaked with "Oma's urine" to kill bacteria and also to increase the pain that prisoners would feel. The result of the lashing is that the skin on the back will turn red if it is struck once, but when it is rattaned five times or more it will cause the skin on the back of the prisoner to fall off and bleed.

All punishments must be executed at one time. If the convict faints or the medical personnel directs the execution of the sentence to be dismissed because the inmate is unable to bear the sentence, then the execution of the cebat sentence will be completed. An application will be made back to the Court for the remainder of the sentence to be replaced by a sanction of confinement. After being sentenced to sebat, the inmate

will be rushed to the prison clinic for further treatment. Inmates aretreated until they recover and for a while the inmates are forced to lie on their stomachs.

There are several stages of pain that are felt due to the stab sentence, starting from the first to the fourth stab, namely in this situation most inmates can still endure the pain, even some inmates do not feel pain at this stage. Then on the fifth stab, the back of the prisoner after being rattaned for 4 (four) times will be bruised and the skin on the back has come off and the pain becomes more serious if the inmate is whipped 5 times or more. In the tenth stroke, the prisoner's back showed bloodyflesh and this stab punishment will not stop if the doctor feels that the prisoner is still able to receive the next stab. At the fifteenth time, the condition of the prisoner's back can be said to be crushed and even the result of the pain may make the prisoner faint. And at the twentieth to the twenty-fourth stroke, the inmate will feel a loss of pain due to the numbing impact of the back.[23]

Indonesian National Law, namely Law Number 6 of 2011 has regulated related to deportation, affirming that deportation is an administrative action imposed as a sanction determined by a government agency known as an Immigration Officer given to foreigners outside the court process where the policy is in the form of imposition sanctions outside or not going through the judicial process. However, there are still many general public, even students themselves, who do not know that Indonesian citizens before being deported must undergo the first sentence that has been determined by the Malaysian government.

When it comes to deportation, what is always in the minds of most people is only focused on foreigners who enter the Republic of Indonesia with valid documents but exceed the period of stay without knowing that so many Indonesian citizens have also been deported. Before deportation

[23] Wikipedia, *Caning Penalties in Malaysia*, accessed via https://ms.m.wikipedia.org/wiki/Penalties_merotan_di_Malaysia, 02 July 2021.

is carried out, these deportees will first serve the sentence that has been determined by the Court in Malaysia in accordance with the type of crime they have committed.

No	Year	Repatriation	Deportation	Quarantined
1.	2008	5429	6	9
2.	2009	4190	37	67
3.	2010	2322	34	3
4.	2011	3380	0	0
5.	2012	2976	0	4
6.	2013	2800	0	0
7.	2014	3575	7	7
8.	2015	5818	22	1
9.	2016	4002	1	21
10.	2019	3405	42	31
11.	2020	2472	0	0
12.	2021	703	0	0
	Total	**41.072**	**149**	**143**

Tabel 3.1. Service Statistics for Providing Immigration Documents for the Class II Immigration Office of TPI Nunukan from 2008 to 2021

The Class II Immigration Office of TPI Nunukan is one of the authorized agencies in collecting data on immigration traffic because Nunukan Regency is one of the areas that directly borders with Malaysia. The deportation process carried out against Indonesian citizens of course always cooperates with the Indonesian Consulate General in Malaysia, especially in Tawau Sabah. After arriving in Indonesia, the first

Indonesian citizens will be accepted and data collection will be carried out. Based on the Service Statistics for Providing Immigration Documents at the Class II TPI Nunukan Immigration Office from 2008 to2021, it can be seen that repatriation is a form of returning citizens from aforeign country who used to be their place of residence to their place of origin with the number of Indonesian citizens being deported from Malaysia to Nunukan Regency. as many as 41,072 (forty one thousand seventy two) people. Meanwhile, the Indonesian state also repatriated 149foreign nationals and 143 people who were quarantined.

2. Forms of Legal Protection for Indonesian Citizens Deported in connection with *Overstay* by the Malaysian Government

Indonesian migrant workers are also Indonesian citizens who commit immigration crimes in the country of placement so that they are labeled or have *overstay* status also have human rights that must be taken into account for the sustainability of their lives by the country where they earna living, especially for the government of the Republic of Indonesia which is the holder of sovereignty and has responsibility What must be implemented is to protect every citizen wherever they are, including if they are abroad. This condition is also continuous with the mandate of thestate constitution in Article 28 I Paragraph 4.[24]

Similarly, the state constitution also in the fourth paragraph emphasizes that related to protection, every person who has the status of an Indonesian citizen must be given protection. However, when combined with implementation, the issue of placement and protection for workers who go abroad to work will definitely be closely related to the bilateral relationship between Indonesia and Malaysia. So it is natural for the Indonesian government to exercise its authority and responsibility in order to provide protection for Indonesian Migrant Workers because the

[24] Adha, L. Hadi, *Legal Protection of Indonesian Migrant Workers (TKI) who exceed the Limit of Stay (Overstay),* Faculty of Law, University of Mataram, Jatiswara Legal Journal, p.188.

protection of Indonesian Migrant Workers is directly continuous with life and honor.

The protection efforts provided by the Indonesian government will have an impact on Indonesian workers abroad. In order to maximize Indonesia's performance in providing protection for migrant workers, the Indonesian government has had a *Memory of Understanding (MoU)* which has the aim of providing facilities for Indonesian Migrant Workers abroad. The MoU that is owned by the Indonesian-Malaysian governments, where the urgency of this MoU is very important to create a similar perspective in order to provide protection for migrant workers as well as in further handling of the return and placement of migrant workers to their areas of origin. In order to provide protection for Indonesian Migrant Workers, the state requires a budget that can becalculated based on the total number of migrant workers located outside the country, especially Malaysia. So that if there is a relationship betweenfunds and amounts, it can be insured that the protection provided by the state for Indonesian migrant workers will be maximized.[25]

3 (three) Indonesian-owned agencies that have the authority to deal with Indonesian Migrant Worker issues, both illegal and legal, namely BNP2TKI, the Ministry of Manpower and Transmigration and the Ministry of Foreign Affairs. To cover employment problems, the Ministry of Manpower and Transmigration as the regulator in the field of manpower can be said to be a natural problem because the majority of countries in the world have a Ministry of Migrant Workers. Illegal migrant workers in an area always start with the official status of the migrant worker's presence in the country of placement. Migrant workers assume they will use official methods and procedures, but job seekers actually exceed the time limit. Due to this, it could result in the Indonesian Migrant Workers making them illegal. The position of

[25] [25] International Law in News, *Handling of Illegal TKI Problems by the Government of the Republic of Indonesia Vol.5 No.4,* Journal of International Law, 2008, p.834.

migrant workers in a country can be detected through information held by BNP2TKI. This agency also represents to notify the Indonesian Representative regarding the termination of the employment relationship of the migrant worker. Furthermore, measurable and planned strategies can be implemented to protect the safety of migrant workers.Indonesianot only has the 3 (three) agencies discussed previously, but the Ministry of Foreign Affairs also has 2 (two) agencies, namely the Directorate for Protection of Indonesian Citizens and BHI with functions that are almost similar to the scope of work that regulates protection for Indonesian citizens. The establishment of this agency is based on the Decree of the Minister of Foreign Affairs concerning Organization and Work Procedure of the Ministry of Foreign Affairs Number: 053/OT/II/2002/01 which is a form of awareness from the Government of the Republic of Indonesia on improving foreign relations.

Because illegal Indonesian workers are also Indonesian citizens who are also Indonesian domains, in this case represented by the Directorate of Protection for Indonesian Citizens and BHI to be given protection with consideration at this time, there are bodies or agencies that supervise and carry out their duties so that they are required to coordinate in an organized and neat manner between institutions so that the expectedresults will be maximized. It is certain that the protection of migrant workers will be partial and tend to be ineffective if this planning does not run smoothly.

There are several forms of major international treaties in the field of human rights *(core human rights treaties)* that are closely related to deportation. One of the agreements ratified by Indonesia through Law No. 12 of 2005 concerning ICCPR which confirms the substance contained in Article 13 of the UDHR. Where is Article 13 of the ICCPR which states that in a country if a person who is not a citizen lives legally in the sense of having an official travel document, then that person cannotbe expelled from a country without a decision issued based on the law

that has been stipulated. As well as for those who were expelled or expelled, they must be given the opportunity to raise objections to their expulsion. Due to this, it can be said that the legality of a policy in carrying out deportations will be carried out based on the procedures specified in the law and not only based on political interests that have the potential to be arbitrary. In addition, there are 2 International Human Rights Conventions which share restrictions on deportation plans on the grounds that they endanger the lives of the deportees. This can be seen in Article 3 Paragraph (1) of the CAT which expressly prohibits a country from expelling someone from their country because there is a situation that ensures that the person will be tortured in another country. The same thing has also been written in Article 16 Paragraph (1) of the CPED.

A very detailed international human rights regulation regarding deportation can be found in article 22 of the ICRMW which regulates that deportation cases must be examined and decided on their own as well as arrangements for migrant workers and their families who can be expelled from an area based on a decision issued by the competent authority and has been stipulated in law.

The Immigration Law is a reflection of the arrangements made by taking into account aspects of human rights. This is stated in the preamble considering the letter b and in the General section on the explanation of this law it is stated simultaneously with the growing demands for the realization of a level of equality in aspects of human life, supporting the obligation to respect and uphold human rights as part of universal life based on a selective *policy* that upholds the value of human rights.

There is a principle that states that the Indonesian government is obliged to provide maximum protection to the community in any situation, both at home and abroad, which is known as the principle of maximum protection. Protection for migrant workers not only works legally, which means having complete documents, but the protection must

also be provided for illegal migrant workers as well as for migrant workers with overstay status.

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers explains all efforts with the aim of ensuring the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers as well as ensuring legal, economic and social protection from Indonesian Migrant Workers is a form of protection.

. The types of protection provided to Indonesian Migrant Workers in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, namely:

1) Before work

a. Administrative protection covers the entirety and correctness of documents and work conditions;

b. Technical protection includes providing counseling and information dissemination, social security, improving the quality of prospective workers through education and job training, strengthening the role of functional introductory employees, facilities for fulfilling the rights of prospective workers, placing services in one-stop integrated services for the placement and protection of migrant workers and coaching and supervision.

2) During work:

Namely, data collection and registration by the labor attaché or referred foreign service official, monitoring and evaluation of employers, employment and working conditions, facilitation of the fulfillment of the rights of Indonesian migrant workers, facilities for resolving employment cases, providing consular services, mentoring, mediation , advocacy and providing legal assistance in the form of advocate service facilities by the Central Government or Indonesian Representatives as well as representatives in accordance with local state law, fostering Indonesian Migrant Workers; and repatriation facilities.

Protection of Indonesian Migrant Workers while working does not mean taking over the criminal and/or civil responsibility of Indonesian Migrant Workers and is carried out in accordance withthe provisions of the rules, laws of the country of placement as well as international laws and customs.

3) After work

Namely, providing facilitation for repatriation to the area of origin, settlement of unfulfilled rights of Indonesian migrant workers, facilitation of the management of Indonesian Migrant Workers who are sick and dead, social rehabilitation and social reintegration; and empowerment of Indonesian Migrant Workers and their families.

Representatives of the Republic of Indonesia abroad have roles and obligations in providing shelter for Indonesian migrant workers and the protection provided must be in accordance with national law as well as international law and practice. Especially for Indonesian Migrant Workers, the Indonesian Embassy and the Indonesian Consulate General are representatives of the Republic of Indonesia whose role is to oversee and provide legal aid services to Indonesian migrant workers who have problems in their country of work and provide protection as a place of protection and legal assistance in accordance with national and international law.

Overstay often afflicts migrant workers and lives like a cat and mouse with the police where sometimes there are raids to clean up foreign arrivals. so that if they are caught causing them to be caught and when they are caught red-handed and found not to have official documents or passports, there will be 4 (four) phases of punishment that will be imposed on PATI, namely being arrested, imprisoned, deported (returned) and even blacklisted. Due to this, representatives of the Indonesian government abroad are now present to provide

protection for migrant workers to be given assistance in order to fulfill the basic rights of migrant workers in order to avoid injustice.

The form of assistance and protection for Indonesian migrant workers with *overstay* status can be in the form of repatriation from the country of placement which is carried out both in terms of repatriation due to their own will or repatriation due to being deported by the country of placement. For Indonesian workers who have *overstayed* status in an area that is not their country before being deported, they must go through several stages, namely the arrest stage and the detention stage carried out in a detention house or immigration detention house while waiting for the repatriation or deportation process.

Protection given to Indonesian migrant workers in the case of the repatriation process, the Indonesian representatives provide repatriation facilities in the form of services, goods management services, financial services, transportation, provide facilities for the rights of Indonesian migrant workers, and ensure that migrant workers are physically and mentally ready for the process. This is in line with the technical guidelines for Indonesian community services carried out by representatives of the Republic of Indonesia as stated in the Minister of Foreign Affairs Regulation Number 04 of 2008 which states that Indonesian citizens who are also migrant workers are deported, the services provided, namely the Indonesian Representatives verify the number of migrant workers. or total deportants and identify the deportants, in order to follow up on the information received from the competent authorities regarding the planning for deportation, especially for Indonesian migrant workers if it is not covered then protection funds are used, and if the deportation costs are not covered If it is borne by the local government, it can contact the employer or the sending or receiving agent and ensure that the basic rights of Indonesian migrant workers

are fulfilled and treated humanely when deportation is carried out. However, if the Indonesian migrant worker does not have an official travel document, a travel document will be issued and a report on the progress of the case will be made to the Ministry of Foreign Affairs to inform the family. However, for Indonesian migrant workers, this information must also be submitted to theMinistry of Manpower and Transmigration or to BNP2TKI, Provincial Government, Regency/City Government;

In addition to being arrested, detained and deported by the country of placement, there is another penalty that will be given by the country of placement, namely being blacklisted, which means that Indonesian citizens are not allowed to enter the country concerned until a certain period of time has expired. At this timethere is a need for protection and prevention from the Indonesian government and interested parties regarding the various causes of problems for migrant workers with *overstay* status , in order to minimize *overstay* cases.

Indonesian migrant workers who are deported will generally be detained beforehand to serve sentences in accordance with the crime committed. At this time, the presence of Indonesian representativesis very necessary to provide protection for deported Indonesian migrant workers, the state has also guaranteed protection with the issuance of laws and regulations related to this matter. But in fact, this is contrary to what happened, in several cases Indonesian migrant workers were caught during a raid conducted by the Royal Malaysian Police in which the Indonesian migrant workers werearrested and put in prison, but at that time there was no appearance from the representative. RI in assisting the management of Indonesian migrant workers so that only the families of Indonesian migrant workers are caught starting from eating, drinking and their clothes so that these Indonesian migrant workers are deported.

E. CONCLUSIONS AND SUGGESTIONS

1. Conclusion

The conclusions that can be drawn from the above discussion are as follows:

a. Deportation can be defined as the expulsion, expulsion or expulsion of a person out of a country because that person has the right to live in the territory. From the definition of deportation, it can be described in general that many Indonesians have problems in Malaysia related to documents held unofficially, resulting in being repatriated and previously serving sentences in Malaysia. As is well known, the Royal Malaysian Government has amended the Immigration Deed 1959/1963 to become Deed A 1154 of 2002 which provides tougher sanctions for illegal migrant workers, bosses and parties who protect or provide rides to unlicensed foreign migrants in Malaysia. The sanctions given to the perpetrators includematerial sanctions in the form of fines as well as physical sanctionsin the form of confinement or detention and whipping using rattan or in Malaysian language it is slashed.

b. In Indonesia itself, there are regulations that regulate the protection of migrant workers in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. In order to maximizeefforts to protect Indonesian Migrant Workers abroad in accordance with the mandate of the law, however, the regulation does not provide details regarding protection for Indonesian migrant workers with *overstay* status, but only issues that must be adjusted to protection during placement. namely when Indonesian workers work in the country of placement. *Overstay* often afflicts migrant workers and lives like a cat and mouse with the police where sometimes thereare raids to clean up foreign arrivals. so that if they are caught causing them to be caught and when they are caught red-handed and found not to have official documents or passports, there will be 4

(four) phases of punishment that will be imposed on PATI, namely being arrested, imprisoned, deported (returned) and even blacklisted. Due to this, representatives of the Indonesian government abroad are now present to provide protection for migrant workers to be given assistance in order to fulfill the basic rights of migrant workers in order to avoid injustice. The form of assistance and protection for Indonesian migrant workers with *overstay* status can be in the form of repatriation from the country of placement which is carried out both in terms of repatriation due to their own will or repatriation due to being deported by the country of placement. In addition to being arrested, detained and deported by the country of placement, there are other penalties that will be given by the country of placement, namely being blacklisted, which means that Indonesian citizens are not allowed to enter the country concerned until a certain period of time has expired. At this time there is a need for protection and prevention from the Indonesian government and interested parties regarding the various causes of problems for migrant workers with *overstay* status ,in order to minimize *overstay* cases.

2. Suggestion

a. Based on the research that the author did, so the author can discuss the impact and solutions of the unilateral policies that are often applied by Malaysia. Due to this, the authors hope that the Indonesian government will be more alert in dealing with the negative impacts that will occur by setting a strategy or policy plan so that it becomes a hope that the existence of Indonesian migrant workers will no longer be victims of discrimination and the provision of protection can run optimally. There is the most important thing and focuses on decisive action from the Indonesian government to urge the Malaysian government to make a new agreement because if there is no new agreement, it means that there

is no legal certainty that binds the two countries. This is one of the weaknesses of Indonesia's position as a sending country for migrant workers, because tens of thousands of Indonesian migrant workers in Malaysia need significant legal certainty in providing protection for migrant workers and its existence is an obligation for the two countries concerned.

b. Protection efforts for migrant workers from the Indonesian government include local governments, central government, Indonesian representatives abroad, BNP2TKI, PPTKIS, namely by establishing good communication and paying attention to their role in society. The importance of protection for migrant workers is carried out so that migrant workers can be treated humanely and get their rights. The State of Indonesia also requires strict regulations by coordinating with each party and conducting intensive outreach to the community directly so that they can direct prospective migrant workers to choose a path that is in accordance with established procedures and also conduct educational and informative socialization to Indonesian migrant workers. in order to increase the legal awareness of migrant workers. Representatives of the Republic of Indonesia are required to be more active in providing legal assistance or advice to Indonesian workers with *overstay* status , and to be able to establish bilateral relations inthe form of a comprehensive agreement between the countries of Indonesia and Malaysia to prevent problems, while in general it is necessary to provide counseling on the urgency of ratifying the Convention. International in 1990 by the destination country of migrant workers so that it is very possible to carry out supervision and control in implementing it.

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POSITION OF HALAL CERTIFICATION AS A CONSUMER PROTECTION EFFORTS IN THE CITY OF TARAKAN

Novita Sylvi

Abstract

The halalness of a food products becoming important for consumer. Based on the Halal Product Assurance Constitution which define if products entered, distributed and marketed in Indonesian district must have halal certificate. But, inthe city of Tarakan, it is often to found food products which are not certified in halal. Research with the tittle "Position of Halal Certification as a Consumer Protection Efforts in the City of Tarakan". This research is purposed to answer the first formulation of the problem, urgency of halal as a form of consumers' safety. Second, role of Tarakan City's government in protecting the consumers toward food products which distributed in the city of Tarakan. This research is using the type of empirical research that seeks substantial truth, not only formal procedural truth. The location of the research done was at the city of Tarakan to be exact Tarakan City Department of Industry and Manpower, Tarakan City Ministry of Religion and Institute for the Study of Food, Drugs, and Cosmetics, Indonesian Ulama Council, North Kalimantan. Fata used in this thesis consist of primary data and secondary data. Primary data is a data which obtained from thefield by interviewing a source person. The secondary data obtained from book, thesis, and journal. Obtaining data technique used by field study and literature study. The result of this research, the writer concluded that: first, the urgency of halal certification is important as a protection guarantee and legal certainty for consumers, halal certification will assure the consumers to feel more relaxed and without doubting while consuming a food product. Second, the role of Tarakan City's government did through financing facility, accompaniment, supervision andsocialization and an appeal are the efforts of prevention (preventive) as well will minimize food distribution which are not certified as halal. The action did is a part from implementation of halal product guarantee. The implementation of halal product guarantee will give comfortable feeling, safe and certainty of the availability of halal products for the community. So that it will create a legal certainty and safety for consumers.

Keywords: Food, Halal Certification, Consumer safety

A. PRELIMINARY

Consumer Protection based on Indonesian literature is generally referred to as "Consumer Law" and Consumer Protection Law. Since April 20, 1999, the Consumer Protection Act has been codified in Law no. 8 of

1999 concerning Consumer Protection is valid and enforced.[1] Consumer Protection Law is a term that emphasizes that consumer protection is based on law, and it relates to the purpose and function of the law which provides legal protection in general and consumer protection in particular. Overall, consumer protection law is the overall principles and rules that regulate and provide consumer protection in relationships and related to the procurement and use of products (goods and/or services) between providers and consumers in society.[2]

Consumer protection law is of more concern because it relates to rules for the welfare of society. The unbalanced position of business actors on the one hand and consumers on the other puts consumers in a weak position, both with regard to the products traded or the services and transactions of these products. As a result, consumers are only used as objects of business activities in order to gain large amounts of profit by business actors.[3] Not only consumers are entitled to a protection, while business actors also have the same right in obtaining protection, both of them have their own rights and obligations, for the harmony and balance of the position of the two parties.

The government functions as a supervisor and controller, therefore a conducive scheme will be formed for each party so that the goal of prospering the community can be achieved. This is the obligation of the Central Government and Regional Governments in increasing the fulfillment of the quantity and quality of food consumption that is diverse, nutritionally balanced, safe and does not conflict with religion, belief, and culture..

Nowadays people are increasingly having a consumptive lifestyle. The high consumptive lifestyle of the community makes business actors publish various types of food, drinks and others to meet the needs of the community.

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[1] Rumah.com "Ulasan UU Perlindungan Konsumen (UU No. 8 Tahun 1999) di Indonesia" https://www.rumah.com/panduan-properti/mengenal-undang-undang-no-8-tahun-1999-untuk-perlindungan-konsumen-18089 accessed on 24 Mei 2021

[2] Susilowati S Dajaan et al., *Buku Materi Pokok Hukum Perlindungan Konsumen*, Cet. 6 Ed. 1, Universitas Terbuka, Tanggerang Selatan, 2018, h. 1.5

[3] Abdurrahman Konoras "*Jaminan Produk Halal di Indonesia Perspektif Hukum Perlindungan Konsumen*", PT Rajagrafindo Persada, Depok, 2017, h. 12

Moreover, every society can buy and sell goods and/or services "anything", "with whomever", "how much" and "how to produce it", that is what is called a market economy. The condition of the market structure and the behavior of producers cannot be predicted by consumers, so that it can lead to fraud and negligence of producers that can harm consumers. The fraud and negligence of these producers include not including labels on their products..

The label serves as an information tool for consumers regarding product name, net weight/content, product composition, expiration date, and halal label. Clear information on the label will greatly facilitate the public in choosing the product to be purchased or consumed. Especially when buying food products, people will feel worried if the information on the labels of the food products they consume is not clear..

As a country with a majority Muslim community, it requires more attention to the various types of food products circulating in the community, not only in terms of a healthy composition, but it must also be noted that the food products consumed must be halal in accordance with the provisions of Islamic law. Halal certification and labeling on products function of course to prove that the products traded do not cause information differences and arenot misleading so that consumers know the halalness of the product.[4]

The guarantee of halal products as protection for Muslim consumers in its application in Indonesia is a development in the implementation of halal product certification that is inseparable from the rise of awareness of embracing Islam on the importance of consuming halal food. The guaranteeof halal products or not is very important, as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia which is reflected in Article 28D paragraph (1) which reads "everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law". Then in Article 29 paragraph (2) which reads "the state guarantees the

[4] Zulham, *Peran Negara Dalam Perlindungan Konsumen Muslim Terhadap Produk Halal, Kencana*, Jakarta, 2018, h. 190

independence of each resident to embrace their respective religions and to worship according to their religion and beliefs".

On that basis, everyone is free to embrace the religion he adheres to and guaranteed also when carrying out teachings according to the religion he believes in. One of several Islamic teachings, food and drink is closely related to worship, food must be good and free from harmful substances, food is also required to be halal (not containing things that are forbidden according to Islamic law). So the halal or non-halal of a product is an obligation for all producers to be able to include a halal label or a non-halal label and the right for consumers to know it. Therefore, the presence of the law is needed to provide protection (to protect) to consumers, especially Islamic consumers so that they can be avoided from products that contain things that are forbidden by Islamic law.

It is stated in Law Number 8 of 1999 concerning Consumer Protection Article l Number l, which explains that consumer protection is all efforts to ensure the creation of legal certainty in order to provide protection to consumers. Then Law Number 8 of 1999 concerning Consumer Protection in article 4 letter a explains that consumer rights are the right to feel comfortable, feel safe, and safe when using goods and/or services. Article 4 letter c explains that consumer rights are the right to obtain actual informationon products and be honest about the condition of goods and/or services, furthermore in Article 8 paragraph (l) letter h, it stipulates that business actorsmay not produce and/or trade goods. and/or services that do not comply with the provisions for halal production, such as the "halal" information listed on the packaging.

17 October 2014 The government ratifies a legal product relating to the guarantee of halal food products in Indonesia, namely Law Number 33 of 2014 concerning Guaranteed Halal Products. This regulation can later be usedas a basis for strengthening the implementation of halal certification in Indonesia. After 3 years, on October 11, 2017, the BPJPH was formed which produced several derivative regulations needed for the implementation of

Halal Product Assurance, such as Government Regulation Number 31 of 2019 and Regulation of the Minister of Religion Number 26 of 2019.[5] It is affirmed in Law Number 33 of 2014 concerning Halal Product Guarantee article 4, namely, products that enter, circulate, and are traded in Indonesia must have a halal certificate.

But in reality, it is often found that food products circulating in Tarakan City are not labeled as halal. Some products are not labeled halal, namely some foods that are sold in shops in Tarakan City. Lack of awareness of producers about the importance of registering halal certification for the products they sell. This is one of the triggers for the widespread circulation ofmany products that do not have a halal certificate. Which means that the business actor/producer has not carried out the obligations as stated in the said legislation

As data obtained from the Tarakan City Industry and Manpower Office, there are around 93 Small and Medium Industries assisted by the Tarakan City Industry and Manpower Office that do not yet have a halal certificate and some of the Small and Medium Industries have several types of food products. These products include bread, dry snacks, drinking water depots, shrimp paste, pastries and several other types of food.[6]

Based on this background, the author took the initiative to write a thesis with the title " HALAL CERTIFICATION POSITION AS A CONSUMER PROTECTION EFFORTS "

Related to the background written above, a problem is drawn regarding: The role of the Tarakan City Government in protecting consumers against food products circulating in Tarakan City

[5] Badan Penyelenggara Jaminan Produk Halal, "BPJPH: Mandatory Sertifikasi Halal adalah Amanat Undang-undang", http://www.halal.go.id/beritalengkap/215, 12 Agustus 2020, 17.07
[6] Data obtained from Dinas Perindustrian dan Tenaga Kerja Kota Tarakan on March 03, 2021

B. RESEARCH METHODS

The type of research used in this paper is the type of empirical law research. Assessing community activities that arise when interacting with the applicable legal system. This interaction arises as a public response when a positive legal provision is enacted. This type of research seeks substantial truth, not just formal procedural truths.[7] In empirical research, initially using secondary data, then it is continued through research using primary data.[8]

The location of this research is in Tarakan City, North Kalimantan, namely the Tarakan City Industry and Manpower Service, Tarakan City Ministry of Religion and the North Kalimantan Institute for Food, Drug, and Cosmetics Research Council of Ulama (LPPOM MUI).

The population is the entire object of research, namely Mr. Murliadi Palham, ST., M.Eng as Head of the Industry and Manpower Office of Tarakan City, Mr. H. Sultan Halim, S. Ag., M.Pd as Head of the Division ofZakat and Waqf Organizers of the Ministry Religion of Tarakan City and Mr. Ir. Elang Buana, M.Si as Director of the Institute for the Assessment of Food, Drugs and Cosmetics (LPPOM MUI) North Kalimantan. Meanwhile, the sample is part of the population under study and can describe the population.

In this study, primary data and secondary data were used. Primary data is data obtained from the field by means of interviews / interviews with informants. Secondary data is a source of legal material in normative research. Secondary legal materials include publications on legal matters including textbooks, legal journals. As secondary legal materials, the main legal books include theses, theses, and legal dissertations and legal journals. There is also a legal dictionary and analysis of court decisions. The benefit of secondary legal materials is to provide such a "guidance" in which direction the researcher is going.[9]

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[7] Jonaedi Efendi dan Johnny Ibrahim, *Motode Penelitian Hukum Normatif dan Empiris*, Kencana, Jakarta, 2016, h.176.
[8] Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 2010, h. 52.
[9] Peter Mahmud Marzuki , *Penelitian Hukum Edisi Revisi*, KENCANA, Jakarta, 2013, h. 195-196

Data collection techniques were carried out by means of field studies and literature studies. Interview technique/interview by conducting interviews with the Department of Industry and Manpower of the City of Tarakan, the Ministry of Religion of the City of Tarakan and the Institute for the Study of Food, Drugs, and Cosmetics of the Indonesian Ulema Council (LPPOM MUI) North Kalimantan. 2) Literature study by collectingdata and looking for relevance to the issues discussed, namely by using books, journals, legislation and documents that can be obtained at the Tarakan City Department of Industry and Manpower, Tarakan City Ministryof Religion, and the Institute for Studies. Food, Drugs and Cosmetics Indonesian Ulema Council (LPPOM MUI) North Kalimantan.

Analysis of data related to this research, namely all primary data obtained in this study, then analyzed by implementing qualitative analysis by arranging and then describing it logically and systematically. Then it is linked to the data from the study of documents that are relevant to the issue. So that it can provide an overview and answers to the issues discussed.

C. LITERATURE REVIEW

1. Overview of Halal Certification

The Halal Product Guarantee Agency, abbreviated as BPJPH, is an agency formed under the auspices of the Ministry of Religion. BPJPH is supported by the duties and functions carried out based on Law no. 33 of 2014 concerning Halal Product Guarantee which contains rules regarding halal registration, halal certification, halal verification, guidance and supervision of product halalness, cooperation and standards for determining the halalness of a product.[10]

Halal certification is a process to obtain a halal certificate by going through various stages or inspection processes that prove that the raw materials, production processes, and product halal assurance system are

[10] Badan Penyelenggara Jaminan Produk Halal Kementerian Agama RI, "Sekilas Tentang BPJPH", http://halal.go.id/

based on the specified standards.[11] Meanwhile, a halal certificate is an acknowledgment of the halalness of a product issued by BPJPH based on a written halal fatwa issued by the MUI.

Halal certificate is a requirement to obtain permission to include a halal label on product packaging. The validity period of the halal certificate is 4 (four years) since the halal certificate is issued by BPJPH, unless thereis a change in the composition of the ingredients. The halal certificate must be extended by business actors by submitting a halal certificate before the validity period of the halal certificate expires for a maximum of threemonths.

The halal label is a symbol of the halalness of a product. This halal label can be attached to the product if the business actor has carried out halal certification. While halal labeling is to include a halal logo or label on the product packaging. The function of the halal label is as an information tool for consumers who explain that the product is a product that is guaranteed to be halal.

2. Overview of Consumer Protection

The term consumer is taken from English, namely consumer or consumer (Dutch). Etymologically the word consumer means everyone who uses goods. Whereas in English, the word consumer means the user or the consumer. Furthermore, in the modern Indonesian dictionary, Muhammad Ali defines consumers as users of industrial goods, foodstuffs, or opponents of producers.[12]

The definition of consumer protection based on the Big Indonesian Dictionary is that protection is taken from the word protected which means to protect, prevent, defend, and fortify. While protection means

[11] Andar Zulkarnain H, "*Analisa Undang-Undang Jaminan Produk Halal Dan Cipta Kerja (Antara Kenyataan Dan Keberlanjutan)*", Tesis UIN Syarif Hidayatullah Jakarta, 2021, h. 22.
[12] Yahya Ahmad Zein, *Kompleksitas Permasalahan Hukum*, Pustaka Themis, Banjarbaru, 2008, h. 18

conservation, maintenance, and care. the definition of protection is a place of refuge.[13]

Law Number 8 of 1999 concerning Consumer Protection explains that consumer protection is a variety of efforts to guarantee the creation of legal certainty in order to provide protection for consumers.

D. The Role of Tarakan City Goverment in Protecting Consumers Against Food Products Circulating in Tarakan City

1. The Role of the Tarakan City Department of Industry and Manpower

The Industry Sector carries out various activities related to halal certification for Small and Medium Industries (IKM) in Tarakan City to prevent the circulation of food that is not halal certified in Tarakan City. Based on the data obtained, there are several programs that have beencarried out in providing facilities for IKM in Tarakan City including policy facilities for halal certification financing assistance for IKM, providing assistance and guidance for IKM, and socialization related to halal certification.

First, the halal certification facility for IKM in Tarakan City has so far been carried out by the Tarakan City government through the Tarakan City Department of Industry and Manpower. Based on the data obtained, the Department of Industry and Manpower of the City of Tarakan provides annual facilities to support halal certification activities in the form of financing for IKM through the Regional Revenue and Expenditure Budget (APBD). According to the Head of Industry, there are about 15 SMIs per year which are facilitated by the Department of Industry and Manpower of the City of Tarakan. The financing in question is to bring in auditors from outside to support halal certification activities. This activity of bringing in auditors is an activity that was carried out before LPPOM MUI Kaltara was formed because there was no institution that checked the composition of a

[13] Leliya "Perlindungan Konsumen melalui Sertifikasi dan Labelisasi Halal Atas Industri Rumah Tangga Pangan", *Jurnal Penelitian Hukum Ekonomi Islam* Vol. 3, No. 1, 2018 , h. 47.

product to determine its halalness. In addition to financing to bring inauditors, financing facilities are also provided before audit activities are carried out, namely at the time of registering for halal certification.

Second, facilitating IKM by providing technical assistance in completing data and requirements such as filling out documents to register for halal certification and directing business actors when taking care of other required requirements. This is done in order to simplify the certification registration process for IKM.

Third, socialize to IKM about halal certification. One of the socializations carried out was by providing recommendations, especially for food product business actors, to carry out halal certification on their products[14]

The program implemented by the Department of Industry and Manpower of the City of Tarakan is one of the efforts to protect consumers. By providing financing facilities and technical assistance when registering for halal certification, the products produced by SMEs are guaranteed to be halal so that consumers will get legal certainty when consuming these products. In addition, conducting socialization is a form of anticipation carried out by the Department of Industry and Manpower of the City of Tarakan so that IKM carry out halal certification and produce their products in a halal manner. So that the certainty of the availability of halal food products for the public/consumers will be fulfilled and consumers will get protection when consuming the food.

2. The Role of the Tarakan City Ministry of Religion in Supervising Halal Certification

Supervision is all activity efforts in order to be able to realize and assess the reality that occurs regarding the role or activity, whether it is

[14] Wawancara dengan Murliadi Palham, ST., M.Eng Kepala Bidang Perindustrian Dinas Perindustrian dan Tenaga Kerja Kota Tarakan, 06 Jul 2021

appropriate as it should be or not. That is, it is similar to the specified program, based on the applicable provisions.[15]

Supervision that has been carried out by the Ministry of Religion of the City of Tarakan is to conduct field surveys related to products in circulation. Supervision is carried out to find out what is actually in the field. As the results of interview researchers:

> he ministry of religion is indeed the task of providing counseling, we go directly to the field to markets such as chicken pieces, we ask who is cutting who, how to cut it. Thento the stalls we immediately asked for a business license, how the manufacturing process was like.[16]

In general, the supervision activities that have been carried out are a form of prevention in order to find out what actually happened in actual conditions. In fact, it is often found that products that do not have a halal certificate are circulated and sold. As for the products found that do not have a halal certificate but use a fake halal label. As explained by H. Sultan Halim, S.Ag., M.Pd as the Head of Zakat and Waqf Organizing Division of the Ministry of Religion of Tarakan City:

> When we conducted a survey in the field, there were several entrepreneurs who immediately put the halal label on, even though it should not be like that because those who have the right to attach it are business actors/producers who carry out halal certification and already have halal certificates.[17]

The inclusion of the halal label itself is a form of information to consumers regarding the halalness of the product and a legal certainty so that consumers do not need to hesitate when consuming food because with the label, information on the products consumed is easily understood by

[15] Asri, 'Perlindungan Hukum Bagi Konsumen Terhadap Produk Yang Tidak Bersetifikat Halal', *Ius*, Vol. IV No. 2 (2016), h. 15
[16] Wawancara dengan H. Sultan Halim, S.Ag., M.Pd Kepala Bidang Penyelenggara Zakat dan Wakaf Kementerian Agama Kota Tarakan, 06 Juli 2021
[17] *Ibid*

consumers. Especially regarding the halalness of a food product that must be clearly informed to consumers. Therefore, honesty and responsibility of business actors are very urgent causes for the realization of legal certainty for consumers.

Presented by the resource person, several reasons why business actors do not carry out halal certification are because there are so many requirements that must be completed while there are still many business actors who have insufficient insight and information to manage these requirements so that the LPPOM MUI Kaltara and the Tarakan City Industry and Manpower Office must help when filling out the registration form. In addition, business actors in Tarakan City do not yet have PIRT. Meanwhile, PIRT is one of the requirements that must be owned by business actors to register for halal certification. And also almost all UMKM in Tarakan City do not have complete administration to register for halal certification such as stamps, Business Identification Numbers (NIB) and limited fees for business actors are also one factor that there are still business actors who have not registered for halal certification in Tarakan City.

The registration of halal certification for business actors in Tarakan City has been through the Tarakan City Ministry of Religion office on verbal instructions from the North Kalimantan BPJPH. The Ministry of Religion of the City of Tarakan only helps North Kalimantan BPJPH to fill in the data of applicants who apply for halal certification registration, suchas the name of the entrepreneur/company, the name of the product, and the type of product being registered. After the data is complete, the Tarakan City Ministry of Religion will make a cover letter which will be forwardedto LPPOM MUI North Kalimantan for verification and processing. There are 6 business actors in 2020 registered through the Ministry of Religion of Tarakan City.

In addition to registering, the Ministry of Religion of Tarakan City also supervises products circulating in Tarakan City. Supervision is one of

the implementations of halal product guarantees that apply the principle of protection. Efforts to protect consumers in order to avoid food that is not halal. However, the Tarakan City Ministry of Religion cannot follow up on business actors who attach fake halal labels because there are no special regulations that authorize the Tarakan City Ministry of Religion to carry out supervision or provide sanctions for business actors who commit fraud. So, the Ministry of Religion of the City of Tarakan only makes an appeal to business actors/producers who include fake halal labels but have not certified their products to revoke the fake halal labels and register for halal certification to obtain halal certificates which are then accompanied by providing halal labels on their products.

3. Institute foe the Study of Food, Drugs and Cosmetics Indonesian Ulama Council North Kalimantan as an Outside the Tegional Government

LPPOM MUI is in charge of inspecting and reviewing the halalness of a product. LPPOM MUI North Kalimantan cooperates with experts and experts in the field of food and agriculture to become auditors, in this case LPPOM MUI North Kalimantan in collaboration with the University of Borneo Tarakan, especially the Faculty of Agriculture. Not only in collaboration with the Faculty of Agriculture as an auditor. Presented by Ir. Elang Buana as Director of LPPOM MUI North Kalimantan, LPPOM MUI North Kalimantan also engaged several Lecturers from the Faculty of Law to become the Legal Division of the internal LPPOM MUI North Kalimantan.

Based on the data obtained by the author, the registration of halal certification is also carried out by LPPOM MUI North Kalimantan, because the North Kalimantan BPJPH has not been fully formed and there are only a few administrators. Therefore, business actors in Tarakan City immediately came to LPPOM MUI North Kalimantan to register for halal certification

manually. From 2020 to 2021 hundreds of business actors have carried out halal certification.

Since its formation and carrying out its duties, LPPOM MUI North Kalimantan has never received consumer complaints regarding products circulating in Tarakan City, based on the author's interview with the Director of LPPOM MUI North Kalimantan:

> So far, LPPOM MUI North Kalimantan has never received complaints from consumers, complaints can be made to government officials because LPPOM is only in charge of researching the halalness of products..[18]

Based on the data above and the research conducted, the authors argue that the role of local government is very important in implementing and supervising and fostering halal certification in Tarakan City. In line with the principle of the implementation of the halal product guarantee itself, namely professionalism. However, the lack of legal products that regulate this makes the local government apparatus passive in carrying out the implementation of halal certification in Tarakan City.

Furthermore, regarding the obstacles encountered by LPPOM MUI North Kalimantan during the implementation of halal certification in Tarakan City based on the author's interview:

> The obstacles faced are that LPPOM does not receive budget assistance from the government and elsewhere and business actors such as MSMEs are only able to pay half of the required costs, while the costs required are quite high, low knowledge of business actors is also an obstacle, such as when filling out registration documents. halal certification.[19]

Based on the results of interviews, the obstacles encountered by LPPOM MUI in North Kalimantan when implementing halal certification

[18] Wawancara dengan Ir. Elang Buana, M.Si selaku Direktur LPPOM MUI Kalimantan Utara, 06 Juli 2021.
[19] *Ibid*

were financing for MSMEs which were only able to pay half of the required financing. be slow.

The next obstacle, when carrying out halal certification, is related to the knowledge and insight of business actors who are less related to thehalal certification registration process such as filling out registration forms so that they have to wait for assistance from the LPPOM MUI Kaltara or theIndustry Service and are constrained by the costs that business actors haveto register for halal certification. These two obstacles hindered the certification registration process. In addition, the Halal Product Assurance Agency which has not been fully formed in North Kalimantan makes the authority that should be carried out by BPJPH according to Law Number 33 of 2014 which is stated in article 29 for now, LPPOM MUI Kaltara is still handling it.

The halal certification registration activity carried out by LPPOM MUI North Kalimantan is part of the implementation of halal product guarantees. The implementation of the guarantee of halal products willprovide a sense of comfort, security and certainty of the availability of halal products for the public when consuming these food products. The implementation of halal certification must be based on the principles of protection, justice, and legal certainty. Related to this, legal protection is needed for consumers when consuming food and for business actors who must provide certainty by fulfilling their obligations to carry out halal certification. As the purpose of the law itself is so that everyone's interestsdo not collide with one another.

E. CONCLUSIONS AND SUGGESTIONS

1. Conclusion

Based on the explanation in this thesis, the writer can conclude that the role played by the Ministry of Religion of Tarakan City is to supervise by going directly to the field to see the products circulating in Tarakan City. Furthermore, if a product is found that uses a fake halal label, the Tarakan

City Ministry of Religion will urge business actors to revoke the fake halal label and carry out halal certification so that they can include a certified halal label on their products. Furthermore, the role of the Tarakan City Industry and Manpower Office in preventing losses to consumers related to product halalness is to facilitate IKM in Tarakan City by providing financing facilities to Small and Medium Industries in Tarakan City, providing technical assistance to IKM in completing and filling out registration requirements documents. halal certification and socialization to IKM related to halal certification. The program being carried out is a preventive or preventive measure in the form of preventing the circulationof non-halal food. With that business actors can carry out halal certification thanks to the program carried out by the local government of Tarakan City,it will minimize the circulation of non-halal food in Tarakan City. In addition, the activities carried out are part of the implementation of halal product guarantees. The implementation of halal product guarantees will provide a sense of comfort, security and certainty of the availability of halal products for the public when consuming food products. This will create legal certainty and protection for consumers.

2. Suggestion

Suggestions submitted by the author from the results of the research carried out are to strengthen coordination between related institutions so that they can jointly supervise products circulating in Tarakan City and maximize the implementation of halal certification in Tarakan City. As well as fully forming the organizational apparatus of the North Kalimantan Province Halal Product Assurance Agency so that the implementation of halal certification can run effectively and clearly.

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POSITION OF CLEMENCY AS A SPECIAL LEGAL REMEDY AGAINST EXTRAORDINARY CRIMES

Grandis Mahendra Abadi

Abstract

This research aims to answer two questions related to the position of clemency as a special legal remedy. First, what is the "ratio legis" for clemency as a special legal remedy against extraordinary crimes? Second, is the existence of granting clemency to convicts related to the deterrent effect of punishment in positive law in Indonesia? This study used a normative legal research method, with referenceto the legislation about clemency and history of clemency. The data used in this study consists of primary data obtained from authoritative legal documents, and secondary data obtained from books, journals, articles, websites, and legal dictionaries. The results of this study are first, clemency is a special legal remedy that can be filed against a court decision that has permanent legal force. Clemency is also said to be a correction tool for the judge's decision who decides the case during the trial process in order to minimize the risk of error in the verdict handed down by the judge. The existence of clemency in Indonesia itself consists of several foundations, namely historical basis, philosophical basis, juridical basis and sociological basis. Second, the existence of granting clemency to convicts is related to the deterrent effect of punishment. Both criminal penalties that cause a deterrent effect and granting pardons are both based on criminal sanctions against criminal acts, so there should be no conflict between granting clemency and the deterrent effect of punishment. In reality, the implementation of granting clemency actually reduces the deterrent effect of this punishment. In fact, thereare convicts who have received clemency by the president and continue to commitcrimes repeatedly

Keywords: Clemency, Extra ordinary crime, Deterrent effect

A. PRELIMINARY

The system of government in Indonesia is a presidential system, based on this presidential system the President has the prerogative of being the head of government as well as the head of state in Indonesia. The president's prerogative is an independent and absolute right, means that the president can determine what he wants without anyone's intervention and cannot be contested. One of president's prerogative in the judicial field is theauthority to grant clemency to convicts who feel they have not received justice for the verdict given to him and have permanent legal force *(Incrath)*. The granting of clemency has been mentioned by the highest law in the hierarchy of Indonesian legislation, *Undang-Undang Dasar Negara Indonesia Tahun 1945* in Article 14 paragraph (1) which states "The President grants clemency and rehabilitation by taking into account the considerations of the Supreme Court". The purpose of involving the Supreme Court which is a judicial institution in granting clemency is as a control with the Check and Balance procedure so that there is no abuse of power by the president who has the prerogative of granting this clemency without reducing the authority of the president.

A court process that has the aim of reaching a permanent legal force (*Inkracht*) cannot always uphold the truth according to juridical. The court's decision cannot be separated from the mistake of the judge who made the decision, there is still a possibility that the decision will be impartial. In order that the judge's mistake decisions can be corrected, it is possible forthe judge's decision on the case to be re-examined in order to achieve a real justice. The correct method in order to achieve a truth and a justice is through a legal remedy as stated in the provisions of the Criminal ProcedureCode (*Kitab Undang-Undang Hukum Acara Pidana*), which includes appeal, cassation, and judicial review. In addition to these legal remedies, there are also special legal remedies outside the provisions of *Kitab Undang-Undang Hukum Acara Pidana*, such as clemency. Each defendant

has the right to file a legal remedy if he is dissatisfied with the verdict given by the judge during the court process.

Legal action is an effort for each individual or legal entity who is aware that his rights have been harmed by a court decision that has been handed down to him or based on his interests in order to obtain justice and protect his rights to achieve legal certainty, based on the rules that have been mentioned in the law. Clemency is currently quite necessary in a country whose purpose is to minimize the risk that it is feared that it is the result of an error in the sentencing of judges in court, especially for severe punishments such as the death penalty, where it is still possible to execute innocent people. innocent people)..[1] when granting clemency, the President as the head of state who has the right to grant clemency to this convict if he can give his wise consideration to the events of criminal acts that have been committed by the perpetrators, especially to criminal acts that are carriedout repeatedly, crimes of decency, and crimes committed in a sadistic and premeditated manner or known as an extraordinary crime.[2]

However, related to this, there is actually a clemency grant that can be said to be inaccurate and given unilaterally without any openness from the authorities or the president and the lack of prioritizing the theory of punishment. As in the awarding of clemency to the former governor of Riau, Annas Maamun, who was convicted of a corruption case against land conversion in Riau Province so that he received a 7-year sentence by the court in 2014. Annas Maamun applied for clemency to the president on humanitarian grounds armed with a doctor's certificate containing history of illness. Then President Joko Widodo accepted Annas Maamun's clemency request for a reduction of one year in prison, so that the convict only served his sentence for 6 years and was released on September 12, 2020.

[1] Dwi Khairawati. "Kebijakan Hukum Pidana Pemberian Grasi Kepada Terpidana Narkoba Dalam Perspektif Pembaharuan Hukum Pidana." *Jurnal Law Reform, vol. 9, no. 2, 2014, pp. 83-97.* Hal. 3.

[2] Penjelasan UU No. 5 Tahun 2010 Tentang Perubahan Atas UU No. 22 Tahun 2002 Tentang Grasi

Another case is against a person named Schapella Leigh Corby who is an Australian citizen who was caught transporting 4.2 kg of heroin narcotics at Ngurah Rai Airport, Bali. This case is an extraordinary crime (Extra Ordinary Crime) related to narcotics crimes that can endanger the country or a crime for future generations in Indonesia, related to this case Schapella Leigh Corby was sentenced to 15 years in prison by the court. In 2012, President Susilo Bambang Yudiono granted clemency to Corby, namely a reduction in the sentence of 5 years, and for the pardon granted Corby was declared parole**.**

Another case was the granting of clemency to Meirika Franola, who was sentenced to death by the court for smuggling 3.5 Kilograms of heroin and 3 Kilograms of cocaine, namely in 2000. In 2012 the President granted clemency through KEPPRES No. 35/G/2012 so that the death penalty by Franola becomes a life sentence. However, after granting this clemency, it was proven that Franola had committed another crime, namely committing narcotics crimes through prisons related to smuggling 775 grams of methamphetamine from India to Indonesia. Related to this, the author assumes that the granting of clemency is not right on target and makes the deterrent effect of punishment disappear.

The three cases mentioned above constitute one of the extraordinary crimes or are also interpreted as serious crimes, crimes that have a broad and systematic impact on social, economic, political, legal and cultural life. When it is said to be an extraordinary crime, of course, the criminal sanctions given to the perpetrators of this extraordinary crime must also be commensurate with what he did in order to create a deterrent effect so as to reduce the number of cases of extraordinary crimes and also eradicate extraordinary crimes that occurred in Indonesia.

Based on the description above, the author took the initiative to describe this paper in the form of a thesis entitled "**POSITION OF CLEMENCY AS A SPECIAL LEGAL REMEDY AGAINST EXTRAORDINARY CRIMES**"

Related to the background written above, the problem is drawn regarding: The existence of granting clemency to convicts related to the deterrent effect of punishment in positive law in Indonesia?

B. RESEARCH METHODS

The type of research used in writing this thesis is the type of normative law research, which examines a statutory regulation, legal theories, and jurisprudence regarding the problem to be studied in order to find answers to legal issues in the problems studied. The conception of normative research sees the existence of law as a written norm designed and formed by the authorized institution. Soerjono Soekanto is of the view that normative legal research or normative juridical research, namely library law research that examines library documents in this case is a secondary material.[3] Furthermore, according to Soerjono Soekanto the normative legal approach is legal research that is implemented by reviewing library documents as secondary data on the basis of research conducted through searching regulations and literature relating to the researched.[4]

In legal research, there are various forms of research approaches, while the research approaches used in writing this thesis are the Statute Approach, the conceptual approach, and the historical approach. The legal materials used in the research consist of primary legal materials and secondary legal materials. The primary legal materials used in this research include:

1) 1945 Constitution of the Republic of Indonesia
2) Law Number 1 of 1946 concerning Regulations on Criminal Law (KUHP)

[3] Soerjono Soekanto dan Sri Mulyadi, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat), Cetakan 5*, Raja Grafindo Persada, Jakarta, 2001, h. 13
[4] Ibid h. 14.

3) Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP)
4) Law No. 4 of 2004 concerning Judicial Power
5) Law Number 3 of 1950 concerning Applications for Clemency
6) Law No. 22 of 2002 concerning Clemency
7) Law Number 5 of 2010 concerning Amendments to Law Number 22 of 2002 concerning Clemency

While secondary legal materials consist of all publications regarding law, which can be in the form of legal books (print and electronic), legal journals, articles and legal materials from websites that have relevance to the material that is the root of the problems that will be reviewed in this study.

Analysis of legal materials related to research, namely utilizing a collection of legal materials that have been obtained earlier, then processed into a discussion in order to solve the legal issues raised by referring to the existing theoretical basis using descriptive qualitative analysis and described in detail.

C. THEORY FRAMEWORK / LITERATURE REVIEW

1. Overview of Clemency

The normative definition of clemency has been explained in positive law, namely Article 1 of Law Number 22 of 2002 concerning Clemency in conjunction with Law Number 5 of 2010, which states that, " Clemency is forgiveness in the form of changes, reductions, reductions, or abolition of executions. punishment for convicts given by the President."

The narrow definition of clemency is a pardon given by the president in the form of changes, reductions, reductions, or abolition of the implementation of criminal acts against a verdict that has been decided by a judge and has permanent legal force (Inkracht).[5]

[5] Dientia Dinnear. "Pemberian Grasi terhadap Terpidana sebagai Hak Prerogatif Presiden (Studi Atas Penggunaan Hak Grasi Presiden terhadap Kasus-kasus di Indonesia)." *Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya*, 2014. Hlm. 1.

2. Overview of Legal Remedy

The criminal justice system in Indonesia has recognized several kinds of legal remedies that can be carried out by submitting to a court decision that has already been decided. Legal remedies can be submitted by one of the litigants, both the public prosecutor and the defendant, where the party is dissatisfied and does not feel that he has received justice for the judge's decision in court. In this regard, the purpose of doing so is to propose legal remedies, namely to correct and straighten out the previous judge's decision which is suspected of having an error in it.

Criminal procedural law classifies legal remedies in two forms, namely ordinary legal remedies such as appeals and cassation and extraordinary legal remedies such as judicial review. In addition, there are also legal remedies that are outside the provisions of the Criminal Procedure Code (KUHAP) such as clemency, amnesty and abolition.

3. Overview of Punishment Theory

The theory of the purpose of punishment (*Strafrechts theorieen*) is divided into Three parts, including: Absolute Theory/*Vergeldings Theorien*. This theory holds that punishment is given solely to people who carry out criminal acts so that this theory considers that criminal punishment is a form of reward for mistakes that have been made so that the orientation is to the occurrence of the crime. Relative Theory/Theory of Goals (*Doel Thoerieen/Utilitarian Theorieen*) Relative theory holds that the imposition of criminal sanctions is not solely for retaliation but rather as a tool to protect the interests of society and has certain goals that have benefits so that the theory is better known as the theory of objectives. Lastly, the Combined Theory/Modern Theory (*Vereningings Theorieen*) Regarding the combined theory, that punishment is based on the purpose of the element of retaliation and maintaining public order, which is realized simultaneously

and prioritizes one element without neglecting the other elements, or against all existing elements.

3. Overview of Extraordinary Crime

The types of crimes that often occur from time to time are extraordinary crimes which are global crimes and have a negative impact on social life. The definition of an extraordinary crime is a crime that is carried out in a planned, systematic and organized manner that targets a largenumber of individuals based on their actual membership or who they consider to be members of groups selected as targets on the basis of discrimination. From this definition, this extraordinary crime is seen from two related aspects, namely the aspect of the crime and the victim. First, crimes must be carried out in a planned, systematic, and organized manner. Second, the number of victims is very large for certain groups, both aspects must be met to meet the threshold for the most serious crimes.[6]

D. Discussion of Research Results and Analysis on the Existence of Granting Clemency to Convicts Related to the deterrent effect of punishment in positive law in Indonesia

1. Clemency Based on the Purpose of Punishment

Considering that clemency is a pardon aimed at the execution of a crime against a convict, it cannot be avoided if the granting of clemency or pardon will be related to the purpose of punishment in general.[7] Based on the theories of the purpose of punishment, it can be seen that one form of the purpose of punishment is to create a deterrent effect on the perpetrator. Based on the absolute theory or the theory of retaliation, criminal penalties are given because the convict has committed a crime. So every criminal act that has been

[6]Vidya Prahassacitta, "The Concept of Extraordinary Crime in Indonesia Legal System: is the Concept an Effective Criminal Policy?" *Humaniora Binus, vol. 7, no. 4, 2016, pp. 513-521*. Hlm. 515.
[7] Isharyanto, *Op. Cit*, Hal. 97

committed by someone must be followed by criminal punishment, these criminal punishment can create a deterrent effect on criminals. Meanwhile, clemency is given to people who have been sentenced to criminal punishment by judges who have permanent legal force (*inkracht*).

Based on the purpose of punishment above, it can be concluded that both criminal penalties that cause a deterrent effect or granting clemency are both based on criminal sanctions against criminal acts. A convict seeks clemency efforts in order to obtain a pardon from the President on the basis of the considerations contained in the convict and the crime he has committed. So, based on absolute theory, there should be no conflict between granting clemency and the deterrent effect of a punishment.[8]

Criminal punishment cannot always be regarded as an attempt to retaliate against a crime committed. The imposition of criminal penalties in addition to creating a deterrent effect, must alsoprovide protection and must provide education to the public. This clemency grant is in the nature of contributing to reintegration and re-education.

2. Eksistensi The Existence of Clemency Against Extraordinary Crime Cases is related to the deterrent effect of punishment

Regarding the granting of clemency to the convict Annas Maamun who was convicted of a corruption case, Schapelle Leigh Corby and also Meirika Franola who was a convict of a narcotics case, these cases are examples of extraordinary crimes that the convict was granted clemency by the President. As a result of granting clemency to convicts of this extraordinary crime case, it

[8] Laelly Marlina Padmawati, "Tinjauan Yuridis Pemberian Grasi Dalam Kajian Pidana Terkait Efek Jera Pemidanaan." *Recidive Volume 2 No. 3, 2013, pp. 301*-306, hlm. 305.

caused a polemic and many people protested and asked for reasons why President Susilo Bambang Yudhoyono gave clemency to Corby and Franola, and President Joko Widodo gave clemency to Annas Maamun. Although the clemency is legally valid and under the authority of the President, granting clemency to convicts of extraordinary crimes is considered to have violated the sense of justice and consistency in terms of eradicating extraordinary crimes and reducing the deterrent effect on the convicts. The granting of clemency to convicts of this extraordinary crime should be considered wisely and wisely by taking into account the purpose of punishment or creating a deterrent effect so that criminals do not repeat the same crime repeatedly (Residive) and it is feared that it will open up opportunities for new cases because it is felt that crime eradication is felt. This extraordinary case in Indonesia is considered weak and not serious and the punishment given does not have a deterrent effect.

Even though clemency actually supports the existence of a deterrent effect which is the purpose of punishment, in reality the implementation of granting clemency actually reduces the deterrent effect of this punishment. It is still possible that this can lead to public opinion that clemency for extraordinary crimes can be easily obtained. Therefore, the granting of clemency must seriously pay attention to the reasons for granting clemency, namely the aspects of justice and the humanitarian aspect and examine the case more deeply and seriously on the petition for clemency submitted. So that the negative effects of granting clemency can be minimized.[9] In reality, the implementation of the granting of clemency actually reduces the deterrent effect of this punishment, in fact there are

[9] Laelly Marlina Padmawati, *Loc.cit.*

convicts who have received clemency by the president and continue to commit crimes repeatedly, such as in the case of Meirika Franola.

Based on the Circular Letter of the Attorney General of the Republic of Indonesia Number B-18/E/Ep.1/I/1999 which was circulated on January 7, 1999 regarding the Preparation, Delivery and Distribution of Minutes of Consideration of Clemency, it was stated that to compose an argumentative treatise on clemency considerations, it must contain the following substances: as follows:

1) Objective considerations that approve/disapprove the request for clemency of the convict supported by solid analysis and arguments;
2) The analysis and argumentation relates to: the severity of the guilt of the convict, a victimological review of the consequences that arise both against the criminal and the community, views and assessments of the severity of the sentence imposed;
3) Various positive/negative aspects for both the convict and the community if the clemency request is granted/rejected.
4) Convict status and criminal execution
   a) Whether or not there has been a delay in the execution of the crime in connection with the request for clemency;
   b) While waiting for the decision on clemency, whether the defendant was detained, or he was released from detention or from the beginning the convict was not detained;
   c) Other explanations deemed relevant to the application for clemency.[10]

The reason for granting clemency by the President, which has been regulated by the Clemency Law, which grants clemency on the basis of humanitarian factors and juctice factors, is very

[10] Circular Letter of the Attorney General of the Republic of Indonesia Number: B18/Ep.1/I/1999, 7 January 1999

unreasonable if it is given to convicts of extraordinary crimes, because considering that these crimes have a tremendous effect on the state administration system in this country. The pardon grantedby the President to convicts of extraordinary crimes such as Schapella Leigh Corby, Meirika Franola, and Annas Maamun has raised many questions from the public because it is true that behind the President who has the prerogative to grant clemency to convicts, the public also has the right to ask questions and given education or explanation regarding the granting of the clemency. However, this is actually not regulated in writing in the Act.

As for the humanitarian factor in granting clemency, it is ambiguous because it is not explicitly explained in this Clemency Act, the convict applying for clemency on the basis of being sick asa humanitarian factor, armed with a doctor's certificate, is also considered not fully a benchmark for granting clemency. , but must be thoroughly researched and observed first because the doctor who issued the certificate to the convict was not officially appointed to examine the convict's health condition. Therefore, the provision of a sick certificate given by the doctor to the convict is deemed not to guarantee and it is feared that the examination and issuance of the certificate is not independent.

E. CONCLUSIONS AND SUGGESTIONS

1. Conclusions

Based on the explanation in this thesis, the writer can conclude that regarding the granting of clemency to the convict Annas Maamun who is a convict of a corruption case, Schapelle Leigh Corby and also Meirika Franola who is a convict of a narcotics case, these cases are examples of extraordinary crimes. Although the granting of clemency is legally valid and under the authority of the President, the granting of clemency to convicts of extraordinary crimes is considered to have violated the sense of justice and consistency in terms of eradicating extraordinary crimes and reducing the deterrent effect on the convicts. The existence of the granting of clemency is associated with the deterrent effect of this punishment, basically clemency supports the existence of a deterrent effect which is the purpose of the punishment, but in fact the implementation of the granting of clemency actually reduces the deterrent effect of this punishment, in fact there are convicts who have received clemency by this president continue to commit crimes repeatedly as in the case of Meirika Franola

2. Suggestions

Suggestions that can be given by the author if they can contribute ideas are the need for restrictions regarding the types of crimes that can apply for clemency in the Law on Clemency, namely regarding convicts of extraordinary crimes (Extra Ordinary Crime) so that they can no longer apply for clemency efforts. This is a decisive step for all elements of the nation, both government and society, to eradicate extraordinary crimes, considering that these extraordinary crimes have widespread and systematic consequences on social, economic, political, legal and cultural life in this country. Therefore, extraordinary efforts are needed to eradicate this extraordinary crime**.**

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Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP)

HOUSING SALE AGREEMENT THAT HAS HIDDEN DEFECTS IN TARAKAN CITY

Mardiana

ABSTRACT

This research is a common problem related to the sound of the main contents promised in the case of housing buying and selling not in accordance with what is obtained by the buyer so as to cause criticism from the buyer for what has been promised and about the quality of housing in tarakan city that has been promoted so that it is outlined in two formulations of the problem, namely:
1. Form a housing agreement in Tarakan city Who has a hidden defect 2. A form of protection for buyers against housing purchase agreements that have hidden defects, this study uses empirical methods with qualitative analysis with a approach to facts and legislation, while some sources of legal material from this study are obtained by making direct observationsof the location conditions, conducting in-person interviews and literature studies and documentation studies as obtained by the author, namely as forthe author. hidden forms of defects that occur such as clogged lavatories less powerful installation of roofs, cracked walls, buildings that are less strong and built on land that is easy to longsong so as to cause very seriousdamage and lack of form of responsibility by the developer but currently there are some who do their obligations in accordance with the promisedas for the developer should be responsible in accordance with the rules of the Civil Law Code, Law No.1 of 2011 on Housing and Residential Areas, Law No. 8 of 1999 on Consumer Protection and Residential Sale And Purchase Agreement.

Keywords: Housing Agreements, Hidden Defects, Developers.

1. Background

Housing is one of the basic needs for humans. Housing is a means to provide human primary protection from all disturbances such as bad weather conditions and other disturbances. Nowadays humans can easily buy a house in decent housing for habitation, but there are some things thatare needed to ensure it, which is not yet fully guaranteed, as is the case if there are no hidden defects, hidden defects. itself is something that can reduce the value of the object that is not / conveyed by the developer regarding the location.

In the activity of buying and selling housing units, it is not uncommon for errors or deficiencies to occur in the construction caused by the lack of technical requirements. The technical requirements referred to include, among others, the structure of the building, security, safety, starting from comfort, and others related to a design, including its completeness in the form of environmental infrastructure and facilities and the constraints. There are buyers who just realized beforehand that the goods they bought could not be used for the intended use or reduce the use of the goods. Items in condition

There are several cases that occur in housing developers who make subsidized and non-subsidized housing with lucrative facilities so as to buy with a sale and purchase agreement system without paying attention to the quality and location of the development strategy. Contracts made on credit for the community may increase the usability and circulation of goods, so that with a sales system the possibility of an agreement. An agreement that provides a guarantee in case of hidden defects, Based on articles 1504 and 1506 of the Criminal Code, article 1504 which reads "the seller is responsible for hidden defects in the goods sold, which make the goods unable to fulfill the intended purpose, or something that reduces the use so that the buyer knows that the defect will not buy the goods at all or will not differ at a lower price. And article 1506 which reads "he causes damage to a hidden defect, even though he himself is not aware of that defect, unless he has asked for an agreement that he does not have anything".

In general, the practice of buying and selling housing uses standard agreements. There are several factors that cause standard agreements by business actors, namely:

1. Employers need to prepare agreements in advance to make it easier for providers at all times.
2. Employers enter into standard agreements with the right to regulate management in the event of default in the future.

A sale and purchase agreement for the buyer as a guarantee that the housing that has been purchased will not be sold again by the developer and will later be submitted in accordance with the specified time, there are several cases of housing purchased not in accordance with what is expected by the party buyers who are not in accordance with what is possible in the brochure so that the agreement given to the buyer by the business actor provides legal certainty for the housing.

Based on what has been described above, the authors are interested in taking the title "Agreement for Sale and Purchase of Housing with Hidden Defects in the City of Tarakan" this is due to the many parties whoharm hidden losses, especially for the buyer.

2. Formulation Problem.

1. The form of a housing sale and purchase agreement in the city of Tarakan which has hidden defects
2. a form of protection for the buyer against a housing sale and purchase agreement that has hidden defects

B. RESEARCH METHODS

This type of research is empirical research that is supported by empirical data, namely data and facts obtained in the field which can then be developed and developed based on the law of agreement between the buyer and seller. As for this research, it can be academic which means that it is related to efforts to contribute new ideas for the development of legal science regarding what to do based on. This research was carried out in the North Tarakan district, namely Juwata, precisely at several different points such as in Juwata Krikil and Juwata Indah by taking populations and samples at several strategic points, as for the location based on the author's interest regarding several housing projects that were stopped and the location of construction was less strategic.

1. Nursery Griya Housing
2. Permai Indah Housing 2
3. Housing Enchantment Juwata Krikil
4. Pesona Citra Cemerlang Housing 2

C. THEORETICAL FRAMEWORK

1. General Agreement/Contract.

   General provisions of an agreement contained in the Civil Code in Chapter II Chapter III, while the specific agreements are regulated in Book III Chapter XVII. In Book III Chapter II of the Civil Code, it is entitled "About engagements born of contracts or agreements". The meaning of the word engagement can be found in old sources in Roman law. The first term used was obligare, later known as obligatio which means "to bind oneself".[1] The provisions as referred to in Article 1313 of the Civil Code formulate that an agreement is an act in which one or more people bind themselves to one or more other people.

2. buyer

   The buyer is the party who wants a place that is interested in being interested in the purchase and pays a price that matches the selling price of the housing.

3. Business Actors (Developers).

   Developer comes from the meaning of a foreign language which according to the Big English dictionary means builder or developer. According to article
   5 paragraph (1) of the Regulation of the Minister of Home Affairs Number 5 of 1974 states that the definition of developer is "a housing development company is a company that is engaged in the development of various types in large numbers on an area of land which will form a unit. residential environment equipped with

1 Ridwan Khairandy. Sale and purchase agreement. FH UI Press. Yogyakarta. 2016, p. 2.

environmental infrastructure facilities and social facilities needed by the resident community.

4. Housing area.

According to (Maslow, 2006) states that human needs show a hierarchy from the most basic or basic needs to advanced needs, Maslow's theory explains human needs for shelter, namely as follows: Survival Needs, Safety and Security Needs, Affiliation Needs, Appreciation Needs, and Cognitive and Aesthetic Needs.[2]

5. *Pre-Project Sales*

Pre-Project Sales is the sale of property that is carried out before the construction of a project that is sold only in the form of pictures or concepts, usually the developer does this to find out the marketing response later to be built, while the concept of Pre Project Selling is an experiment in the market to find out how the buyer's reaction or society will be in the offer of housing products offered, all of them have complied with what is regulated in Article 42 paragraphs (1) and (2) of Law Number 20 of 2011 concerning Flats in which these conditions apply. Project Sales.

6. Default

The fulfillment agreement on achievement is the debtor's obligation to fulfill it with responsibility in risking his assets as collateral to fulfill his obligations to creditors. The buyer cannot carry out his achievements or obligations with two possibilities, namely the developer's fault or negligence and Due to human circumstances something happened beyond the control of the buyer. It can be said that the buyer is in default or breach of contract.

2 Suparno Sastra M, Housing Planning and Development, Andi, Yogyakarta, 2006, p. 108.

D. DISCUSSION

1. Form of a Housing Sale and Purchase Agreement in Tarakan City.

In the activity of buying housing itself in Tarakan City using a standard agreement system, namely a preliminary sale and purchase agreement used, namely a standard agreement, it is often used in buying and selling housing transactions in Tarakan City, then the initial agreementis a bad thing but it makes it easier for both parties but as long as the agreement does not harm both parties, the standard agreement is also legal from the legal aspect of the agreement as long as the agreement made by the developer is in accordance with the provisions as stipulated in article 1320 BW. which does not really provide guarantees related to both responsibility in the event of default and the form of responsibility when damage occurs during the maintenance period.

Preliminary agreement or binding in the form of a sale and purchase is carried out based on the applicable provisions, which is carried out to reach an agreement in buying and selling housing carried out by the housing buyer and the housing provider which is known by the agreed party, namely the physical condition of the housing which is sold and reported through promotion media. Which contains the location of housing, land/plot conditions, building specifications, house prices, house shape, house building area, infrastructure, facilities, other facilities, general ultimasi housing, house handover time and settlement of disputes[3], in fact many cause problems, especially in the wishes of the parties the buyer in terms of several voices in the agreement that are not balanced in terms of the occurrence of cases, for example there is an article relating to negligence which only describes in general terms so as to allow negligenceas to what is meant, we also know that all buyers also know that can be used to understand However, on the basis of any conditions, if the standardagreement must really take into account the harmony of the two parties so

3 Interview Results from the Buyers of the Fourth Housing

that no party is harmed, it is also necessary to prioritize the interests of the buyer so that it can be applied effectively in carrying out the sale and purchase of housing, in accordance with the provisions that the business actor must be responsible for providing compensation when something untoward happens with regard to housing quality.

2. Implementation of the Standard Sale and Purchase Agreement for Housing in Tarakan City.

Implementation of the standard agreement, especially the preliminary sale agreement, based on the results carried out in several housing estates in the city of Tarakan on the implementation of the sale and purchase agreement carried out in the city of Tarakan, that the contentsof the agreement contain the rights and obligations of both parties. the insider as a contractual freedom to make an agreement on the other handon the grounds that the freedom is only unilaterally owned by business actors is a violation of consumer rights.

A standard agreement usually has an exoneration clause or a clause contained in an agreement that can be one of the parties from "demands or responsibilities in the future. In simple terms, the exoneration clause is defined as a valuation clause or obligation in the agreement. Overall the results of the interviews that the housing sale and purchase agreement can be implemented are not much different, but some of the contents of the agreement have different forms of arrangement.

3. A Form of Protection for Buyers Against the Sale and Purchase Agreement of Housing With Hidden Defects

In essence, there is a relationship between legal subjects and legal objects that are protected by law and obligations arising from these legal relationships must be protected by law, so that people feel safe in carrying out their interests. This shows that legal protection can be interpreted as a

guarantee or certainty that someone will get what has become his rightsand obligations, so that the person concerned feels safe. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice,

There are several types of hidden defects that have occurred as follows:

No	Types of Hidden Defects	Nursery	Beautiful Game 2	Krikil's Millionaire Charm	Brilliant Image Charm 2
1	Leak roof	V	V	V	V
2	Foundation Down	V	V		V
3	Cracked Wall		V	V	V
4	Floor Down	V	V		V
5	Land long	V	V		V
6	Near the Gorge				
7	NearLand Easy Easy	V	V	V	
	long				
8	Pralon Clogged		V	V	
9	Broken Pralon				V
10	Cracked Floor	V	V		V

11	Water pipe Leak		V	V	
12	near the swamp	V	V		V
13	Easy to flood		V		V
14	WC plugs	V	V		
15	Tap water Damaged		V		V
16	building Collapse		V	V	V
17	on Open/broken		V	V	V
18	Street		V		V

According to the author, another problem that often arises and is very detrimental to consumers is the existence of an ordering fee that is required in advance to consumers before holding a house sale and purchase agreement. Consumers are not given the opportunity to seek information in advance, but are only directed to order without a chance to think. This condition usually occurs when there is an exhibition or promotion event held by the developer. At the time of the promotion or exhibition, the developer usually promises a special discount for exhibition for consumers who directly place an order and provide the booking fee (signature money). With the reason that housing units are limited, consumers without being able to think long are interested in ordering before getting clearer information about housing locations, housing facilities and so on. produce many consumers who feel disappointed after knowing and seeing for themselves in the field. Consumers are compelled to still have to pay the remaining down payment because they have paid a fairly large sign-up fee.

4. Developer's responsibility in dealing with hidden defects.

The developer's responsibilities include the contents of the house sale and purchase agreement between the developer and the buyer regarding the status and availability of the facilities that have been agreed in the agreement clause which is placed on the item of building construction and building maintenance, not many buyers always complain about the agreed housing is not in accordance with what obtained. In the event of a case such as a hidden defect, the developer has an obligation to be responsible for it in accordance with what is stipulated in the Civil Codein Article 1504, namely:

1. The seller is obliged to deliver the goods.
2. The seller is obliged to guarantee the goods from two things,namely:
    1) Guaranteeing a peaceful enjoyment of the goods
    2) Guarantee the existence of hidden defects in the goods.

Article 1491 states that the seller's obligation to the buyer guarantees that the two things sold are safe and that there are no hidden defects in the goods being sold which can give rise to reasons for entering into an agreement, namely that the developer must really guarantee that thegoods being traded or the housing being traded free from all burdens in thesense that there is no dispute over the land and buildings, and must

If one day there is a hidden defect in which the buyer has or does not have the housing article, unless previously agreed that the seller will not guarantee anything, but some of the agreements that the author has observed that the developer tends to narrow the responsibility, there are many that require reasoning and There are many assumptions because the article does not describe the developer, but basically the business actor must be responsible on the basis that the business actor knows this or not because the business actor must guarantee all forms that occur.

Whereas the responsibility for being responsible when there is a breach of contract, such as in the case of hidden defects, the developer will be responsible for regulating more specifically because the buyer is also difficult to understand the meaning and sound of the article in the agreement, there is also a term of maintenance period for hidden defects. The limitation of the period of time set to be taken by the developer in being responsible for hidden defects known as the maintenance period, thismaintenance period can also be referred to as a form of responsibility in connection with the developer's error due to liver damage in building which results in damage or defects. hidden after the occurrence of the problem to the buyer.

As for some in practice, not all with a maintenance period of 3 months, some use a period of 90 days and 100 days, in accordance with the customs where when the agreement states that the sale is obliged to provide maintenance or repairs within the agreed period . Compensation is usually given by the developer in the form of repairing the damage that occurs in accordance with the standard specifications of the building that have been agreed in addition to compensation .loss the developer also conveyed several apologies for the incident.

basically it can be seen from the developer that if there is a housing sale transaction where the seller knows there is a hidden defect in the housing, the seller is obliged to pay the price that has been received and replace all losses and interest costs if the buyer is not aware of the hidden defect. the seller is obliged to return the money for the same item as above. We know that an object of an agreement, in the form of a good achievement in the form of something, does something.

E. CONCLUSIONS AND SUGGESTIONS

1. The agreement used is a standard agreement that has legal force and is binding if it is based on Article 1320 of the Civil Code. As for the

implementation of the housing sale and purchase agreement in Tarakan City with the buyer, not everything is in accordance with what was agreed this can be due to the developer's lack of concern for the buyer and lack of accuracy. the buyer in making the purchase of housing. but it is undeniable that until now there have been many cases related to the contents of the agreement that require the support of the Developer to pay attention to it so that there is no question of the agreement in the sense that the agreement is beneficial for both parties.

2. The protection provided by the developer to the buyer in the standard sale and purchase agreement in the city of Tarakan, both ready-made housing and under construction must properly provide certainty for legal development, even related to this being one of the fundamental problems in housing potential, as for some forms of responsibility developer or form of protection provided when a hidden defect occurs, namely there are several developers who directly respond well to complaints from the buyer for the occurrence of hidden defects.

So far the advice that the author can convey is that the developer must really pay attention to the comfort of the buyer so that when building a housing it is not only the splendor that is the attraction but the correct quality can be proven. to the buyer regarding the standard clauses in the agreement. Especially regarding maintenance time to find hidden defects. Especially for the buyer before making a transaction or even an agreement must first seek accurate information on the housing and make the buyer smart in responding to everything related to housing buying transactions in Tarakan City.

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LAW ENFORCEMENT OF THE CRIMINAL ACTION OF SHIPPING BY SYAHBANDAR AGAINST SHIP SAILING WITHOUT HAVE A SAILING APPROVAL AND NOT SEA WORTH

Mansyur, S.H., M.H;

Zulvia Makka, S.H., M.H;

Mercy Kurniawati, S.H

Faculty of Law, Universitas Borneo Tarakan

ABSTRACT

Indonesia is a maritime country, realizing the importance of transportation and shipping services in supporting the smoothness of domestic and foreign trade, so sea transportation is one of the most important and most appropriate. Sea transportation (ships) is one of the main transportations in this era of globalization. Article 219 of Law 17 of 2008, to carry out shipping activities, every sea transportation (ship) requires a Sailing Approval Letter (SPB) issued by the harbormaster so that it can sail or dock.

This study uses a normative juridical research method, which examines legislation and legal theory related to shipping crimes committed by ship captainswho sail without having an SPB, the problem approach used is the legal approachand the case approach. To answer the formulation of the problem, the responsibility of the captain of the ship for ships that sail without a Sailing Approval Letter (SPB) and is not Seaworthy and the Factors of not issuing a Sailing Approval Letter (SPB)

The captain can be punished if he fulfills the requirements that the criminal act that must be committed fulfills the elements that have been determined in the law. The captain of a sailing ship, without having a Sailing Approval Letter and complete administration, then the captain who is held accountable in accordance with Article 117 paragraph (2) may be sentenced to a maximum imprisonment of3 (three) years or a maximum fine of Rp. hundred million rupiah). Internal factors that are not issued by the harbormaster to the captain of the ship for sailing are as follows: Incomplete ship documents or ship certificates, the ship to be brought according to the harbormaster is not suitable, external factors such as dangerous weather, which if it is possible to endanger the safety of the ship and the captain, passenger goods, and crew (Crews of the Ship), these things for which the harbormaster does not issue a Sailing Approval Letter (SPB) and is not seaworthy for the ship.

Keywords : Harbormaster, Cruise, Captain

Introducion

A. Background

Indonesia has a sea area of 3,257,483km or 2/3 of the total area of Indonesia. From these reasons, sea transportation (ships) has become one of the main transportations in this era of globalization. In accordance with Article 219 of Law Number 17 of 2008, to carry out shipping activities every sea transportation (ship) requires a Sailing Approval Letter issued by the harbormaster in order to be able to sail or dock. Syahbandar according to etymologically consists of the words Syah and Bandar. Syah means ruler, and the word Bandar means: Ports and rivers that are used as shelters or anchoring places, kepil places on the upload bridge and loading bridges, piers, and other kepil places commonly used by people. the ships, as well as the sea area which is intended as a place for ship's kepil, which because of its laden or for other reasons, cannot enter within the boundaries of the common use of berths.[1] Civil Servants (PPNS) KSOP Tarakan.[2]

In practice, there are still many ships sailing without a Sailing Approval Letter and other seaworthy documents, even though every ship used for the public interest must have a Sailing Approval Letter and seaworthiness documents in accordance with the rules or laws that have been issued. there is. SPB is used for supervision carried out by the harbormaster on ships that will sail from the port to ensure that the ship, crew, and cargo technically-administratively meet the requirements of shipping safety and security as well as the protection of the maritime environment.

B. Problem Formulation

From the description of the background, the formulation of the problem to be studied is as follows:

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[1] Bima Setyo Utomo, *Peran Syahbandar Terhadap Keselamatan Pelayaran Di Pelabuhan Tanjung Tembaga Probolingo,* Artikel, 2019, h. 3

[2] https://www.tribunnews.com/nasional/2020/01/26/penegakan-hukum-di-laut-ksop-tarakan-tuntaskan-dua-kasus-pelanggaran-pelayaran, diakses 24 Maret 2020, 22.15 WITA

1. The responsibility of the captain of the ship for ships that sail without a Sailing Approval Letter and are not Seaworthy
2. Factors for not issuing Sailing Approval Letter (SPB)

C. Research Objectives

Based on the formulation of the problem above that has been put forward by the author, it can be concluded that the objectives of this study are:

1. To find out the responsibility of the captain of the ship for ships that sail without a Sailing Approval Letter and seaworthy seaworthy documents
2. To find out the factors causing the failure to issue a Sailing Approval Letter and seaworthiness documents.

D. Research Benefits

The results of the research to be carried out by the author are expected to provide the following benefits:

1. Theoretical benefits, it is hoped that the results of this research can be useful and can increase knowledge for the academy in the development of legal science, especially in the field of shipping crimes
2. Practical benefits, it is hoped that the results of this research can be useful for the community, students and related parties in increasing understanding about martyrdom and criminal acts that occur in the shipping world.

E. Research methods

Legal research is a form of scientific activity that relies on certain methodologies, systematics, and thoughts to study one or more certain legal phenomena by analyzing them.3

1. Research Type

The type of research used is normative legal research, which is legal research that refers to legal norms contained in laws and regulations and court

[3] Zainudin Ali, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, 2016, h. 14

decisions as well as norms that exist in society. Legal research is conducted to create new arguments, theories, or concepts as prescriptions to solve current problems.

2. Problem Approach

The approach used in this research is the Statute Approach, the Conceptual approach and the case approach. And the main approach that will be used is a case approach by looking at examples of cases that occurred in the waters of Tarakan City.

The statute approach is an approach that is carried out by examining all laws and regulations related to the legal issue being researched.

The conceptual approach is an approach that studies views and doctrines to find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issues at hand.

Case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force.[4]

3. Types and Sources of Legal Materials

In connection with the use of the type of research above, the data used are:

1. Primary Legal Material

Primary materials are binding legal materials consisting of basic norms or rules, statutory regulations, uncodified legal materials, jurisprudence, treaties, and other legal materials that are still valid as positive law.

a) Kitab Undang-Undang Hukum Pidana.
b) Kitab Undang-Undang Hukum Acara Pidana.
c) Undang-Undang No.17 Tahun 2008 tentang Pelayaran (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 64, Tambahan Lembaran Negara Republik Indonesia Nomor 4849)

[4] Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, h. 35

d) Peraturan Pemerintah (PP) No.7 Tahun 2000 tentang Kepelautan (Lembaran Negara Republik Indonesia Tahun 2000 Nomor 13, Tambahan Lembaran Negara Republik Indonesia Nomor 3929)

e) Keputusan Menteri Perhubungan RI No.70 Tahun 1998 tentang Pengawakan Kapal Niaga.

f) Keputusan Meneteri No 76 tahun 2018 tentang Organisasi dan Tata Kerja Kantor Kesyahbandaran dan Otoritas Pelabuhan

g) Keputusan Menteri No 6 tahun 2020 tentang Tata Cara Pemeriksaan Kecelakan Kapal

2. Secondary Legal Material

The secondary materials are all publications on law which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and commentaries on court decisions.[5] The secondary legal materials used in this research are textbooks and legal journals.

a) The decision of the Tarakan District Court Case Number 84/Pid.B/2020/PN.Tar

4. Methods and Collection of Legal Materials

The method of collecting legal materials begins with searching for primary legal materials in the form of legislation, as well as secondary legal materials in the form of textbooks and legal journals by means of a literature study, then an in-depth analysis of the legal materials to be used will produce related considerations. with the compatibility between the legal materials obtained and the legal issues raised.

5. Legal Material Analysis

The author conducted an analysis using qualitative analysis methods. Qualitative analysis is used in normative legal research.[6] The reason for the

[5] *Ibid*, h. 181.
[6] Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, 1991, h. 77

author to use qualitative analysis methods on primary and secondary legal materials is because the research conducted by the author is a normative legal research in which the author tries to solve a legal issue based on literature or document studies.

F. Writing Systematics

CHAPTER I : INTRODUCTION

This is the initial chapter in this paper which contains the background, problem formulation, research objectives and benefits, research methods and writing systematics. CHAPTER II : LITERATURE REVIEW

This chapter is an introduction that describes the general understanding of the subject which contains an overview of Shipping, Crime, Harbor Masters, Sea Transportation, Shipping Documents, Sailing Permits (SPB) and Seaworthy Ships.

CHAPTER III : DISCUSSION

This chapter discusses the responsibility of the captain for the occurrence of shipping without a Sailing Approval Document and the factors that occur in shipping violations without a Sailing Approval Letter (SPB) document.

CHAPTER IV : CLOSING

This is the last chapter in writing, which contains conclusions and suggestions. The conclusion contains answers to the problems as written in the problem formulation. Then the suggestions section contains suggestions from the author that are in accordance with the conclusions.

DISCUSSION

A. The Ship Master's Responsibility for Sailing Ships Without Sailing Approval and Not Seaworthy

Perpetrators of criminal acts can be punished if they meet the requirements that the crime they commit fulfills the elements that have been determined in the Act. Viewed from the point of view of the occurrence of prohibited actions, a person will be held accountable for these actions, if the

action is against the law and there is no reason to justify or negate the unlawful nature of the crime he has committed.

Criminal liability implies that anyone who commits a criminal act or violates the law, as formulated in the law, then that person should be held accountable for his actions in accordance with his mistakes.

The captain is a legal subject, which can be called a person. The captain of the ship can be held accountable for criminal acts that have been committed intentionally, where the captain deliberately without having asailing approval letter carries out shipping activities. It has been stated in the law that the captain who sails without having a sailing approval letter issued by the harbormaster shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah).

This responsibility theory is very clear, if a captain who commits a crime or commits an unlawful act (conducting a voyage without an Sailing Approval Letter), will be subject to criminal penalties or sanctions in accordance with existing laws. Where every act committed by everyone, must be held accountable if the act is wrong and includes an act against the law.

B. Factors Not Issuing Sailing Approval Letter

To issue a Sailing Approval Letter, the captain must first meet the administrative requirements that have been determined. If it is not fulfilled then the Sailing Approval Letter) cannot be issued, there are 2 factors regarding the non-issue of the Sailing Approval Letter, namely external factors such as bad weather conditions and high waves, therefore the harbormaster does not issue a Sailing Approval Letter. For internal factors such as incomplete administrative requirements, and the condition of the ship is not declared seaworthy by the harbormaster.

Article 44 of Law Number 17 of 2008 concerning Shipping. Sailing Approval Letter is not given to ships or revoked if the transportation of special goods and dangerous goods is not carried out in accordance with the

provisions of laws and regulations, Article 117 paragraph 2 of Law Number 17 of 2008 concerning the ship's seaworthiness voyage is not fulfilled by the ship in accordance with the shipping area including: the safety of the ship; prevention of pollution from ships; ship manning; ship loading and unloading lines; welfare of crew members and health of passengers; the legal status of the ship; ship management. safety and prevention of pollution from ships; and security management. In addition to the postponement of the Sailing Approval Letter, there is also the exemption of the Sailing Approval Letter which can only be given by the harbormaster to ships sailing within the port limits, ships conducting sailing trials, ships aiming to provide aid assistance and ships stopping at the port due to an emergency. Besides being able to release the SPB, the harbormaster can also revoke the SPB that has been issued if the ship does not sail from the port more than 24 (twenty four) hoursfrom the set refusal time limit, the ship interferes with the smooth flow ofship traffic, and there is a written order from the District Court.

To obtain a Sailing Approval Letter, the captain/ship owner must submit an application to the harbormaster by attaching the ship's seaworthiness document. The harbormaster may delay the ship's departure after the Sailing Approval Letter is issued if the seaworthiness requirements, ship safety and weather conditions can endanger safety. If the delay in the departure of the ship exceeds 24 (twenty four) hours from the set time of departure, the captain/ship owner must submit a letter of request for re- issuance of the SPB to the harbormaster by attaching the reasons for the delayin departure.

Based on the description above, it can be concluded that, in general, the factors are not issued or revoked and the delay in granting a Sailing Approval Letter by the Syahbandar to the captain of the ship to make a voyage because the ship to be carried by the captain does not meet the requirements required by the harbormaster such as ship documents. such, incomplete ship

certificates and natural factors such as unfavorable weather to carry out a voyage.

The next factor is that if the captain of the ship is allowed to sail, it can endanger the safety of the ship and the captain, goods, passengers, and crew of the ship (the crew), the things above that make the harbormaster not issue a Sailing Approval Letter for sailing purposes.

CLOSING

A. Conclusion

Based on the overall description of the research results and discussion of chapter III, several main conclusions are set as follows:

1. The responsibility of the captain of the ship for a ship that sails without a Sailing Approval and is not seaworthy has violated Article 323 of the Law on Shipping. Perpetrators of criminal acts can be punished if they meet the requirements that the crime they commit fulfills the elements that have been determined in the Act. The captain of a sailing ship, without having a Sailing Approval Letter and complete administration, then the captain who is held accountable. Article 302 paragraph (1) of the UUP explains that the captain who sails his ship, while the person concerned knows that the ship is not seaworthy as referred to in Article 117 paragraph (2) can be sentenced to a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 400,000,000 (four hundred million rupiah).
2. Factors that prevent the issuance of a Sailing Approval Letter by the harbormaster to the captain to make a voyage because the ship to be brought by the captain does not meet the requirements required by the harbormaster: Incomplete ship certificates or ship certificates, the ship to be brought according to the harbormaster inadequate, external factors suchas dangerous weather, which, if permitted, could endanger the safety of theship and its captain, passengers, and crew (Crews), these are things that make the porter not issue a Sailing Approval Letter and is not seaworthy.

to sail. Obtaining a Sailing Approval Letter automatically, the conditions that must be met to obtain the permit have met the requirements determined by the laws and regulations so that there is a relationship between the Sailing Approval Letter and sailing safety efforts.

A. Suggestion

Based on these conclusions, the authors provide some suggestions as follows:

1. In order to minimize the negligence of the captain in carrying out his duties, it is better if every ship or sea transportation makes a voyage so that an inspection or check is carried out by the competent authority, if it is found that someone has committed an unlawful act, the captain will be subject to criminal sanctions.
2. When the ship or sea transportation is about to make a voyage, the first request for a Sailing Approval Letter is made at least 1 hour or 2 hours before departure, so that the Sailing Approval Letter can be processed after an officer checks and so that the ship is always in a seaworthy condition. The captain can also play a role in whether or not to continue sailing after the Sailing Approval Letter is issued. In case of bad weather,the captain should postpone departure.

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THE ENFORCEMENT OF CRIMINAL LAW ON THE USE OF THE MALAYSIAN RINGGIT CURRENCY IN NUNUKAN DSITRICT BORDER, SEBATIK ISLAND

Mansyur S.H., M.H.
Inggit Akim S.H., M.H.
Ulvi Permatasari S.H.

Faculty of Law, University of Borneo Tarakan

ABSTRACT

This study was conducted to answer two questions relating to: first, the enforcement of criminal law against the use of the Malaysian Ringgit currency in Nunukan district, Sebatik Island. Second, the accountability of Nunukan district government for the use of the Malaysian Ringgit currency in Nunukan district, Sebatik Island. Third, this undergraduate thesis was a juridical empirical study conducted directly in the field and using primary and secondary data. Primary data were collected from representative office of Bank Indonesia, North Kalimantan Province, the sectorial Police of East Sebatik sub-district, Nunukan district, sub-district office of East, North and Central Sebatik sub-districts. While secondary data were from laws, books, journals, articles and internet data. The results of the study showed that First, law enforcement against violations on the use of the Malaysian Ringgit currency in Nunukan district, Sebatik island was not implemented properly, proven by the lack of causes related to violations on the use of the Malaysian Ringgit currency, due to the police's lack of strict action. Second, the responsibility of the Nunukan District government for the use of Malaysian Ringgit currency in Nunukan District, Sebatik Island through the sub- district office was to inform the society in the form of socialization, leaflets, billboards, and any activities to campaign the love for the Republic of Indonesia, the love for the Rupiah currency. due to the police's lack of strict action. Second, the responsibility of the Nunukan District government for the use of Malaysian Ringgit currency in Nunukan District, Sebatik Island through the sub-district office was to inform the society in the form of socialization, leaflets, billboards, and any activities to campaign the love for the Republic of Indonesia, the love for the Rupiah currency. due to the police's lack of strict action. Second, the responsibility of the Nunukan District government for the use of Malaysian Ringgit currency in Nunukan District, Sebatik Island through the sub-district office was to inform the society in the form of socialization, leaflets, billboards, and any activities to campaign the love for the Republic of Indonesia, the love for the Rupiah currency.

Keywords: Currency, Border, Malaysian Ringgit

A. PRELIMINARY

Money is one of the most important things in human life as a support for the progress of a region for the welfare of society. Generally, money is used to make payment transactions such as electricity, water and other daily household needs. Article 1 paragraph (1) of Law Number 7 of 2011 concerning Currency (hereinafter abbreviated as the Currency Law) states that currency is money issued by the Unitary State of the Republic of Indonesia (hereinafter abbreviated as NKRI) further referred to as Rupiah. The sound of the article above can be concluded that the Rupiah currency is a symbol of the sovereignty of the Republic of Indonesia which of course must be upheld by the value and honor of all Indonesian people so that the international community also believes in the Rupiah currency, by using Rupiah currency as a legal transaction instrument in the territory of the Republic of Indonesia using money. Talking about the Rupiah currency, Bank Indonesia, which has the authority related to the Rupiah currency, of course has an important task in disseminating the Rupiah currency.

Bank Indonesia is the Central Bank which is an independent state institution in carrying out its duties and authorities in accordance with Law no. 23 of 1999 concerning Bank Indonesia and as amended by Law of the Republic of Indonesia No. 6 of 2009 concerning Bank Indonesia. The law provides status and position as an independent state institution in carrying outits duties and authorities, free from interference from the Government and/or other parties, except for matters that are expressly regulated in this law.[1]The status and position given independently are intended to enable Bank Indonesia to carry out its roles and functions as a monetary authority more effectively and efficiently. One of the mandatory tasks of Bank Indonesia in maintaining the stability of the Rupiah exchange rate, as well as maintaining the integrity of the Rupiah currency value in the community, of course, must be conveyed from Sabang to Merauke, especially in remote and border areas. greater than the Rupiah currency that will be exchanged by the public. However, this is not an excuse for Bank Indonesia not to properly distribute Rupiah currency suitable for circulation, sharing information related to the Rupiah currency to the public in order to maintain the integrity of the Rupiah currency at the borders or remote areas of the Republic of Indonesia as a symbol of the sovereignty of NKRI.

Nunukan Regency is one of the regencies in North Kalimantan Province which is directly adjacent to Malaysia. Nunukan Regency was formed on the basis of Law Number 47 of 1999 concerning the establishment of West Kutai Regency, East Kutai Regency, Bontang City, Malinau Regency

[1] https://www.bi.go.id/id/about-bi/profile/Default.aspx, accessed on 08 June 2021

and Nunukan Regency. The formation of Nunukan Regency consists of 5 sub-districts, namely Nunukan sub-district, Sebatik sub-district, Lumbis sub-district, Krayan sub-district and Sembakung sub-district. Nunukan Regency, which borders and serves as a transit point for and in and out of Indonesian Migrant Workers (TKI) in North Kalimantan province, already has a cross-border port that indirectly leads Nunukan Regency as a trade and service area and is a strategic route that connects the region.

The distribution of the Rupiah currency in the border areas, especially the Sebatik Island, is highly considered by the Bank Indonesia Representative for the Province of North Kalimantan. It is an unfortunate problem when the use of foreign currency (Malaysian Ringgit) is still common in the territory of the Republic of Indonesia itself, this is what happened in the Sebatik island region, until now the use of the Malaysian Ringgit currency is common for the surrounding community in all transactions. In Article 21 paragraph (1) of the Currency Law, it is clear that our obligations as citizens of the Republicof Indonesia are obliged to use Rupiah in payment transactions and other payment transactions using money.

1. Enforcement of criminal law against the use of the Malaysian Ringgit currency in the Sebatik Island area;
2. The responsibility of the Nunukan district government for the use of the Malaysian Ringgit currency in the Sebatik Island region.

B. RESEARCH METHODS

In this thesis research, the data that will be used are primary data and secondary data. Primary data was obtained from the field by conducting direct interviews with the informants and through a questionnaire/list of questions by the informants. The method used in collecting secondary data is library research.

The primary data of the research was obtained through interviews with competent sources. Results of interviews conducted laterdone indata analysis using qualitative techniques by outlining the results obtained from the questionnaire in question according to the problems that occur in the field related to the writing done.

The secondary data of this study were sourced from the results of library research are laws and regulations, documents, books, and articles related to research titles and dictionaries, encyclopedias and cases. The data in this study were obtained using two research instruments, namely the collection of relevant laws and regulations and other legal materials related to research through a search of various legal documents and available library data.The laws and regulations related to this research are the 1945 Constitution of the

Republic of Indonesia, the Criminal Code, the Currency Law, PBI Number 17/3/Pbi/2015 concerning the Obligation to Use Rupiah in the Territory of the Republic of Indonesia, Law Number 23 Year 2014 concerning Regional Government and Law No. Number 43 of 2008 concerning the Territory of the State.

C. LITERATURE REVIEW

1. Overview of criminal law against Rupiah

a. Criminal law

Mochtar Kusumaatmadja argues that law is the rules and principles that regulate social relations and are made based on justice. This means that the law is a tool as a protector, prevention and maintenance of order in people's lives. Meanwhile, according to Sudarto, he argues that punishment is misery given by the state to someone who has committed a violation of the provisions of the law (criminal law) on purpose to be given as misery.[2] Criminal law is a collection of regulations that regulate a person's actions, both orders and prohibitions made by the state and threatened with criminal sanctions.[3]

Material criminal law is all the rules that are set to regulate all actions of the entire community in the form of orders or prohibitions that are threatened with criminal sanctions while formal criminal law is a criminal procedural law in which all regulations or legal norms regulate procedures for carrying out and maintaining material criminal law.[4] Criminal law has a purpose as a regulator of society so that the rights andobligations of the community to get a sense of security in carrying outlife in society are protected.

In article 2 of the Criminal Code which reads "Criminal provisions in the legislation with Indonesia are applied to everyone" which in this case Article 2 of the Criminal Code explains that the criminal provisions in the Republic of Indonesia apply to everyone within the territory of the Republic of Indonesia. The implication of the application of the territorial principle is the enactment of criminal law regulations for all who commit criminal acts that occur within the territory of the state.[5]

The conclusion that can be drawn is that criminal law is a collection of regulations governing criminal acts and violations which

[2]Sudarto, Capita Selecta on Criminal Law, Bandung: Alumni, 1981, p. 109-110

[3] Rahman Syamsuddin, Introduction to Indonesian Law, 1st edition of Prenada media Group, Jakarta, 2019, p.60

[4]Umar Said Sugiarto, Introduction to Indonesian Law, East Jakarta, Sinar Graphic, 2013, p. 234

[5]Moeljatno, Principles of Criminal Law, Literacy, Jakarta, 1985, p. 38

constitute public opposition to public order that can harm other people and even the state.

b. Enforcement of criminal law against mandatory the use of Rupiah currency

Law enforcement is an effort to enforce or carry out legal norms in real terms as behavioral guidelines in legal behavior in social and state life. The problem of law enforcement always occurs when there are discrepancy between the legal aspects in the expectations of the applicable law or das sollen, with the aspects of applying the law in reality or das sein.[6]The Indonesian state always upholds the value of justice, to maintain the sovereignty of the Republic of Indonesia. Talking about sovereignty, many things that have been regulated in such a way aslaws and regulations to maintain and uphold the value of the sovereignty of the Indonesian state, one of which is about the Rupiah currency,especially in maintaining the value of the Rupiah currency in the eyes of the people in the country and in the eyes of other countries. In this case, the Currency Law in article 21 paragraph (1) explain the obligation to usethe Rupiah currency in the territory of the Republic of Indonesia in payment transactions and so on related to money, this is regulated because the Rupiah currency is one of the identities of the Indonesian state as well as the Red flag. White and the Garuda Pancasila bird, whosevalues of honor need to be preserved.

"(1) Everyone who does not use Rupiah in:

a. Every transaction that has a payment purpose;
b. Settlement of other obligations that must be met with money; and/or
c. Other financial transactions as referred to in Article 21 paragraph (1) shall be subject to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million Rupiah currency).

Article 33 paragraph (1) of the Currency Law clearly states the criminal sanctions that will be obtained if you violate the rules that have been clearly defined. Criminalization (penalization) is a process of determining an act as something prohibited and threatened with criminal law for anyone who violates these rules, with the occurrence of criminalization, an act or various acts that were not previously prohibited

[6]Ucuk Agiyanto, Law Enforcement in Indonesia: Exploration of the Concept of Justice with Divine Dimensions, University of Muhammadiyah Ponorogo, Ponogoro, 2018, p. 21

and were threatened with crime, are not criminal acts, to be subsequently turned into criminal acts. criminal act.[7]

2. Overview of Indonesian Rupiah and Malaysian Ringgit

a. Definition of Rupiah

According to Article 1 of the Currency Law, money is a legal payment. In this case, of course the whole world uses money as a transaction tool, especially in terms of buying and selling. Currency itselfmeans the unit price of a country's money, each country has a different type and designation of currency, therefore currency becomes a symbol of sovereignty and as an identity for each country. The Rupiah currency is the currency of the Unitary State of the Republic of Indonesia which should be a source of pride for all the people and the state of Indonesia, which in this case is a symbol of sovereignty, therefore strengthening the Rupiah currency in the economic field is very necessary. The Rupiah currency must be used in every financial transaction within the territory of the Republic of Indonesia to strengthen the Rupiah currency in its own country and become the host in its own country.

According to article 1 number 1 of the Currency Law. Currency is money issued by the Unitary State of the Republic of Indonesia, hereinafter referred to as Rupiah. The currency of the Unitary State of the Republic of Indonesia itself is Rupiah currency, in this case in the territory of the Republic of Indonesia it is required to carry out all transactions using Rupiah currency. Regarding the use of the Rupiah currency, its use has been regulated in Article 21 paragraph (1) of the Currency Law which reads:

"The Rupiah currency must be used in: a. every transaction that has the purpose of payment; b. settlement of other obligations that must be met with money; and/or c. other financial transactions conducted within the Territory of the Unitary State of the Republic of Indonesia."

The conclusion from the above article can be stated that the Rupiah currency is one of the symbols of the sovereignty of the Republic of Indonesia which is valuable in Indonesia itself, talking about money is not just buying and selling, accounts payable, and so on but also as one of the most important things that we must uphold in its use.

b. Definition of Malaysian Ringgit

Malaysia is one of the neighboring countries that directly borders with the Republic of Indonesia, talking about Malaysia cannot be

[7] Sudaryono and Natangsa Surbakti, Criminal Law Fundamentals of Criminal Law Based on the Criminal Code and the Draft Criminal Code, Surakarta, 2017, p.104

separated from the word Malaysian Ringgit Currency in this case the Malaysian Ringgit Currency which is the identity of the Malaysian state itself is not a taboo subject among Indonesian people who live in the border areas of Indonesia and Malaysia.

The Malaysian Ringgit currency or also known as the Malaysian Ringgit Currency is the Malaysian currency having the currency code MYR. Malaysian Ringgit currency has fractions into coin fractions starting from small denominations of 1 cent, 5 cents, 10 cents, 20 cents and the largest denomination is 50 cents while the banknote is worth the smallest RM. 1.00 (one Malaysian Ringgit), RM. 2.00 (two Malaysian Ringgit), RM. 5.00 (five Malaysian Ringgit), RM. 20.00 (twenty Malaysian Ringgit), RM. 50.00 (fifty Malaysian Ringgit Currency) up to the largest denomination of RM. 100.00 (one hundred Malaysian Ringgit).[8]

3. Obligation to use Rupiah in the territory of the Unitary State of the Republic of Indonesia

Article 27 paragraph (1) of the Constitution of the Unitary State of the Republic of IndonesiaIndonesia in 1945 stated that:

"All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions"

The article clearly states that every Indonesian citizen are obliged to comply with existing legal regulations, including one of them is the obligation to use the Rupiah currency in the territory of the Republic of Indonesia. The Currency Law regulates everything related to the use of the Rupiah currency in the territory of the Republic of Indonesia itself, in this case it is certainly not a taboo thing for all Indonesian people because this is very, very important for all Indonesian people to know, especially for people who are on the border of the Unitary State of the Republic of Indonesia with other countries.

The use of Rupiah currency must be stated in article 21 paragraph (1) of the Currency Law which reads:

"The Rupiah currency must be used in: a. every transaction that has the purpose of payment; b. settlement of other obligations that must be met with money; and/or c. other financial transactions conducted within the Territory of the Unitary State of the NKRI."

The obligation to use Rupiah currency, there is a policy that can be excluded in terms of payment or for the settlement of obligations in foreign currencies that have been agreed in writing. The policy on the use of Rupiah

[8] https://blog.qelola.com/serba-serbi-mata-uang-malaysia/, accessed on 10 February 2021

currency places a legal obligation for every business actor in the territory of the NKRI to be required to list prices of goods and/or services in Rupiah only and are prohibited from listing prices of goods and/or services in Rupiah and foreign currencies simultaneously. The policy of using the Rupiah currency raises concerns for foreign tourists who come to Indonesia. Foreign tourists are afraid of criminal threats if they use the currency oftheir home country to transact in Indonesia.

The law regulates in such a way the obligation to use the Rupiah currency in every transaction that has the purpose of payment, settlement of other obligations using money in the territory of the NKRI in order to foster the value of Indonesian people's trust in the Rupiah currency which will affect the international community's confidence in the Rupiah currency. and the national economy so that the Rupiah currency has dignity both at home and abroad and the Rupiah currency is maintained stability.

4. Overview of the Territory of the State and the Border Territory of the Unitary State of the Republic of Indonesia

a. Definition of the Territory of the Unitary State of the Republic of Indonesia

Law Number 43 of 2008 (hereinafter abbreviated as Law on State Territories) in article 1 number 1 states that the territory of the state is defined as one of the elements of the state, as a unitary area of land, inland waters, archipelagic waters, and the territorial sea along with the seabed and land. below it, as well as the air space above it, including all the sources of wealth contained therein.[9]

The Unitary State of the Republic of Indonesia is a unitary state, in the form of a Republic.[10] Article 18 of the 1945 Constitution paragraph (1) states that the Unitary State of the Republic of Indonesia is divided into provincial regions, provincial regions are further divided into regencies and cities. Each city/regency and province has a local government which is regulated by law. The State Territory Law in article 3 explains the purpose of the State Territory which in this case is to guarantee the integrity, sovereignty, and manage the utilization of the State Territory.[11]

b. The authority of the Regional Government over the border area

[9] Partnership Partnership, Policy on Management of Indonesia-Malaysia Land Border Area (Evaluative Study in Entikong District), The Partnership for Government Reform, Jakarta, South, 2011, p.11

[10] https://www.merdeka.com/sumut/purpose-nkri-function-dan-latar-back-form-negara-kln.html, accessed on 20 February 2021

[11] Jeanne Darc Noviayanti Manik, Regulation of the Border Law of the Unitary State of the Republic of Indonesia Based on the State Territory Law, Lecturer at the Faculty of Law, University of Bangka Belitung, 2015, p.3

Regional government is the administration of government affairs by the regional government and regional people's representative councils according to the principle of autonomy and co-administration with the principle of the widest possible autonomy. The system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia are clearly explained in Article 1 paragraph (2) of Law Number 23 of 2004 concerning Regional Government.

Article 18 of the 1945 Constitution of the Unitary State of the Republic of Indonesia clearly states about regional government, one of which relates to regional autonomy which is given to provincial and district and city governments who are given the authority to regulate and manage according to the needs of government affairs given their powers. except for central government affairs which are determined by law. Regional governments have the right to form regional regulations and other regulations in carrying out autonomy and assistance tasks according to regional needs.

The city or district area is divided into sub-districts and sub- districts consist of villages or sub-districts. The local government in the sub-district administration delegates the implementation of the responsibility for the sub-district area to the sub-district head. Sub- districts that are included in the apparatus and are responsible to the sub- district are led by the head of the village at the lurah which is explainedin Article 229 of Law Number 23 of 2014 concerning Regional Government.

The regional government has the authority given by the central government to carry out the authority in the context of task assistance in accordance with the laws and regulations described in article 10 paragraph (3) of the State Territory Law. The authority of the regional government is emphasized in article 11 in conjunction with article 12 which explains the authority of the provincial government and district/city regional governments in terms of managing the country's territory and border areas. Assignments for the management of the State and border areas that are given include those related to implementing andestablishing policies in assistance tasks, coordinating development and supervising the implementation of development in border areas.

c. Sebatik Island Border Area with Malaysia

According to Article 5 of the State Territory Law, the border area is part of the territory of the country which is located on the inside along the Indonesian border with other countries, in the case of state boundaries

on land, border areas.[12]With a large number of border areas, the Republic of Indonesia has an interest in maintaining sovereignty from threats from other countries and for the welfare of the lives of its people at the border. As the front porch, the face of the Indonesian border should reflect a safe and prosperous condition. However, the past paradigm that saw the border area as a backyard and the outermost area made its development less attention to the centralistic Indonesian government and people at thattime more concerned with the development of the central area. As a result, the development of border areas in general lags behind other regions of Indonesia. Sebatik Island is one of the areas bordering the mainland with Malaysia. Of course, there is a lot of potential that existsin the border area in the province of North Kalimantan.

D. DISCUSSION OF RESEARCH RESULTS AND ANALYSIS

1. Enforcement of Criminal Law Against the Crime of Using the Malaysian Ringgit Currency in the Sebatik Island Region, Nunukan Regency

Sebatik District with geographical conditions whose land is integrated with neighboring Malaysia, it causes several impacts, among others, the large circulation of Malaysian state goods on the island of Sebatik, there are even a number of buying and selling transactions carried out using the Malaysian Ringgit currency, even though the laws and regulations explicitlystate that the use of foreign currency in conducting transactions aimed at payment, settlement of other obligations using money and/or other transactions in the Unitary State of the Republic of Indonesia.

The use of Malaysian Ringgit currency in the territory of the Republic of Indonesia, of course is a violation of the law because this is clearly regulated in article 33 paragraph (1) of the Currency Law which reads:

"(1) Everyone who does not use Rupiah in:

a. every transaction that has the purpose of payment;

b. settlement of other obligations that must be met with money; and/or

c. other financial transactions

as referred to in Article 21 paragraph (1) shall be sentenced to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million Rupiah currency)."

[12] Partnership Partnership, Indonesian Border Area Management Policy, The Partnership for Governance Reform, 2011, p.5

The obligation to use the Rupiah currency in the territory of the Unitary State of the Republic of Indonesia is one of the government's stepsto maintain the honor and dignity of the Rupiah currency domestically and abroad as well as the stability of the Rupiah exchange rate. The results of direct research conducted by visiting several regional sub-districts on the island of Sebatik, namely Central Sebatik District, North Sebatik District and East Sebatik District. The fact that occurs in the field of using the Malaysian Ringgit currency in the Sebatik Island area is still often found in the community, especially in terms of buying and selling transactions in large shops or small retailers and is considered something normal for the people on Sebatik Island. Habits are certainly not a small problem in society, Continuous omission will threaten the sovereignty of the Republic of Indonesia and the stability of the Rupiah exchange rate. Violation of the law on the use of the Malaysian Ringgit currency is a crime that is categorized as an ordinary offense (gewone delicten), this action is carried out without the condition of a complaint in advance. The absence of a requirement for a complaint in advance for ordinary offenses is of course the basis for the police to take firm action in accordance with existing regulations, not just making efforts that do not have a deterrent effect for thecommunity.

Article 30 of the Currency Law explains that criminal acts against Rupiah are carried out based on the applicable Criminal Procedure Code which reads:

> "Investigation of criminal acts against the Rupiah currency is carriedout based on the Law on Criminal Procedure, unless otherwise stipulated in this Law"

The above article is very clear regarding criminal acts against the Rupiah currency carried out under the Criminal Procedure Code so that dealing with criminal acts against the Rupiah currency is the duty of the competent authorities according to the Criminal Procedure Code and will continue to coordinate and synergize in carrying out law enforcement against the Rupiah currency.[13] One of the law enforcement steps against perpetrators of criminal acts using the Malaysian Ringgit currency is a repressive legal step where this step is a law that is in nature to resolve disputes or legal problems that occur. In this case, law enforcement against the use of the Malaysian Ringgit currency is under the authority of law enforcement officers in the jurisdiction of the Sebatik island, namely the Indonesian National Police or the East Sebatik Police of Nunukan Regency.

[13] Interview results with SP Policy Implementation Unit and SP-PUR Supervision Unit for Bank Indonesia Representative Office, North Kalimantan Province on June 15, 2021

The authority possessed is to take legal action against perpetrators of criminal acts using Malaysian Ringgit currency in the Sebatik island region.

The head of the police for the East Sebatik sector, Nunukan Regency stated that until now the use of the Malaysian Ringgit Currency is still often encountered in the community in buying and selling transactions, of course this is a violation of the Currency Law which explains the obligation to use Rupiah currency in the territory of the Republic of Indonesia and is a However, the Sebatik Timur Police Chief stated that until now there has been no report while in this case the violation of the law against the Rupiah currency is an ordinary offense or law enforcement action from the police to follow up on legal violations that occur against the use of the Malaysian Ringgit currency. criminal sanctions and other types of sanctions.[14]

The police, which are the authorities, carry out repressive law enforcement in taking action against violations of the law that occur against the Rupiah currency, stated that until now in 2021 there have been no reports or cases. The actions taken by the police to date against perpetrators of using Malaysian Ringgit currency have never existed, for several reasons,one of which is humanity towards the community, in this case most of the people who make a living as farmers or agricultural entrepreneurs sell natural resources and for merchants buy merchandise in neighboring Malaysia which in payment uses Malaysian Ringgit currency,

Based on the analysis of the results of the interviews described above that this is a concern because in the absence of cases or reports of criminal acts using the Malaysian Ringgit currency, there are actions that are not in accordance with the regulations in article 21 paragraph (1) of the Currency Law which explains that in all transactions using money in the territory of the Republic of Indonesia, it is obligatory to use Rupiah currency and it is emphasized in article 33 paragraph (1) of the Currency Law that the sanctions that will be imposed if not using the Rupiah currency in the territory of the Republic of Indonesia are sanctions in the form of imprisonment for a maximum of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million Rupiah).

The problem of law enforcement occurs that there are mismatch between the legal aspects in the hope or das sollen, with the aspects of applying the law in the reality of das sein, so that the use of the Malaysian Ringgit currency in the Sebatik island area is not in accordance with therules that have been set. In addition to not complying with existing regulations, the absence of firmness in law enforcement against perpetrators

[14] Results of Interview with the Sebatik Timur Police Chief on May 28, 2021

of law violations by the Sebatik Timur Police does not work properly, in accordance with the authorities stipulated in the legislation. For various reasons, there is no action against the perpetrators of using the Malaysian Ringgit currency, namely humanitarian factors and sociological factors.

2. The Form of Responsibility of the Government of Nunukan Regency, North Kalimantan Province for the Use of Malaysian Ringgit Currency in the Sebatik Island Region

The use of the Malaysian Ringgit currency in the territory of the Republic of Indonesia is not foreign to the people of the Sebatik island region, because this is always found in the community and is a common thing. In tackling the use of the Malaysian Ringgit currency, the Nunukan district government took preventive legal steps, which are steps that havethe aim of preventing violations of the law before they occur. Violations of the law related to the use of the Malaysian Ringgit currency until now there have never been any criminal sanctions or other witnesses applied in the community and related to the rules in the Currency Law which regulates criminal acts of using foreign currency in the territory of the Republic of Indonesia no one knows, as for The socialization received by some people was only related to the mandatory use of Rupiah.

Table 1

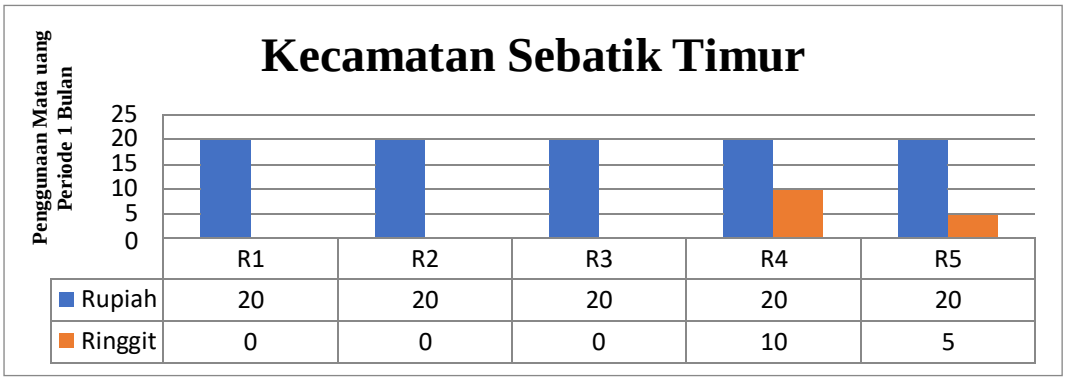
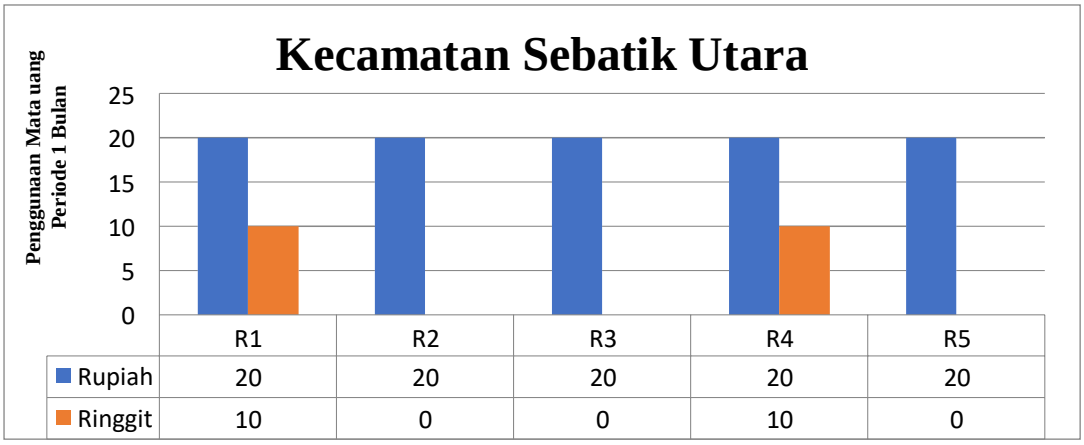
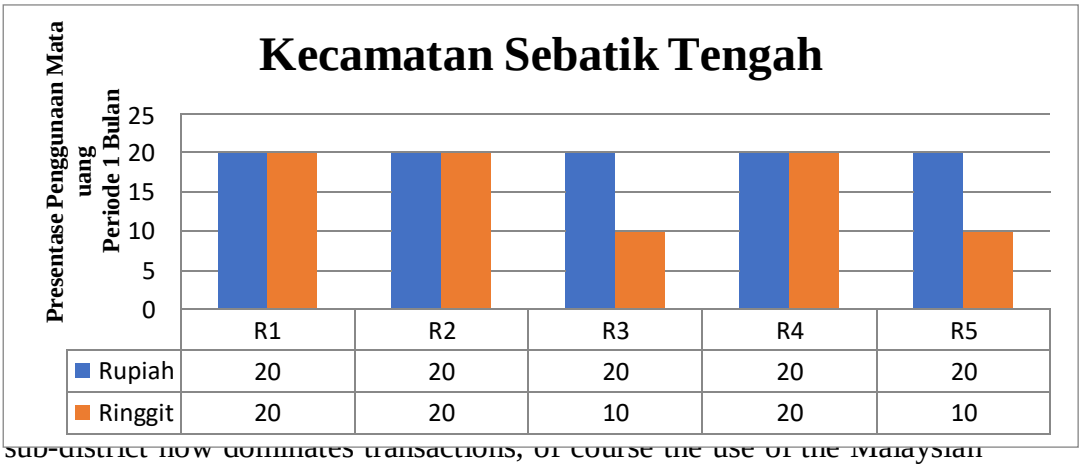


Table 2



Note: Use more than 5 times in a month
Total Usage of 5 Respondents

Table 3



sub-district now dominates transactions, of course the use of the Malaysian Ringgit currency is a violation of the law. The main factor in using the Malaysian Ringgit currency is the distance traveled, of course, the reason for the large number of Malaysian Ringgits being used in the Sebatik island region. In addition, entrepreneurs and traders who are still conducting buying and selling transactions in Malaysia whose payments are made using Malaysian Ringgit currency and still receiving payments and returning the remaining payments using Malaysian Ringgit currency.[15]

The existence of the Malaysian Ringgit currency in the Sebatik island community, as for the form of responsibility of the Nunukan district government to date, can be seen from the results of interviews conducted with several sources, namely the first resource person, Mr. Nunukan Regency and together with Mrs. Hj. Fatmawati, S.ST as Head of Tratib, East Sebatik District, Nunukan Regency, while the results of the interview explained that buying and selling transactions using the Malaysian Ringgit currency were still carried out in the sebatik community, especially in the middle sebatik area which was closer to Malaysia. This is due to several factors, namely, first, the distribution of merchandise is closer to Malaysia than from the center of Nunukan district. Second, this is also because the price of goods originating from Malaysia is cheaper and clearer than the price of goods originating from the center of the Nunukan district which uses Rupiah currency. Third, the profit generated from payments using the Malaysian Ringgit currency is more profitable, in addition to profit in money as well as profit on goods, of course this is what attracts the public,

[15] Result of interview with Sebatik Island Community on 28-30 May 2021

especially traders who still receive and shop using the Malaysian Ringgit currency.

The rules regarding the obligation to use the Rupiah currency in the territory of the NKRI as well as the rules regarding criminal sanctions the local government knows this, however, until now there has never been a criminal sanction in accordance with the laws and regulations. The use of Rupiah currency is sourced from Bank Indonesia and the local government itself facilitates and assists the dissemination of information through leaflets and socialization as a countermeasure to reduce the amount of use of the Ringgit currency.[16]

The second source person, Mrs. Eka Purwanty, SE, who is the Head of Sosek and Revenue of North Sebatik District, Nunukan Regency stated that she stated the same thing as the previous informant, this happened due to several factors, one of which was the large number of merchandise sourced from neighboring Malaysia.[17]Law enforcement carried out on the community in accordance with the rules of the Currency Law itself has never had a criminal sanction. Bank Indonesia has conducted a direct surveyrelated to the use of the Rupiah currency, of course speaking the Rupiah currency will be related to Bank Indonesia because everything regarding theRupiah currency is the authority of Bank Indonesia. The government has provided transportation facilities to meet the needs of Indonesian products on the island of Sebatik. However, Indonesian staple products originating from outside the island of Kalimantan are one of the factors that people continue to use Malaysian state products, due to the distance traveled for thedistribution of Indonesian staple goods, incurring greater costs during the distribution process, This results in the price of Indonesian products being more expensive than Malaysian products. Due to this, the people of the island of Sebatik are more interested in using Malaysian products.

The last source person at the Nunukan district government was Ms. Mardiana, who was the secretary of the Sebatik Tengah sub-district, Nunukan district. The factors that cause people to continue to use the Malaysian Ringgit currency are almost all of the people in the Sebatik Tengah sub-district whose livelihood is a farmer whose results are sold to the Malaysian state, as well as basic daily necessities sourced from Malaysia which are paid using Malaysian Ringgit currency, in addition to community farmers who work for companies in the Sebatik island area, salary payments

[16] Results of an interview with the Head of Social Sector and Revenue of the East Sebatik District on 27 May 2021

[17] Results of an interview with the Head of Sosek and Revenue of North Sebatik District on May 28, 2021

are made using Malaysian Ringgit currency. In contrast to the West Sebatik sub-district where some of the people make a living from PNS (Civil Servants), Bank employees, and others so that their income or salaries are paid using Rupiah currency and the basic goods are sourced from the center of the Nunukan district which is a product of Indonesia, unless they want to buy basic products of the Malaysian state, the people of the West Sebatik sub-district still use the Malaysian Ringgit currency. This is also due to the lack of easy currency exchange services other than banking, which causes ordinary people such as small farmers or workers in oil palm companies to find it more difficult to exchange Malaysian Ringgit currency into Rupiah currency. The steps taken by the local government to date are only by carrying out activities such as activities with the PKK, youth organizations by promoting the Love of Rupiah currency,[18]

Preventive legal steps related to the use of foreign currency in the territory of the Republic of Indonesia were carried out by Bank Indonesia Representative of North Kalimantan Province, Mr. Hari Agung, who is an employee of the Payment System Policy Implementation Unit and Payment System Supervision - Rupiah Currency Management, Bank Indonesia Representative Office of North Kalimantan Province stated several points namely, First, Bank Indonesia Representatives of North Kalimantan Province have disseminated information related to the use of the Rupiah currency in the Sebatik island area such as the Socialization of Love, Proud and understanding of the Rupiah currency including an explanation of the Currency Law until the signing of a commitment to the use of Rupiah in 2017 in Central Sebatik sub-district, Nunukan district.[19]Second, the changes that occurred in the use of the Malaysian Ringgit currency in the Sebatik island region before and after the establishment of the Bank Indonesia Representative office in North Kalimantan Province were the percentage ratio of the use of the Malaysian Ringgit currency and the Rupiah currency. The percentage before the establishment of the Bank Indonesia Representative office in North Kalimantan Province, the use of Malaysian Ringgit currency was 70% and the use of Rupiah currency was 30%, but after the establishment of the Bank Indonesia Representative office in North Kalimantan Province, the use of Malaysian Ringgit currency was 10% and the use of Rupiah currency was 90 %.[20] Third, Bank Indonesia has collected

[18] Results of an interview with the Secretary of the Sub-district of Central Sebatik District on May 28, 2021

[19] Interview results with SP Policy Implementation Unit and SP-PUR Supervision Unit for Bank Indonesia Representative Office, North Kalimantan Province on June 15, 2021

[20] Interview results with SP Policy Implementation Unit and SP-PUR Supervision Unit for Bank Indonesia Representative Office, North Kalimantan Province on June 15, 2021

data on the distribution of Rupiah currency to banks on the island of Sebatik, as an effort to ensure that the need for Rupiah currency in the Sebatik island area is not short, especially in terms of exchanging Malaysian Ringgit currency into Rupiah currency, the proceeds of sales the results of natural resources to the country of Malaysia.[21] Bank Indonesia's regular efforts to reduce the use of the Malaysian Ringgit currency in the borderarea of Sebatik Island.

Based on the analysis of the explanation results from the three sources which representing the Nunukan district government and representatives of Bank Indonesia and the people of the Sebatik island described above, it is stated that until now the use of the Malaysian Ringgit currency in the Sebatik island area is a common thing to do, because people use the currency Ringgit in buying and selling transactions is common. The factors that make people still use the Malaysian Ringgit currency are as follows:

a. The distribution of merchandise is closer to Malaysia than from the center of Nunukan district;
b. The price of goods originating from Malaysia is cheaper and clearer than the price of goods originating from the center of Nunukan district;
c. Profits generated from payments using the Malaysian Ringgit currency are more profitable, in addition to profit on money as well as profit on goods;
d. The distance traveled for the distribution of basic Indonesian products costs more during the distribution process than the price of goods, resulting in higher prices for Indonesian products after arriving on the island of Sebatik compared to Malaysian products; and
e. Lack of easy currency exchange services other than banking, making it difficult for ordinary people who lack information to exchange Malaysian Ringgit currency to Rupiah currency.[22]

The factors that occur are of course very unfortunate, in this case the people of the island of Sebatik are more inclined to trust buying and selling to Malaysia than Indonesia itself. This is of course due to uneven development in terms of adequate facilities for the community, in trusting to carry out buying and selling transactions in the territory of the State of Indonesia itself. Until now, the very rapid development and development on the island of Java is inversely proportional to the border area itself, even though the border area is an area that certainly needs special attention by the government. so that legal violations that occur related to the use of the Malaysian Ringgit currency in border areas, especially Sebatik Island, can

[21] Ibid
[22] The results of interviews with the people of Sebatik Island on 27-29 May 2021

be handled by the Nunukan district government in such a way in accordance with the rules in article 21 paragraph (1) Jo. 33 paragraph (1) of the Currency Law.

The policy of using Rupiah in the territory of the Republic of Indonesia is carried out to stabilize the value of the Rupiah. Since 2011, conditions in the Indonesian foreign exchange (forex) market have been marked by higher demand for foreign exchange, particularly the US Dollar, than supply. The plan to increase interest rates by the Central Bank of the United States (US) or the Fed, has resulted in the US Dollar strengthening against various other currencies in the world, including the Rupiah. On the other hand, in 2005 corporate or private foreign debt amounted to around 80billion US dollars. In 2015, the number increased to around 160 billion US dollars. In addition, the ratio of private external debt payments to export revenues, known as the Debt Service Ratio (DSR), also increased, from around 15 percent in 2007, to around 54 percent in 2015.[23]This condition causes the weakening of the Rupiah's position in its own country. In addition, the purpose of the regulation of Bank Indonesia Regulation Number 17/3/PBI/2015 of 2015 concerning the Obligation to Use Rupiah in the Republic of Indonesia which is a derivative of the Currency Law, is to ensure that all transactions with money in the territory of the Republic of Indonesia use Rupiah. However, there are still some areas that still use foreign currencies, especially the Sebatik island area which still uses the Malaysian Ringgit currency, of course this is one of the causes of thecondition of the Rupiah currency to be weak and the exchange rate to the dollar to be high. In addition, the purpose of the state to regulate this is so that the value of the two countries in the Rupiah currency as one of the identities of the Indonesian state is maintained in respect of Indonesian citizens and in the eyes of other countries.

Article 27 paragraph (1) of the Constitution of the Unitary State of the Republic Indonesia 1945 which reads:

> "All citizens are equal before the law and the government and are obliged to uphold the law and the government with no exceptions."

Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia clearly states that every Indonesian citizen is obliged to uphold the law in Indonesia. The obligations contained in article 21 paragraph (1)of the Currency Law clearly state the obligations of Indonesian citizens to use the Rupiah currency in every transaction using money within the territory of the Republic of Indonesia. However, what happened in the

[23]https://www. Hukumonline.com/berita/baca/lt5639de732a378/demi-kedaulatan-negara--policy-use-rupiah-harus-run/, accessed on 16 July 2021

Sebatik island community did not carry out their obligations in terms of using the Rupiah currency, who can be blamed in this case the community or the government for neglecting the existing rules.

Until now, the efforts made or as a preventive measure for the local government of Nunukan Regency and Bank Indonesia are as follows:

a. Activities to promote the Love of Rupiah currency, Love of the Republic of Indonesia;
b. Dissemination of other information related to the mandatory use of the Malaysian Ringgit currency in the form of socialization, pamphlets, billboards and so on;
c. The signing of the commitment to the use of Rupiah in 2017 in the Sebatik Tengah sub-district, Nunukan district.[24]

Until now, the Nunukan district government has only focused on doing things that do not have a deterrent effect. The theory of legal effectiveness stated by Soerjono Soekanto that one of the efforts that can be done so that the community obeys the existing regulations is to include sanctions, so that it can cause stimulation so that people do not take prohibited actions.[25] Not implementing the laws and regulations that have been regulated in life in society, of course there are things that are wrong, inthis case the Nunukan district government as the government responsible for the use of the Malaysian Ringgit currency, should act decisively in responding to this.

Talking about government responsibilities, article 9 of the State Territory Law explains that the government and local governments have the authority to regulate the management and utilization of state territories and border areas. But why is it that there is only omission from the local government of Nunukan district, who considers this law violation to be just something that usually happens and is a geographical border factor that encourages people to still use Malaysian Ringgit currency, while the laws and regulations clearly give the government authority to manage border areas. . This is unfortunate even though it is clear that the use of theMalaysian Ringgit currency itself is a violation of the law which is regulatedin such a way as to sanction Article 33 paragraph (1) of the Currency Law, namely imprisonment for a maximum of 1 (one) year and a maximum fine of Rp. 200,000. 000.00 (two hundred million rupiah), but there is no clear step from the local government of Nunukan. The explanation of the legal

[24] Results of interviews with local government and Bank Indonesia employees on 27-29 May 2021

[25] Nur Fitryani Siregar, Effectiveness of Law, Lecturer of the Barumun Raya Islamic High School, Padang Lawas, p.6

effectiveness theory states that for a stimulus there must be the inclusion of sanctions, so that people do not do things that are prohibited, of course, this is one of the steps taken by the Nunukan district government, by continuing to socialize and act related to criminal sanctions for the use of Malaysian Ringgit currency. .

This can be done by coordinating with stakeholders and law enforcement officers to create prevention and control over the use of the Malaysian Ringgit currency and to realize the ideals of the Republic of Indonesia itself to maintain the value of sovereignty as a state identity, namely the Rupiah currency in the eyes of the people of Indonesia and othercountries. However, the actions taken by the Nunukan district government in implementing the rules, in accordance with the theory of effectiveness of the Nunukan district government, of course, must also pay attention to the actual goals to be achieved in ways that do not harm anyone.

E. CONCLUSIONS AND SUGGESTIONS

Law enforcement against violations of the use of the Malaysian Ringgit currency on the island of Sebatik has not been carried out properly, as evidenced by the absence of cases related to violations of the use of the Malaysian Ringgit currency to date, which is due to the absence of strict action from the competent authorities, especially from the Indonesian National Police in the area. This, of course, seems that the police are unresponsive and not proactive in tackling the problem of using the Malaysian Ringgit currency in the Sebatik island region. And the form of accountability of the Nunukan Regency government towards the use of the Malaysian Ringgit currency in the Sebatik island region that has occurred in the community until now through thesub-district is only an effort to disseminate information through socialization, distribution of leaflets, baleho, with activities to promote love for the Unitary State of the Republic of Indonesia, love for the Rupiah currency as well as monitoring of staples imported from Malaysia and facilitating the distribution of staples originating from Indonesia with regional capabilities. Until now, Bank Indonesia has always made efforts to suppress the use of the Malaysian Ringgit currency on the island of Sebatik through socialization of the Currency Law and the love of the Unitary State of the Republic of Indonesia (NKRI) to love the Rupiah currency, to promoting the use of Rupiah currency by signinga commitment to use Rupiah currency.

The author's suggestion related to the results of this study is for law enforcement officers as the authorities or those authorized to take strict action in accordance with the rules of the law. Sebatik; and for local governments, in this case the provincial, district, sub-district and their staff, efforts should be made to pressure the public not to use the Malaysian Ringgit currency in

buying and selling transactions, not only providing socialization to the community but also following legal action as referred to in the applicable legal provisions are in accordance with the Currency Law. In addition, local governments can act by establishing regional regulations in accordance with the interests of the community and the state regarding the obligation to use Rupiah currency in border areas, especially Nunukan district along with sanctions that will be applied to anyone who violates these rules. and the provincial government is expected to form a special task force team in dealing with the circulation of illegal products to the province of North Kalimantan so as not to harm the state treasury.

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INCREASING COMMUNITY CAPACITY IN SUPERVISION IN THE SEBATIK LAND BORDER REGION AS A MANAGEMENT IMPLEMENTATION OF THE NATIONAL DEFENSE LAW BY TNI AD

Nurasikin

Eko Antoni Chandra Lestianto

Faculty of Law, Universitas Borneo Tarakan

BACKGROUND

The Border Area is an important area from the defense aspect and national security, considering that the border area is the entrance and exit from Indonesia's sovereign territory, from Sabang to Merauke, both land and sea Indonesia borders several ASEAN countries and other Asian countries, on land Indonesia is bordered by countries such as Malaysia, Papua New Guinea (PNG), and Timor Leste and sea borders bordering 10 countries, namely India, Malaysia, Singapore, Thailand, Vietnam, Philippines, Republic of Palau, Australia, Timor Leste, and Papua New Guinea (PNG).

Understanding of the border area as the entrance and exit as well as areas directly bordering neighboring countries have a degree of potential conflict separately from other countries.[1] This can be classified into several threats that can occur in the border area, namely the field of defense and security or military threats, economic threats, and ideological threats[2], while the problems that can appear in the Indonesian border areas related to security are terrorism, smuggling, illegal logging, human trafficking, illegal trade, deforestation and

[1] Muradi,Pengelolaan Pengamanan Perbatasan Indonesia. Dalam : *Jurnal Ilmu Pemerintahan CosmoGov*. Vol.1 No.1, April 2015, h. 27-28

[2] Chairil Nur Siregar dkk, Ancaman Keamanan Nasional di Wilayah Perbatasan Indonesia Studi Kasus Pulau Sebatik dan Tawau (Indonesia-Malaisya). Dalam : SOSIOGLOBAL : *Jurnal Pemikiran dan Penelitian Sosiologi*, Vol. 4, No.1, Desember 2019, h. 28

forest degradation, economic inequality, and social conflict.[3]

In the era of globalization, this has resulted in a global flow process that penetrates the boundaries of national sovereignty, one of which is the existence of human movement with a certain number of ideas and cultures.[4]

Article 8 Paragraph 2 states that one of the supporting components is: Indonesian citizens who have rights and obligations to defend their homeland other than from the existence of resources and facilities owned by the Indonesian state, further in Law No. 23 of 2019 concerning Resource Management National Defense for National Defense states that citizens as one of the supporting components can be utilized by the state either directly or indirectly not to address threats of a military, hybrid and non-military nature.

With the existence of various potential threats in the border area, it is important to taking into account the possible use of supporting elements found in the area borders, especially its demographic potential and human quality, this potential can become a strategic element in carrying out security and defense in the region border. There is a potential population (demography) that is beneficial from the point of view of national security, it is necessary to have the role of the TNI in develop/empower citizens in supporting national resilience considering that the quality aspect of citizens needs to be improved and can support enforce the national defense law based on Law No. 3 of 2002. Based on Law No. 23 of 2019 it is said that citizens can be fostered and educated in supporting national defense, especially in assisting the TNI in assisting the supervision of the border area in accordance with Article 26 Paragraph 1 were carrying out coaching activities which include (1) socialization; (2) technical guidance and (3) simulation. This is a program in improving the ability of citizens as supporting components in helping enforcethe law of state resilience in accordance with the law No.

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[3] Rahman, Optimalisasi Penyelenggaraan Pertahanan Wilayah Perbatasan Pendekatan Human Security Dalam Rangka Mendukung Ketahanan Wilayah Kecamatan Entikong, Kabupaten Sanggau, Provinsi Kalimantan Barat. Dalam : *Jurnal Ketahanan Nasional*, XIX (1), April 2013, h. 33

[4] Ritzer, Goerge, *Teori Sosiologi Dari Sosiologi Klasik Sampai Perkembangan Terakhir Postmodern*. (Yogyakarta : Pustaka Pelajar, 2010) hal 1001-1002

3 of 2002.

Based on the background of the problems that have been presented above, the writer can formulate the problem as follows: The authority of the TNI in Community Supervision in the Border Area; Relationship between TNI Supervision and National Defense based on the Law Law Number 3 of 2002 concerning National Defense in Border Area.

RESEARCH RESULT

1. TNI AUTHORITY IN COMMUNITY SUPERVISION IN BORDER AREA

A. TNI Strategy in Building Community Capacity Sebatik Land Area in Supporting The Task TNI Supervision TNI Strategy In Building Capacity of The Sebatik Area Community in Supporting The Duty of TNI Supervision

The ability to control the ocean is a very significant thing in Indonesia in the midst of the emergence of a global trend towards the importance of marine areas as a vehicle for achieving and protecting national interests. To guarantee the national interest in the sea, control over the sea (sea control) is an absolute prerequisite in the modern maritime era. Seapower can interpreted as a country that has extraordinary naval power. Seapower also means the ability of a country to use and control the sea (sea control) and prevent the opponent from using it (sea denial).

For archipelagic countries, the sea is a unifying medium nation, resource media, communication media, science development media knowledge and technology, media builds influence, as well as media National Defense. Decades ago, several archipelago kingdoms such as Sriwijaya, Singasari, Malay, Samudera Pasai, Kutai, Bugis and Majapahit have able to show its success to the international world through vision maritime affairs in an effort to unify the territory and control vital routes maritime trade of the archipelago and even the world. This proves the confession regional and global control of the

Indonesian nation's seas. Seapower does not mean only the fleet of warships, but also covers the whole the potential of national sea power such as commercial fleet, fishing fleet, industry maritime services, as well as the maritime community.

Observing the current conditions, seapower Indonesia cannot stand up itself like the era of Srivijaya and Majapahit existed in the ocean. Indonesia's glory as an archipelagic state is largely determined by the concept of the unity of the whole components of national strength in exploring national resources, including marine resources. In terms of defense, strength, and ability Indonesia's defense is determined by its toughness on land, its glory on the ground the sea, and its might in the air. From an economic and political perspective, success as a steady and favorable state is determined by the ability of Indonesia in managing resources and fighting for interests national.

Regional Naval Force Development

The intersection of the protection of national interests in the region has been triggering an increase in defense spending in Asia. On March 7th 2012, Reuters reported a global defense survey that for the first time in centuries, in 2012 budget Asian military spending will surpass Europe.[5] It is further explained that China ranks the first country in Asia in military spending with an estimated expenditure of $89 billion in 2011, it encourage other countries in the region to disburse more funds to finance its defense programs. Some improvements significantly related to the development of naval weaponry that occurred in the area for example is the start of operation of China's first aircraft carrier, Vietnam's procurement of Kilo-class submarines, the addition of warships Philippine Navy of the ex-U.S. Coast Guard added strength Singapore Submarines, as well as the modernization of the Australian Navy through increasing the ability of ships on the water as well as the procurement of new submarines. A brief description of the development of Indonesian naval forces

[5] Lihat Heru Susetyo, *Mengelola Perbatasan Indonesia-Malaysia dengan Pendekatan Keamanan Non Tradisional*, Paper untuk disertakan dalam Lomba Karya Tulis Ilmiah PPI Malaysia, Tahun 2008, hlm.4.

and neighboring countries, namely Australia, China, India, Malaysia, and Singapore.[6]

Border Problem Analysis

In accordance with universal provisions, a country must have people, territory, and government. In the Montevideo Convention on the Rights and Duties of States, 1933, Article 1, stipulated that as a unity, the state must have four qualifications, namely; Have residents fixed boundaries, clear sovereign boundaries, effective governance, and the ability to establish cooperation and relationships with other countries. Referring to the convention, problem analysis borders can be further categorized in three aspects, including; subject/object involved in border issues; space dimension (spatial) where the problem occurs; and based on identification

The problems that occur are as follows:[7]

a. Subject/Object

Subjects/objects involved in border issues are: Government and Society. Referring to the results of the Montevideo convention above (point b), we can see that the boundary setting aspect region, is an important component of a country. It will affect the population, government, and relations country with other countries, especially neighboring countries. Related to the effort that has been done by the government and the condition of border communities;

b. Space Dimension

When it comes to maritime borders, the problems this can occur in coastal or coastal areas (coastal regions), sea level (water surface), in the water (water

[1] [6] Lihat Helen Ghebrewebet: 2006, Identifying Units of Statehood and Determining International Boundaries: A
Revised Look at the Doctrine of Uti Possidetis and the Principle of Self-Determination, Verlag Peter Lang, ISBN 3631550928, sebagaimana dikutip oleh Wikipedia, Uti Possidetis, diakses pada tanggal 11 Mei 2021 dari http:// www.answers.com/topic/uti-possidetis

[7] Irwan Lahnisafitra, 2005, Kajian Pengembangan Wilayah Pada Kawasan Perbatasan Kalimantan Barat - Sarawak, Thesis Master-S2 Pada Program Pasca Sarjana Institute Teknologi Bandung, hlm.i

column), the seabed (sea bed) and the air above it. This should be underlined because often we tend to see maritime boundaries with only one dimension that of course, it will make the solution less sharp.

c. Problem Identification

Maritime borders with neighboring countries have not yet been established resulted in the implementation of the enforcement of sovereigntyand law in the regions the border is in trouble. Especially in carrying out patrols sovereignty and law enforcement in the KRI border areas have difficulty in determining the extent to which patrols should be carried out implemented. Thiscondition is to avoid territorial violations which could happen.

b. Implementation of Community Capacity Building in Supervision of Territory on The Land of Sebatik Island by TNI

Referring to the reality that has been revealed at the beginning, there need to be serious efforts to advance the Sebatik Island area as a front porch Indonesia is in direct contact with neighboring countries. So far, efforts to advance the Sebatik island area are constrained by administrative problems, because the area has the status of a sub- district that is geographically separated by the sea from the parent district. As an area with the status of a sub-district, government officials the bureaucracy on Sebatik Island cannot decide various strategic policies regarding their territory. Everything must be reported in advance to the parent district so that all matters concerning the management of the Island area Sebatik runs slowly. If this condition is allowed to continue, people living on Sebatik Island continue to experience dependence on neighboring countries. They will advance the city in the neighboring country because every day spends their money in the country. The condition of the area that becomes where they live will always be left behind. One way to make Sebatik Island along with the people who live in the area experience progress are by increasing the status of Sebatik which is currently still a sub-district intoa city autonomy. With this status, bureaucratic inaction can be cut off so that they can accelerate in pushing the progress of Sebatik Island.

2. THE RELATIONSHIP OF TNI SUPERVISION WITH NATIONAL DEFENSE BASED ON LAW NUMBER 3 OF 2002 CONCERNING STATE DEFENSE IN THE BORDER AREA

a. Application of Law No. 3 of 2002 on aspects of state defense

The state defense and security system is a defense system that universal nature that involves all citizens, regions, and resources other national resources, as well as being prepared early by the government and carried out in a total, integrated, directed, sustainable, and sustainable development to uphold state sovereignty.[8] Defense and security the state is all efforts to uphold state sovereignty, maintain the integrity of the Unitary State of the Republic of Indonesia, and protect the safety of the entire nation from threats and disturbances to the the integrity of the nation and the state. Then the country's defense and security system is Indonesia is regulated in the 1945 Constitution article 30 paragraph (1) and paragraph (2) as follows: following

1. Article 30 paragraph (1) of the 1945 Constitution

Article 30 paragraph (1) of the 1945 Constitution reads as follows: "Every citizen" The state has the right and is obliged to participate in defense and security efforts country". The contents of this article have the consequence that citizens have the right to and must participate in determining policies on state defense through representative institutions in accordance with the 1945 Constitution and the laws and regulations applicable.

So the participation of citizens in defense and security efforts state security is structured in the concept of defending the country, defending the country in the context This can be categorized in two forms, namely physically and non-physically physical means being ready and responsive to enemy attacks or aggressions that threaten the safety of the state, while non-physical means all efforts made to defend the Unitary Republic of Indonesia Indonesia (NKRI) by increasing national awareness and state, instill a love for the homeland, and play an active role in advancing the nation and the state.

[8] Anggota IKAPI, Undang-Undang Hukum Disiplin Militer, (Bandung : Fokus Media, 2015), cet. ke-1, h. 47

But in reality, the concept of defending the state that was drawn up by the government raises pros and cons among the Indonesian people, the ministry of RI's defense targets 100 million Indonesians to participate in the defense program country for a whole month, various exercises regarding the love of the homeland to physical exercise, the state defense program launched by the government is ongoing until 2025.

The debate about the state defense program that is being discussed by the government at this time this has become a hot issue for some people, the people who are pro-the state defense program responds to state defense as a moment to show patriotic spirit against attacks from outside, while the opposing side respond to state defense as an effort to mobilize the state to involve people into war.

B. Factors influencing the implementation of Law No. 3 Year 2002 concerning National Defense regarding the implementation of national defense Sebatik border community

State defense is defined as the determination, attitude, and actions of citizens orderly, comprehensive, integrated, and continuous which is based on love on the homeland and awareness of life as a nation and state (Winarno, 2013: 228). In the 1945 Constitution of the Republic of Indonesia Article 27 Paragraph 3, it is stated that;

"Every citizen has the right and obligation to participate in defense efforts" Country". Every citizen has the right and obligation to participate in the defense the state as stated in Article 30 Paragraph 1 that; "Every citizen The state has the right and is obliged to participate in defense and security efforts country."

The concept of defending the country can be described physically or non-physically. By physically, namely by taking up arms against attacks or aggressive enemies. Physical state defense is carried out to deal with external threats. Meanwhile, non-physical state defense can be defined as "everything" efforts to defend the unitary state of the Republic of Indonesia by means of increasing awareness of the nation and state, instill love to the homeland and

play an active role in advancing the nation and state".

The manifestation of the effort to defend the country is the readiness and willingness of every citizen-state to sacrifice for the sake of defending the independence, the sovereignty of the state, the unity and integrity of the Indonesian nation, the territorial integrity of the archipelago, the survival and national jurisdiction, as well as the values of Pancasila and the Constitution 1945. The attitude and behavior of defending the country are based on the nationalism and patriotism of every citizen.

To realize the sustainability of the Republic of Indonesia and survival of the nation and state, then the cultivation of national defense in Citizens are the central point that needs to be nurtured and developed. Through the superior quality of citizens of the Indonesian nation can carry out sustainable development and overcome various forms of threats, challenges, obstacles, and disturbances (ATHG) that come from within or outsiders that directly or indirectly endanger the identity, integration and survival of the nation and the unitary state of the Republic Indonesia is based on Pancasila and the 1945 Constitution.

Several serious problems are facing the border areas Kalimantan and the problem are not simple but quite complex and have multiple dimensions. The various problems that need to be attentive and need to be addressed immediately are as follows:

a. The blurring of the borders of the country's territory due to the damage to the stakes in the the border which is a threat of losing the territory of sovereignty;

b. Lack of synchronization of policies carried out in the regions border by government agencies, so it needs to be done more stable and integrated coordination involving many agencies (both at the center and in the regions);

c. The economic development of the Kalimantan border area is lagging behind North causes a high regional disparity when compared with the border areas of neighboring countries (Sabah and Sarawak);

d. Limited basic facilities and infrastructure as well as transportation and

telecommunications on the border of North Kalimantan which caused this area has low accessibility and is isolated from the region surroundings;

e. The low political commitment of the community, the central government, and regions in developing border areas;

f. The level of health, education, and skills of the population in the region North Kalimantan borders are generally still low;

g. Poverty due to the isolation of border areas is the trigger for border crossers to improve their economy;

h. Economic globalization and free trade have led to products the border area of North Kalimantan is claimed as a product of Malaysia.;

i. The unintegrated management of natural resources, especially the area protection and conservation of forests, across countries in cooperation programs bilateral relations between Indonesia and Malaysia resulted in differences in the use of borderland between the two countries;

j. Various good events related to security aspects and politics, as well as violations in management and exploitation of natural resources across national borders, both land and natural resources the sea has caused problems or relationship disturbances bilaterally between countries.;

k. Regional expansion that is not followed by the readiness of infrastructure and facilities infrastructure and apparatus.

The problems that have been identified above have an influence which is very significant to the condition of development and the level of welfare people living in border areas such as Sebatik Island. As efforts to overcome these problems, the government The Republic of Indonesia formulates policies that are adapted to conditions in the border area.

Initially historically and administratively, Sebatik Island is an inseparable part of the district government area Bulungan. In 1999 there was the expansion of Bulungan Regency so that Nunukan Regency was formed which was marked by the issuance of Law No. Law Number 47 of 1999 concerning the Establishment of Nunukan Regency, Malinau Regency, West Kutai Regency, East Kutai Regency, and Bontang. The administrative area of Nunukan

Regency at the beginning of its formation covering the Nunukan District, Sebatik District.

Sembakung District, Lumbis District and Krayan District, The first government on Sebatik Island was in the form of a village with two main villages, namely: Setabu Village and Sungai Pancang Village which are included in the Bulungan Regency, then its status changed from village to sub- district in 1997. In 1999 Bulungan Regency was divided into three regencies, namely: Bulungan Regency, Nunukan Regency, and Malinau District.

Nunukan Regency is an autonomous region that was formed based on Law Number 47 of 1999, several times to expand the district. Specifically, Sebatik District has been divided 2 (two) times, among others based on Regency Regional Regulations Nunukan Number: 03 of 2006 concerning the Establishment of Sebatik District West within the District.

The expansion of the border area carried out on Sebatik Island is indeed only corn, but the hope of this region to be able to develop more fast has great potential. But of course, this expansion program must be supported by the ability and awareness of the people at the border so that they are willing to carryout development programs with the government. Especially in the program to develop the potential of economic resources that are identified very potential, so that the border communities on Sebatik Island are no longer too depends on the supply of necessities from neighboring countries Malaysia.

The border area development policy is part of the the integral part that cannot be separated from national development policies as well as the development policies of North Kalimantan Province in particular. In the context of national development, several policies become reference for the implementation of development in the border area, among others: National Long-Term Development Plan Bill 2005-2025; National Medium Term Development Plan; National Spatial Planning (RTRWN); Draft Decree of the President of the Republic of Indonesia concerning Spatial Planning for Border Areas Country in North Kalimantan.

Therefore, so that the main objectives of development policies can be is realized, it is necessary to improve strategies and change approaches in the implementation of the development process in border areas, especially islands Sebatik. The recommendations from this research that want to be addressed to the North Kalimantan provincial government, among others:

1. The government of North Kalimantan Province should start implementing the model participatory development. A development model that provides space to the community to be actively involved in the development process from the planning, implementation to program evaluation stages development, including the border area development program in the Malindo Sosek cooperation framework. At this point, the government should open a forum for deliberation with the community from the highest level low can take the form of focus group discussions. In the forum community can express their aspirations directly related to their main needs as people living on the border,

this is at the same time a medium for the government to explore potential and direct public interest. Do not stop there, community representatives also need to be present in the process of cooperation negotiations, and then participate in supervising the implementation process of the agreement.

2. The Provincial Government of North Kalimantan as soon as possible to schedule socialization activities for development programs, work results and the latest developments from development programs to the community border areas and government officials in border areas such as Sebatik island. The socialization program can be in the form of oral and written. For socialization verbally by both the central government and the provincial government of East Kalimantan by asking for support from village government officials in border areas by bringing people together, so they can listen direct information aboutthe development process.

CONCLUTIONS AND SUGGESTIONS

1. The issue of borders and outer islands is a complex matter and dynamic. The strategic location provides opportunities for any illegal activities in the border area. The TNI takes this problem seriously because it is a component defense and as an enforcer of Indonesian sovereignty in border areas, TNI realize that the problems at the border and the outer islands do not only have an impact on the task of the TNI but also affects national security as awhole direct. The government's serious efforts, Cooperation, and support from all Relevant stakeholders are needed to manage problems in the borders and outer islands. Through synergistic management, the area borders and outer islands as the homeland of the Republic of Indonesia can improve the standard of living society as well as provide deterrence impact on other countries. Recognizing the authority and capabilities of the TNI and its complexities border issues that must be implemented cross-sectorally, the TNI always fosters partnerships, by embracing and encouraging ministries or related agencies in collaborating to secure the borders of the Republic of Indonesia. Unity This

effort is Indonesia's strength in fencing its territory thus providing a deterrent effect for any attempts to undermine national sovereignty.

2. The border area development policy is an integral part of the cannot be separated from national development policies and policies development of North Kalimantan Province in particular. In context national development, several policies serve as a reference for implementation of development in border areas, including: National Long-Term Development Plan Act 2005- 2025; National Medium Term Development Plan; Spatial Plan National Territory (RTRWN); Draft Presidential Decree of the Republic of Indonesia Regarding the Spatial Plan for the State Border Area in North Kalimantan.

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Legal Analysis of Employment Relations in Individual Companies

Darwis Manurung[1]

[1]*Lecturer, Law Faculty, Universitas Borneo Tarakan, Tarakan,*

darwismanurung226@gmail.com

BACKGROUND

As social beings, humans in fulfilling their life needs always interact, both direct and indirect interactions. This fact is a fact that applies eternally and universally, in the sense that it applies to all times and all nations as a symptom of life that is general and absolute, without being negotiable. Humans arenatural creatures who are weak because they need everything. Indeed, nature and the environment provide it, but it is still raw. For that to be able to meet these needs and desires, it needs to be processed and worked on.

That humans need to work in order to make money that will be used to finance the lives of themselves and their family members, so that by working humans will be able to maintain their existence in personal and social life (social beings). In an effort to earn income to meet the various necessities oflife, everyone will need other people in a relationship to help each other or help each other in giving everything they have and receiving everything that others still need.

A person who lacks capital or income needs a job that can provide him with income, so that he can fulfill all the needs in his life, at least to the extent of his ability. On the other hand, someone who has been classified as a rich person and even if he can be said to have everything he wants, but he is not ableto maintain, care for or maintain it alone. He still needs other people who can care for, maintain and maintain everything that he has and he also still needs thehelp of others to work with him to earn a continuous income to finance and maintain everything he has.

Humans in terms of working to meet needs are not only directed to something that is material in nature, but also spiritually such as ethics, self-

esteem, dignity. However, in the process of interaction or relationships with other human beings (entrepreneurs) there may be a relationship that fills in, helps to help, or on the contrary, destroys each other and threatens the existence of the human being (worker) itself. Therefore, the working relationship needs to be regulated and arranged in such a way, so that peace of mind and work can be realized. Indeed, it must be admitted that concerning working relations, legally, the position between workers and employers is equal because it has become a mandate of the Constitution of the Republic of Indonesia to have equalitybefore the law and the government, but if viewed sociologically, the position of the worker with respect to the entrepreneur is under the worker works under the orders of the employer. Apart from that, another influential factor is the very large number of job seekers each year while the company's ability to acceptthem is actually very limited.

Basically, an employment relationship begins as soon as an employment agreement is agreed upon between the employer and the worker. However, in reality, not every company that accepts new workers makes and signs an employment agreement. Although these workers are given wages every day or every month, these workers are never given a payslip. Even more ironic is when the worker or his family member is sick, all medical expenses or treatment must be fully borne by the worker himself.) even though the workers working in the company come from outside the entrepreneur's family members. Such a relationship is very vulnerable to acts that violate the law because the entrepreneur does not/lack good faith.

Apart from that, in individual companies, it is common practice to have an oral work agreement and even if there is a written work agreement, the work agreement is generally made unilaterally by the employer/entrepreneur in a standard form in the form of a form and its contents contain more disciplinary rules that must be implemented by the employer. the worker. Every worker who wants to work in the company is first asked to agree and sign the standard work agreement. As a standard agreement, it usually contains exenteration conditions that protect the entrepreneur from certain consequences. Furthermore, sole

proprietorships are generally managed directly by the business owner and/or close family members of the business owner and tend to be closed. Based on the background that the author describes, the authors are interested in taking the title of legal analysis of employment relations in individual companies.

LITERATURE REVIEW

Definition of work agreement

Based on Law Number 13 of 2003 concerning Manpower Article 1 number 15, an employment relationship is a relationship between an entrepreneur and a worker/ laborer based on a work agreement, which has elements of work, wages, and orders. According to Iman Soepomo, basically,an employment relationship, namely the relationship between a worker and an employer, occurs after an agreement is made between the worker and the employer, in which the worker declares his/her ability to work for the employer by receiving wages and where the employer declares his/her ability to employ workers by paying wages.[1] Meanwhile, Husni and Asikin also argue that the employment relationship is the relationship between the worker and the employer after the employment agreement, which is an agreement in which the worker binds himself to the employer to work for a wage and the employer declares his ability to employ the worker by paying wages.[2]

Elements of Working Relationship

Based on the definition of an employment relationship, both given by Law Number 13 of 2003 and provided by the doctrine as described above, it can be concluded that there are 4 (four) important elements of an employment relationship, namely:

1. There is a job;

[1] Iman Soepomo. 2003. *Pengantar Hukum Perburuhan (Edisi Revisi)*., Djambatan, Jakarta, hal. 70.
[2] Zainal Asikin., *Dasar-dasar Hukum Perburuhan*., P.T.Raja Grafindo Persada, Jakarta, 1993, hal. 51

2. The existence of other people's orders;

3. The existence of wages;

4. There is a work agreement.

The existence of orders and under orders shows that the relationship between workers/ laborers and employers is a pattern of subordinate relationships. This also proves to us that the relationship between workers/laborers on the one hand and employers/employers, on the other hand, will never take the form of a parallel/coordination relationship. While the existence of work and wages is an essential condition for the occurrence of an employment relationship or work agreement. One of the main obligations/achievements of the worker/laborer to the entrepreneur/employer is to carry out the work that has been agreed upon as well as possible and for the work that has been carried out, the employer/employer is obliged to pay the worker/laborer's wages.

Overview of The Employment Agreement

According to Article 1 point 14 of Law Number 13 of 2003, it is stated that a work agreement is an agreement between a worker/laborer and an entrepreneur or employer that contains the working conditions, rights, and obligations of the parties. Furthermore, in Article 1 point 15 of Law Number 13 of 2003 it is determined that the Employment Relationship is the relationship between the entrepreneur and the worker/laborer based on a work agreement, which has elements of work, wages, and orders. Based on the previously writtenregulations, it can be concluded that the employment agreement that creates an employment relationship has elements of work, wages, and orders.

A work agreement according to article 1601 a of the Civil Code is an agreement in which one party, the worker, binds himself to under his orders the other party, the employer, for a certain period, to do work for a fee. So that according to article 1601 of the Civil Code several special qualifications must

be met to be called a work agreement, namely the existence of work, under orders, a certain time, and the existence of wages. The first two qualifications, namely the existence of work and under orders, show that the relationship between workers and employers is a pattern of subordinate relationships.

To make a work agreement, the provisions of Article 1320 of the Civil Code must be fulfilled, which confirms that a new agreement can be said to be legal if it meets the following four requirements, namely:

1. There is an agreement between the parties who agreed;

This means that the agreement must be an agreement of the parties who made it. The agreement of those who bind themselves means that the work agreement must be an agreement of the parties who make it, namely the employer and the worker.

2. The existence of the skills of the parties who agreed;

Legal subjects who agree must be competent according to law. The ability to make a work agreement is related to the legal principle that everyone is capable of agreeing if he is not declared incompetent by law (Article 1329 ofthe Civil Code). People who are not capable of agreeing according to Article 1330 of the Civil Code are:

a. minors;

b. those who are put under custody (curated);

c. women in matters stipulated by and everyone to whom the law has prohibited making certain agreements;

Furthermore, according to article 1331 of the Civil Code, those who are declared incompetent to agree can oppose the agreement they have made in all matters that are not excluded by law.

3. There are certain things;

What is meant by a certain thing is something that is agreed upon. So it relates to the object of the agreement. The object of the employment agreement is work. The agreement (work) will detail the work to be carried out, work time,

rest time, amount of wages, and others.

4. There is already a lawful cause.

Because in Dutch it is called oorzaak, or in Latin, it is called causa, which means the contents of the agreement. The contents of the agreement made must not be a cause that is prohibited by law and is contrary to decency and public order.

If the conditions or one of these conditions are not met, then in Legal Science, it is distinguished between the Subjective requirements and the Objective conditions. The terms of agreement and skills are included in subjective conditions, which if violated, the legal consequence is that the work agreement can be canceled. While the conditions for the existence of a thing (the object of the agreement) and a lawful cause are objective conditions, which if violated, the legal consequence is that the work agreement is null and void.

The work agreement made to fulfill the requirements in Article 1320 of the Civil Code is binding as a law between employers and workers/workers. Each party must obey and adhere to the work agreement that they mutually agreed upon, and they cannot change or revoke unilaterally all agreements that have been contained in the work agreement unless there are valid and justified reasons by law for that as determined. Article 1321 of the Civil Code is an agreement based on oversight, coercion, or fraud. According to Article 55 of Law Number 13 of 2003, the employment agreement cannot be withdrawn and/or changed, except with the consent of the parties. What is stipulated in Article 55 of Law Number 13 of 2003 is appropriate, because it is in accordancewith the principle of pacta sunt servanda which means that the promise is binding and must be obeyed.

The termination of the employment agreement is regulated in articles 61 and 62 of Law Number 13 of 2003 concerning Manpower. According to article 61 paragraph (1) of Law Number 13 of 2003, there are 4 (four) factors that cause the termination of a work agreement, namely:

1) the worker dies;

2) expiration of the term of the work agreement;

3) there is a court decision and/or decision or stipulation of an industrial relations dispute settlement institution that already has permanent legal force;

4) there are certain circumstances or events that are stated in the work agreement, company regulations, or collective work agreement that can cause the employment relationship to end.

Meanwhile, if the entrepreneur dies, the work agreement does not end. This means that even if the entrepreneur dies, the ongoing work agreement will continue. Likewise, the transfer of rights to the company due to sales, inheritance, or grants also does not terminate the work agreement (Article 61 paragraph (2) of Law Number 13 of 2003). The existence of this provision is of course intended to provide legal protection to workers/ laborers for loss of workdue to the death of the entrepreneur.

Understanding Companies and Entrepreneurs

Company is a term used in the Commercial Code (hereinafter abbreviated as KUHD) and legislation outside the KUHD. However, the KUHD itself does not explain the official meaning of the term company. The definition of a company is officially formulated in Law Number: 3 of 1982 concerning Mandatory Company Registration. According to article 1 letter b of Law Number: 3 of 1982 concerning Compulsory Company Registration, what is meant by the company is any form of business that runs every type of business that is permanent and continuous and is established, works, and is domiciled within the territory of the state of Indonesia, to obtain profit and/or profit.

An entrepreneur is a person who runs a company or orders to run a company. Running a company means managing the company yourself, either by yourself or with the help of workers. This is generally found in sole proprietorships. If the entrepreneur runs the company with the help of workers, then in this case he has two functions, namely as an entrepreneur and as a company leader. If the entrepreneur also functions as the leader of the company, the leader of the company is always identified with the entrepreneur. In carrying

out its activities, entrepreneurs are assisted by entrepreneur assistants, namely everyone who performs actions to assist entrepreneurs in running the company by getting wages. The head of the company is not included in the assistant to the entrepreneur because, as in a sole proprietorship, the leader of the company is also the entrepreneur himself. Business assistants are distinguished between helpers within the company (for example shop assistants, etc.) and helpers outside the company (for example company agents, banks, brokers, and others).

RESEARCH METHODS

The type of research used is normative legal research[3], namely legal research methods to analyze the rule of law, legal principles, and legal doctrines in order to answer legal issues that are the main problems in the research. In this type of research, the researcher examines and analyzes legal theories, legal principles, and what is written in the legislation (law in the book) and legal literature to answer the issues of this research, namely the legal analysis of employment relations in a sole proprietorship.

In this study, the authors use several types of approaches to analyze existing problems in order to answer the problems comprehensively, including:

1. Legislative Approach (The Statute Approach)

The main thing in the statutory approach is that it requires understanding in understanding the hierarchy and principles in statutory regulations. An understanding of the principles of laws and regulations is the main thing in this approach, which is then used as a basis or basis for analyzing laws and regulations related to the problems discussed in this study, namely; Code of Civil law; Law Number 13 of 2003 concerning Manpower;

2. Conceptual Approach (The Conceptual Approach)

The purpose of the researcher in the conceptual approach here is the researcher in examining the main issues in this research, departing or starting

[3] Peter Mahmud Marzuki. 2010. *Metode Penelitian Hukum.* Kencana Prenada: Jakarta. Hal. 35

from the views and theories of civil law contained in the study of legal science.

3. The Comparative Approach

It should be emphasized that the author in conducting research also uses a comparative approach, although in this study it is not intended to completely compare a legal system as a whole. The comparative approach in this study was carried out only as a tool by assessing and weighing the elements of a work agreement or employment relationship in a private company regulated by the Civil Code with Law Number 13 of 2003 concerning Manpower. Departing from the process of reviewing the comparison, it will be used as material for additional considerations or references in research.

Secondary legal materials are all publications on the law that are not official documents. These legal materials include, among others, textbooks, legal dictionaries, legal journals, comments on court decisions. Non-legal materials are materials other than primary legal materials and secondary legal materials. Non-legal materials can be in the form of books on political science, economics, sociology, philosophy, and as well as other writings as long as they are relevant to the research topic, so as to broaden the researcher's horizons.

The technique of collecting legal materials used is the study of literature study documents. Document studies are used by collecting legal materials such as statutory regulations, and relevant reading materials to obtain objective data related to this research problem.

The legal materials that have been collected are then processed and analyzed descriptively with the deductive method, namely by analyzing legal materials and then systematically arranged as an arrangement of legal facts to then be used as a basis for reviewing problem-solving from research[4], namely answering legal analysis. working relationship in a sole proprietorship.

[4] Mukti Fajar ND dan Yulianto Ahmad. 2013. *Dualisme Penelitian Hukum; Normatif dan Empiris*. Pustaka Pelajar: Yogyakarta. Hal 320

RESEARCH RESULT

Legal Analysis of Employment Relations in Individual Companies

Article 1 point 3 of Law Number 13 of 2003 provides the understanding that a worker/laborer is any person who works by receiving wages or other forms of remuneration. Article 1 point 5 of Law Number 13 of 2003 provides the definition of Entrepreneur as:

a. an individual, partnership, or legal entity that operates a self-owned company;

b. an individual, partnership, or legal entity that independently operates a non- owned company;

c. individual, partnership, or legal entity residing in Indonesia representing the company as referred to in letters a and b which is domiciled outside the territory of Indonesia.

Based on the provisions of Article 1 point 3 jo. Article 1 point 5 of Law Number 13 of 2003 as mentioned above is known that a person is called a worker/laborer when he works for wages or other forms of remuneration, and the party who employs the worker/laborer is called an entrepreneur. And the entrepreneur who employs the worker/laborer can be an individual, or a partnership, or a legal entity, either running a business of his own, or running a business that is not his own or representing the owner of an individual company, partnership, or legal entity located in outside the territory of Indonesia. That is, with an authentic understanding of entrepreneur as describedabove, it can be concluded that an individual, partnership, the legal entity is an entrepreneur whether he or she runs a company owned by himself, or whetherhe runs a business that is not his own, or he represents the owner of a company domiciled. outside the territory of Indonesia.

Furthermore, Article 1 point 14 of Law Number 13 of 2003 reads that a work agreement is an agreement between a worker/laborer and an entrepreneur

or employer that contains the working conditions, rights, and obligations of the parties. Work agreements made between employers and workers with objects regarding work give rise to rights and obligations for both parties. Rights and obligations must be fulfilled in order to create a harmonious working relationship. The rights of one party are the obligations of the other party, and vice versa, the obligations of one party are the rights of the other party.

The obligations of workers include: carrying out the work ordered by the entrepreneur personally/not being represented (except with the permission of the entrepreneur), the obligation to obey the rules and regulations made by the entrepreneur/company (including obeying the laws and regulations). While the obligations of employers to workers include: paying the agreed wages on time (the value of these wages must also be subject to the wage determination set by the government), providing rest and leave (maternity and maternity leave for female workers, annual leave for every employee). workers who are already entitled to it), provide care and treatment (to maintain the health of workers, when workers experience illness or work accidents), provide certificates when workers stop working (experience termination of employment with employers).

Article 1 number 15 of Law Number 13 of 2003 reads: Employment relationship is the relationship between the employer and the worker/ laborer based on a work agreement which has elements of work, wages, and orders. From the formulation of the formulation above, it can be concluded that to be called a work agreement, it must meet the following elements:

1. There is a job.

In an employment agreement, there must be a work that is agreed upon (the object of the agreement), the work must be carried out by the worker himself, only with the permission of the employer can order someone else. This is explained in Article 1603a of the Civil Code which reads that workers are obliged to do their work, only with the permission of the employer he can order a third person to replace him. The nature of the work carried out by the workeris very personal because it is related to his/her skills/expertise, then according to

the law, if the worker dies, the work agreement is terminated by law.

2. There is order;

One of the specifics of the employment agreement/employment relationship with other employment relationships (such as doctor and patient, notary with notary service users) is that the worker receives work from the employer, and in carrying out the work the worker is ordered by the employer in the sense of carrying out the work. the worker must submit under orders from the employer. Carrying out work under the orders of the employer is the main obligation of the worker and vice versa is the main right of the employer.

3. The existence of wages;

Wages are very essential in an employment relationship, especially for the worker, because the main purpose of the worker willing to work is to earn a wage in order to support the living and living of the worker along with his family. Paying wages is the obligation of the entrepreneur and vice versa is the right of the worker.

4. There is time.

The time referred to here is primarily to determine whether the working relationship is limited in time (a certain time) or not limited in time (permanent/permanent).

Based on the provisions of Article 50 of Law No. 13 of 2003 concerning Manpower, what is meant by an employment relationship is a relationship that occurs because of a work agreement between the entrepreneur and the worker/ laborer. Article 51 paragraph (1) of Law no. 13 of 2003 concerning manpower stipulates that a work agreement can be made in writing or verbally, only the difference is that a written work agreement as referred to in paragraph (2) must be in accordance with the applicable laws and regulations. The main elements contained in the employment relationship based on Law No. 13 of 2003 concerning Manpower are;

a. agreement;

b. between the worker or laborer and the entrepreneur or employer;

c. contains the terms of work, rights, and obligations of the parties.

Especially for a work agreement for a certain time, the work agreement is made in writing (see Article 57 paragraph (1) of Law Number 13 of 2003). Then, if the working relationship between the worker and the authorities is for an indefinite/permanent time and the entrepreneur does not make a written work agreement, then according to Article 63 of Law Number 13 of 2003 the entrepreneur is obliged to make a letter of appointment for the worker/laborer concerned which at least contains:

a. name and address of worker/labor;

b. date started work;

c. type of work; and

d. amount of wages.

In relation to the conditions for the validity of a work agreement, specifically, it is to follow the arrangements determined by Article 52 paragraph (1) of Law No. 13 of 2003 concerning Manpower which states that a work agreement is made on the basis, namely:

a. Both side agreement

This means that employers and workers, employers and workers must agree/agree, agree on the things that will be agreed upon. What one party wants the other party wants. The worker accepts the offered job, and the employer accepts the worker for employment.

b. Ability or ability to carry out legal actions

Positive law views the ability or ability to make agreements based on a person's age or age. A person is considered capable of making an agreement if the person concerned is of sufficient age. The provisions of the labor law provide a minimum age limit of 18 years for a person to be considered capable of making a work agreement, as stipulated in the provisions of Article 1 paragraph (26) of Law No. 13 of 2003 concerning Manpower. Article 69 of Law No. 13 of 2003 concerning Manpower provides an exception for children

aged 13 to 15 years to do light work as long as it does not interfere with physical, mental, and social development and health. In addition, a person is said to be capable of making a work agreement if the person is not under guardianship, that is, he is not mentally disturbed/healthy.

c. The existence of the promised work;

The existence of agreed work means that certain things are agreed upon. The agreed work is the object of the employment agreement between the employer/employer and the worker. The work is handed over by the employer to the worker to be carried out as the worker receives the handover of the job from the employer. And workers do the work under the orders of employers.

d. The agreed work does not conflict with public order, decency, and applicable laws and regulations.

Whereas therefore a work agreement made by an entrepreneur and a worker may not conflict with the conditions mentioned above, because if the work agreement is contrary to the provisions in paragraphs (1) letters a and b, it can be canceled, while if it is contrary to the provisions in paragraph (1), it can be canceled. paragraph (1) letters c and d then the work agreement is null and void by law.

CONCLUTIONS AND SUGGESTIONS

Based on the results of research and discussion of the formulation of research problems that the implementation of employment relations inindividual companies should still be subject to the provisions/regulations contained in Law Number 13 of 2003 concerning Manpower because individualcompanies are included as entrepreneurs as referred to by Law Number 13 The year 2003.

The research suggests is that because individual companies are more dominated by small and micro businesses, so as to supervise the implementation of working relations by Government Agencies cq. Technical Agencies in the Manpower Sector must be different from medium and large companies

(Supervision is carried out with a pick- up and drop-off system and maximizes coaching). And it is necessary to make regulations at the level of Government Regulations or Ministerial Regulations as legal umbrellas.

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LEGAL ASPECTS OF INFORMATION DATA EXCHANGE ELECTRONIC MEDICAL RECORD AND RECORD ELECTRONIC HEALTH

Nurasikin
Tera Ronggo Priyagung

Faculty of Law, Universitas Borneo Tarakan

BACKGROUND

Advances in Information and Communication Technology (ICT) have experienced very rapid development compared to two decades ago. Two decades ago, people in Indonesia generally see information technology devices as limited standalone computer, nowadays everyone uses a smartphone to get information from outside, communicate with others, share data or files, and so on etc.

Advances in Information and Communication Technology (ICT) in its application has even been able to influence a number of other fields of science in various fields sectors in life because Information and Communication Technology is very helpful in individual and group activities.

In the health / medical field, information and communication technology is one of them used in conducting patient referral service systems, service booking systems polyclinic, electronic medical records, and electronic health records. On record service Electronic medical and electronic health records currently make it possible to perform recording and storage of patient clinical data into electronic media.

The use of information technology in the health sector, especially in medical records electronic health records and electronic health records have become a hot issue considering that on the technology also questions the extent to which personal data is secure patients, but on the other hand there arepositive things that are interesting when the medical record electronic health

records and electronic health records are used continuously and integrated into better health efforts. This is also considered important in countermeasures when a pandemic outbreak occurs in a country. Use information technology in the health sector is organized with the aim of improving the quality of health services. So it can be said that the activities is included in a health effort.

Definition of health efforts based on Law Number 36 the Year 2009 Article 1 number 11 reads "Health efforts are any activity and/or series of activities carried out in an integrated, integrated, and sustainable manner to maintain and improve the degree of public health in the form of prevention disease, health promotion, disease treatment, and health restoration by government and/or society". This is of course in line and becomes part of the mandate of the 1945 Constitution Article 28H paragraph

(1) which reads "Everyone" have the right to live in physical and spiritual prosperity, to live, and to have an environment live a good and healthy life and have the right to health services". Service health provided by the government must be able to facilitate everyone properly and also provide convenience in performing health services public to society. The 1945 Constitution article 28H paragraph (2) reads "Everyone has the right to special facilities and treatment to obtain equal opportunities and benefits to achieve equality and justice".

Efforts made by the government to carry out constitutional orders the 1945 Constitution, especially in the fulfillment of public health, namely: through Law Number 36 of 2009 which regulates the rights and obligations of both the community (especially patients), health workers, and health facilities. Rights and obligations by patients and health facilities have been attempted to increase through various instruments to support the fulfillment of these rights and obligations, but in some cases the right of health workers to obtain information on the health of patients have not received adequate guarantees. Information The patient's health is important because it can be used as material for personnel decision analysis health in providing the best service. On the otherhand, service demands health analysis from the patient and the patient's familyto health workers as well very high. It is at this point how the proportionality

balance becomes the foundation so that there is an ideal and adequate health service contract for all interested parties.

Based on the description described above, then the formulation legalissues, namely Fulfillment of patient health information rights for health workers; Protection of patient health data in the exchange of health information data

RESEARCH METHODS

The type of research used is normative juridical law research. According to Peter Mahmud Marzuki, legal research is a know-how activity in law, not just know-about. As a know-how activity, research law is carried out to solve the legal issues encountered.[1] The purpose of Legal research is to provide prescriptions for what should be done.

The problem approach used in this research is:

i. Conceptual Approach

The conceptual approach is carried out when the researcher does not move from existing legal rules. This is done because it doesn't exist or doesn't exist the rule of law for the problem at hand.

ii. Comparative Approach

The comparative approach is carried out by conducting a study of comparative law. Comparative law studies are activities for comparing the law of one country with the law of another country or the law of a certain time with the laws of another time. The source of legal material used in this research is legal material primary and secondary legal materials.

i. Primary legal materials

Primary legal materials are authoritative legal materials, which means having authority. This legal material consists of statutory regulations, official records, or treatises in making legislation and court decisions.

ii. Secondary legal material

Secondary legal materials are mainly textbooks because textbooks

[1] Peter Mahmud Marzuki, Penelitian Hukum edisi revisi, Kencana, Jakarta, 2005 hal. 60

contains the basic principles of legal science and views classics by highly qualified scholars. In addition to textbooks, other published documents can be used as references, such as: legal dictionaries, legal journals, and commentaries on decisions court.

In addition to legal materials, you can also use non-legal materials such as books on political science, economics, philosophy, culture, or reports and non-legal journals as long as they are still relevant to the research topic.

Primary legal materials and secondary legal materials are collected and analyzed based on the topic of the problem that has been formulated andclassified according to the source and hierarchy to be studied comprehensively.

The collected legal materials were analyzed using the method descriptive analysis with a qualitative approach to primary and secondary materials secondary.

RESEARCH RESULT

FULFILLMENT OF PATIENT HEALTH INFORMATION RIGHTS FOR PERSONNEL HEALTH

Legal Relationship between Doctor and Patient

The relationship created between doctors or health workers with patients based on a therapeutic agreement. A therapeutic agreement is an agreement formed because of the legal relationship between the doctor and the patient. Which What is meant by legal relationship is the relationship between legal subjects or between the legal subject with legal object, which is regulated by law.[2] Relationship of this agreement between doctors as providers of health services and patients as recipients of the health services. This legal relationship can occur because:

1. the existence of a legal basis, namely the legal regulations governing the relationship;

2. Legal events, namely events that have consequences regulated by law,

[2] H. Zaeni Asyhadie, Aspek-Aspek Hukum Kesehatan Di Indonesia, RajaGrafindo Persada, Depok, 2017, hal. 53

namely engagement.

Civil law views that the relationship in a therapeutic agreement is a contractual relationship that results in an engagement (*verbintenis*) between service providers and recipients of medical services. Regarding the achievements of In terms of civil law, it is known that there are 2 (two) types of agreements, namely:

1. *resultaatverbintenis*, which is a type of agreement whose performance is based on work result.

2. *inspanningverbintenis*, which is a type of agreement whose achievements are based on for maximum work.

In the *resultaat verbintenis* agreement, the health care provider will: provide performance in the form of certain results as expected by the patient. In this agreement, the health service provider can be sued if the results promised at the beginning of the agreement did not materialize. Meanwhile, in the spanning verbintenis agreement, the health service provider is not required to provide an outcome that is desired by the patient and his family, considering the results of a medical effort are not can be calculated mathematically (uncertainty) because it is influenced by many factors factors that are beyond the control or reach of the doctor.

Leenen[3] argues that based on the principle of self-determination determination) and the principle that everyone is responsible for himself own, then every citizen has the right to determine whether to utilize medical services that have been provided by the government or not. By Therefore, if someone comes to a doctor or health worker to take advantage of available medical services, then the action is based on responsibility for one's health.[4] This is where the principle of a cooperative relationship between doctor and patient,and is not buying and selling when the patient come to ask for help from a doctor or health worker then a contract occurs unwritten.

However, there can also be a contractual relationship in which the patient

[3] Leenen H, J.J, Lamintang, P.A.F, *Pelayanan Kesehatan dan Hukum*, Bina Cipta, Jakarta, 1985, h. 53 dalam Moh. Hatta, Hukum Kesehatan & Sengketa Medik, Liberty, Yogyakarta, 2013, Hal. 127
[4] Moh Hatta, Hukum Kesehatan & Sengketa Medik, Liberty, Yogyakarta, 2013, h. 127

enter into an engagement not with a doctor or health worker directly, but with the hospital as a health service institution, so that the hospital participates aswell as in providing health services to patients.

Forms of Protection for Health Workers

As a state of law, everything in Indonesia must be based on the law (legality principle). Health workers who carry out health services in hospitals are regulated and protected by law. Legal protection applied to every citizen asa form of protection of their rights human rights to legal provisions that may violate the rights individually.

According to Julius Stahl, the concept of a rule of law with the term 'rechsstaat' includes: four important elements, namely: (1) protection of human rights, (2) distribution of power, (3) government based on law, (4) administrative court country. The elements and principles of the new rule of lawinclude 4 (four) things including the following:[5]

1. recognition, respect, and protection of rooted human rights in respect for human dignity;
2. the application of the principle of legal certainty, the rule of law to guarantee that legal certainty is realized in society;
3. the application of equality in a state of law, the government may not privileges certain people or groups or discriminates certain people or groups;
4. The principle of democracy in which everyone has the right and the same opportunity to participate in government or to influence government actions.

A state of law can run properly when pay attention and understand that humans in their lives must will behave and interact with other humans. So in the interaction social life requires a code of conduct or also known as with the rules or norms so that there is no form of relationship that can cause negative consequences that can harm others or may lead to an advantage on the one hand.

[5] Maskawati dkk, Hukum Kesehatan Dimensi Etis dan Yuridis Tanggungjawab Pelayanan Kesehatan, Litera, Yogyakarta, 2018, Hal. 32

Doctors or health workers in carrying out their practice, in accordance with the rules or legal norms that apply in Indonesia need to be protected by regulations applicable laws. Forms of legal protection for doctors or staff health is poured into the legislation obtained from the norms or rules that apply in society.

Legislation relating to energy protection current health services include:

1. Law Number 4 of 1984 concerning Infectious Disease Outbreaks
2. Law Number 29 of 2004 concerning Medical Practice
3. Law Number 36 the Year 2009 concerning Health
4. Government Regulation Number 10 of 1966 concerning Mandatory Keeping Secrets Medical
5. Regulation of the Minister of Health Number 269/MENKES/PER/III/2008 concerning medical records

Patient Health Information Rights

Patient health information can be seen in medical records and health records electronic. Definition of the medical record as stated in Permenkes No. 269/MENKES/PER/III/2008 concerning Medical Records, namely "medical records are files" containing records and documents regarding patient identity, examination, treatment, actions, and other services that have been provided to patients. Meanwhile, according to Garrett, as quoted by Sintak Gunawan, said that health medical records are electronic files that contains all the treatments and examinations the patient has undergone, for example: visits to primary care clinics, specialist clinics, hospitals, or laboratories clinical.[6] Based on the above definition, any form of medical or patient health information listed by a competent health worker as part of the protection law to patients and health workers themselves in case of problems lawsuit.

There is a legal relationship between the patient and the doctor or health worker inside it. This legal relationship gives rise to the rights and obligations of each individual patient, doctor or other health worker. Patient has rights and obligations as also regulated in Articles 52 and 53 of the Law Number 29 of

[6] T Sintak Gunawan dan Gilbert Mayer Christianto, *Op.Cit*, h. 27

2004 concerning Medical Practice. While the rights and obligations of doctors regulated in Articles 50 and 51 of Law Number 29 of 2004 concerning Practices Medical.

In a legal relationship between a patient and a doctor, the patient has the right to the other is to get complete information and explanation from the doctor about medical action that at least includes a diagnosis and procedure for action medical treatment, the purpose of the medical action taken, alternative other actions and risks, risks and complications that may occur, and the prognosis for done. The patient's right to obtain information from a doctor is described in Various implementing regulations that guarantee patient rights include:

1. PP Number 10 of 1966 concerning the Obligation to Keep Medical Secrets
2. PP Number 67 of 2019 concerning Management of Health Workers
3. Permenkes Number 269/MENKES/PER/III/2008 concerning Medical Records The implementing regulations above guarantee the patient's right to obtain

information from a doctor or health worker. Information conveyed from doctor to patient is the basis of the existence of an informed consent agreement.Informed consent is the patient's consent to be treated or treated by a doctorafter the patient is given sufficient explanation by the doctor regarding various matters such as: diagnosis and therapy.[7] An informed consent agreement is considered valid if the doctor has provided clear information to the patient for the medical action to be taken done. If the doctor is considered lacking or does not provide information in providing such information, as a result, there is a possibility to face the risk of lawsuits against the law in civil cases, cases criminal and disciplinary action.

On the other hand, the doctor's right to obtain information is different patient health as stated in Article 50 of Law No. 29 of 2004 concerning Medical practice. The doctor's right to patient health information has not been obtained further arrangements in its implementation. In this regard, information The

[7] Syafruddin & Ghansham Anand, "Urgensi *Informed Consent* terhadap Perlindungan Hak-hak Pasien", *Hasanuddin Law Review*, Vol. 1 Issue 2, Agustus 2015, h. 166

patient's health is very much needed by doctors in conducting analysis and action to be taken along with studying the risks involved.

Speaking of justice, John Rawls in his work, A Theory of Justice, Community is a form of cooperation, but it is also competitive and even undermines each other. This fact provides room for the concept of justice, how regulate the lives of individuals who are different and have the same own interests, so that they can work together to benefit each other and not harm other parties. The principle of justice states that two principles must be balanced, namely the principle of equal liberty and the principle of inequality, whereas the four proposed interpretations are natural freedom, free equality, aristocracy nature, and democratic equality.

According to Rawls, the principle of equal liberty, that everyone has the same basic freedoms. Those basic freedoms include (1) political freedom, (2) freedom of thought, (3) freedom from action arbitrarily, (4) personal freedom, (5) freedom to own wealth. While the principle of inequality or the principle of difference, where power and welfare is equally divided except that inequalities will generate mutual benefits and all have equal opportunities in reach higher positions.

The first principle is considered more than the second principle, meaning that the first must not be defeated because to fulfill the second principle and the principle of The first one should not be misinterpreted. On the one hand, the second principle divided into two formulas, namely (a) benefits for everyone,
(b) greater openness same. Formula (a) can be further divided into two possibilities: efficiency and differentiation, Similarly, formula (b) can also be divided into two possibilities, namely the equation of career opportunities open to the talented and equal in quality of opportunity fair. Based on these four possibilities, there are four interpretations of justice, namely: natural freedom, free equality, free aristocracy, and democratic equality. This democratic equality is the best interpretation of the justice system, and Rawls hopes that this system of democratic equality can be guidelines for creating an enabling framework for justice as honesty.

PATIENT HEALTH DATA PROTECTION IN EXCHANGE PATIENT INFORMATION DATA

Legal Aspects of Medical Records in Health Law

In a legal relationship between patients and health workers (doctors, nurses) or health care facilities, it is known that there is evidence that contains: everything related to actions taken by health workers of patients being treated is known as Medical Records. A medical record is a file containing records and documents regarding the patient's identity, examination, treatment, action, and services that have been provided by health to patients.[8] Medical records as stated in the Minister of Health Number 269/MENKES/PER/III/2008 can be used for maintenance patient health and treatment, evidence in the law enforcement process, discipline medicine and dentistry and the enforcement of medical ethics and medical ethics dentistry, educational and research purposes, basic health care costs, and health statistics data.

According to article 46 of Law Number 44 of 2009 concerning Hospitals, hospitals legally responsible for all losses caused by negligence committed by health workers in hospitals. Legal responsibility hospitals in the implementation of health services to patients can be seen from the aspects of professional ethics, administrative law, civil law, and criminal law. Actions carried out by health service facilities, namely having to record the patient identity, examination, treatment, action, and other services to patients.

So the medical record also includes the type of patient and even the history of the disease the patient's family who is the reference for healing the patient's illness that has to do with hereditary diseases, for example. Then it means that the patient's and family's secret is there in the medical record. The secret belongs to the patient who isin the medical record file made by health workers. With regard to the confidential nature of the contents of medical records, there are several rights that is a juridical manifestation of the nature of

[8] Tiromsi Sitanggang, "Aspek Hukum Kepemilikan Rekam Medis Dihubungkan Dengan Perlindungan Hak Pasien",
Jurnal Penelitian Pendidikan Sosial Humaniora, Vol.2 No.1 Mei 2017, Hal. 199

the secret itself, including the right to privacy, the right to access patients, the right to medical secrets, and the right to refuse to disclose medical secrets.

Patient Health Data Protection

Along with the development and advancement of technology, it also has an impact on in the world of health. This is mainly to the form of a service system that given to patients, hospitals, doctors or other health workers. Included in the activities of managing health information, several service agencies Healthcare providers are starting to apply electronically so that the management of patient health data can be done more effectively. Ideas on healthinformation management patients who receive treatment at several health care institutions are not new thing. Existing health care agencies have now done management of patient health information by storing data on lab results, archives about treatment and so on.[9] However, these data are only managed on each agency in the form of paper-based conventional records.

Several health service agencies have transferred data media patient health from paper to digital media. The health service agency also started to make records Electronic Health Record (EHR) or Health Record Electronic data containing patient demographics, medical and drug history, information diagnostics, vital signs, medical history, laboratory data, and radiology reports. But now in Indonesia in particular, in general the information management system Patient health is still carried out independently at each health agency even the standard of information storage database is also not the same between service agencies health. Management of health information that has been carriedout in Indonesia today namely in the form of an integrated referral information system (Sisrute).

The integrated referral information system (Sisrute) is a technology application internet-based information that can connect patient data from the service level lower to a higher or equivalent service level (horizontally or

[9] Royal College of Nursing, Policy and International Department. Personal Health Records and Information Management Helping Patients, Clients and Their Parents/ Carers to Make The Most of Health Information. London : Royal College of Nursing, 2014, h. 3-4

horizontally) vertical) with the aim of simplifying and speeding up the patient referral process. The basis for implementing the referral system in Indonesia has been regulated in the guidelines regarding the referral system based on the Minister of Health of the Republic of Indonesia Number 001 of 2012 concerning the Individual Health Service Reference.

As for the integrated referral information system (Sisrute) as listed:

in article 15 of the Minister of Health Number 001 of 2012 concerning the Service Referral System Individual Health states that the referral cover letter made by a referral and will be given by the recipient of the referral at least containing the patient's identity; results of the examination (history, physical examination, and investigations) which has been done; working diagnosis; therapy and/or action that has been given; referral purposes; and the name and signature of the health worker who provided service. The contents contained in the integrated referral information system (system) is part of what is also stated in the contents of the medical record as contained in Article 3 of the Minister of Health Number 269/MENKES/PER/III/2008 concerning RecordMedical. Fill in medical records for inpatients and one daycare at least contain the patient's identity; date and time; history taking, including at least the complaints and history of the disease; results of physical examination and medical support; diagnosis; management plan; treatment and/or action; approval of action when necessary; records of clinical observations and treatment outcomes; discharge summary; the name and signature of the doctor, dentist, or certain health workers who provide health services; other servicesthat carried out by certain health personnel; for dental case-patients equipped with clinical odontogram. Data entered in the integrated referral information system (Sisrute) is part of the same data as the data in the patient's medical record, so it can be it is said that the data entered into the integrated referral information system (Sisrute) also needs to be protected against the confidentiality of its contents just like medical records.

One of the legal grounds for Permenkominfo Number 20 of 2016 is: PP Number 82 of 2012 concerning the Implementation of Electronic Systems and

Transactions has been revoked and replaced by PP Number 71 of 2019 concerning Operation of Electronic Systems and Transactions.

Establishing a therapeutic contract between the patient and the doctor or health worker certain, it will create a legal relationship for the parties, one of the other in the form of the right to be kept secret about the state of health including the medical data it has, it is related to the existence of patient's medical record.[10] According to Hanafiah, secrecy is defined as hiding something that only one or a few people or certain groups can do know it.12[11] Meanwhile, confidentiality is protection against medical records and other patient information by safeguarding the patient's personal information and service. This information in health services is only intended for competent health workers.[12]

The thing of concern is the integrated referral information system (Sisrute) connected in a computer communication network so that legal protection of the confidentiality of patient data becomes very important considering the security gap in the transmission of data between networks is possible.

A few things to note regarding the manufacture and implementation electronic medical records and electronic health records according to Sintak Gunawan and Gilbert Mayer is as follows :[13]

1. Doctor-patient relationship
2. Privacy, confidentiality, and security
3. The culture of applying electronic medical records and electronic health records
4. Patient safety
5. Use of electronic medical records and electronic health records for other interests

Another thing that needs to be considered and is still an obstacle in the development and the application of electronic medical records and electronic

[10] Triana Ohoiwutun, Bunga Rampai Hukum Kedokteran, Bayu Media, Malang, 2007, h.7
[11] Indriyanti Dewi, Etika dan Hukum Kesehatan, Pustaka Book, Yogyakarta, 2008, h.254
[12] Budi Sampurna, dkk, Pedoman Manajemen Informasi Kesehatan Di Sarana Pelayanan, Universitas Indonesia, Depok, 2008, h. 10
[13] T Sintak Gunawan dan Gilbert Mayer Christianto, *Op.Cit*, h. 29

health records in Indonesia is the existence of obstacles such as the quality of knowledge of Human Resources will Information Technology that continues to develop, the latest infrastructure supporting Technology Information that has not been spread evenly in Indonesia and the geographical conditions of the region in Indonesia are diverse.

The legal basis for implementing regulations used by the referral information system integrated system (Sisrute) namely Permenkes Number 001 of 2012 concerning Referral System Individual Health Services. As for the Permenkes, it does not base on Law Number 11 of 2008 concerning Information and Electronic Transactions where this law regulates the use and development of Information Technology in Indonesia.

In accordance with the definition in Article 1 Numbers 1,2,3, and 4 of Law Number 11 In 2008, Article 1 numbers 1,2,3,4 and 5 of the Minister of Communication and Informatics Number 20/2016, Article 1 number 1Permenkes Number 269 Year 269/MENKES/PER/III/2008, and see Minister of Health Regulation Number 001 of 2012 concerning Health Service Referral System Individuals, it can be concluded several things as follows:

6. Medical records can be classified as electronic documents in which contains electronic information in the form of patient clinical history data;

7. an integrated referral information system (Sisrute) as the implementation of Permenkes No. 001 of 2012, using existing informationtechnology to support the system and in it, there are electronic transactions because there is a legal action that is transmitting clinical history data patient.

CONCLUTIONS AND SUGGESTIONS

The rights and obligations of the patient have been regulated as stated in article 52 and 53 Law Number 29 of 2004 concerning Medical Practice. Regulation the implementation that specifically regulates the rights of patients in obtaining the health information that the patient needs has been regulated in the derivative regulations such as Government Regulation Number 10 of 1966 concerning Mandatory to Keep Medical Secrets, Government Regulation

Number 67 of 2019 concerning the Management of Health Workers, and Regulation of the Minister of Health No 269/MENKES/PER/III/2008 concerning Medical Records. Meanwhile, the rights and obligations of doctors are regulated in Articles 50 and 51 of the Law. Law Number 29 of 2004 concerning Medical Practice. One of the rights of doctors is to get healthinformation from patients for data support in analyzing the patient's medical history. However, the implementation of the rules that regulate how to fulfill the right to health information for doctors has not been regulated; The existing laws and regulations in Indonesia are not yet specific and comprehensive in protecting the privacy rights and personal data of a person as rights that should be protected by the constitution. Relevant regulations in the exchange of patient information data such as health laws and the law on information and electronic transactions has not been able to guarantee implementation of an individual health service referral system that is realized in the current Integrated Referral System (Sisrute) where This system can become the forerunner of the electronic medical record and medical record system electronic health remembers the data entered into the system related to patient data. Regulations relating to data protection currently contained in PP 71 of 2019 concerning System Implementation and Electronic Transactions and Permenkominfo Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems. The rules alludes to the protection of personal data on a limited scale, namely within the scope of systems and electronic transactions, while the true protection of personal data need to have a wider scope.

Regarding the suggestion, regarding the context of the theory of justice, each human being has have their interests, but can be managed to run together with mutual benefit and no harm to each other. Regulations regarding thepatient's right to obtain health information or information about the medical action to be taken by the doctor is necessary balanced with the laws and regulations governing the right to information doctor regarding the patient's medical history and implementing regulations concrete to provide a precise analysis of the disease or patient complaints. Information obtained by doctors or

health workers relating to patient information is expected to be able to have an impact on better patient health as well as for protect doctors or related health workers from malpractice or errors in the medical treatment of patients; To guarantee the protection of human rights related to privacy and personal data, the Government of the Republic of Indonesia needs to formulate the existenceof legislation that guarantees this. Human rights should not be violated even by the state by some exceptions as mentioned at the conclusion point. Settings regarding the protection of privacy rights and personal data necessary considering the development of such information technology rapidly. Other scientific fields are helped by developments in information technology. The development of information technology also has an impact on the world field health. Indonesia has regulations regarding medical records, however there is nospecific regulation regarding electronic medical records until at this time so that it is also necessary to make legislation that protect patient data in electronic medical records. Another thing that needs to be input is the existence of agencies/institutions/ the agency that handles and guarantees the implementation of laws and regulations related to the protection of personal data.

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PROTECTION OF SONG OR COVER SONG ON SOCIAL MEDIA NETWORKS

Rauva Alfrida Qirom

Faculty of Law, University of Borneo Tarakan, Jalan Amal Lama Number 1, Tarakan, North Kalimantan

Abstract

One of the developments of the era is the discovery of the internet. The internet has a role in providing information and disseminating someone's creations related to the music industry in investing, part of Intellectual Property Rights (IPR). Sing it back cover song through social media platforms, especially Youtube. In this case, the issues raised are 1. The use of copyrighted songs or cover songs on social media networks is associated with related rights. 2. Legal consequences for copyrighted songs or music is sung cover songs on social media networks again. This study aimed to determine the use of copyrighted songs or cover songs on social media networks associated with related rights. 2. To determine the legal consequences of copyrighted works of songs or music that are sung cover songs again on social media networks.

This research was conducted with a normative type of research with a Statute Approach, a State Case Approach, and a Conceptual Approach.

Based on the study results, it was concluded that singing back a song (cover song) could be an act that violates copyright if the cover song is done for commercial purposes and the Creator and related parties object to it. The legal consequences of cover song activities are when The creator and related parties object to their song being re-sung to sue the performer of the cover song with a lawsuit for compensation or a criminal case.

Keywords: ***Copyright, Cover Song, Social Media***

INTRODUCTION

In response to the rapid developments in the world, it is answered that technology that makes speed in the practicality of human life is growing. This can be seen in the daily lives of humans who never escape the use of technology in cellphones, laptops, etc. The role of technology in life is about practicality and has provided the best solution in overcoming the limitations of distance and time. And one of the technologies that make things easier is the invention of the internet.

The internet has become the communication tool of choice that can meet the demands of the global community for the presence of faster, effective, and cheaper communication and the need for the most actual information acquisition. Meanwhile, using the internet has helped humans in various fields, looking for information to buy and sell transactions. In addition, the internet also has a role in providing information and disseminating someone's creations related to the music industry in investing, which is part of Intellectual Property Rights (IPR).

The concept of Intellectual Property Rights (IPR) is a form of appreciation for the results of human creativity both in the form of inventions (inventions) as well as the results of works of art and art (art and work). The scope of Intellectual Property Rights (IPR) consists of Copyright and Related Rights, Trademark Rights, Patent Rights, Industrial Designs, Layout Designs of Integrated Circuits, Trade Secrets, and Protection of Plant Varieties. The previous statement shows that copyright is a right owned by the Creator of his creation, provided that it has been ratified under the provisions of the legislation. Some things that are protected by copyright are science, art, and literature.

Copyright is the exclusive right of the Creator that arises automatically based on declarative principles after work is realized in a tangible form without reducing restrictions by the provisions of laws and regulations. Some of the exclusive rights of the copyright holder are the right to make copies and reproduction of the work and sell the documents, create derivative works of the work, display or hold an exhibition of the work in public, sell or transfer the exclusive rights to other people or parties. Then it is explained that copyright consists of economic rights and moral rights. Economic rights are an essential part of copyright that develops and advances in technology, especially technology in multiplying creations. The thought arises that creating is the same activity as other fields of work, which should produce material. Therefore, if moral rights reflect the Creator's personality, economic rights may be a reflection of the needs of the Creator, both physical and spiritual needs.

The use of internet technology has also facilitated various fields of work, one of which is the music industry. With the internet, record companies can easily promote their job as for what needs to be done by maximizing social media networks to introduce the created works. However, apart from providing benefits, this convenience also provides disadvantages. One of the activities that caused the loss was that many parties sang back songs that were already popular or known as cover songs and then uploaded them on various social media networks. Social media networking sites often used to upload cover songs include Youtube, Soundcloud, iTunes, or Spotify. Music is the content most frequently sought after by the public through social media, both from the original Creator and versions from other people or a cover song.

With this situation, to increase their popularity, not many cover song performers upload their work on social media networks to show their work to the public. Because through social media networks, people will more easily see the results of the upload. As for these uploads, it is not uncommon for someone to become famous and provide income for the performer of the cover song. Because it's so easy to become famous nowadays, everyone is competing in making cover songs of songs that are currently popular or songs that have been popular for a long time.

The cover song is not an act that violates the law. Still, it will be categorized as a violation if the cover song actor disagrees with the songwriter. After the song is re-sung, the cover song actor gets economic benefits from the cover song. Many of the resulting cover songs have become more famous than the songs the original singer had sung so that the performers of the cover song try their luck by singing the music in the hope of becoming more famous and benefit from the cover song that is sung without being understood that it has violated the economic rights of the Creator of the song sung by the cover song actor.

The previous statement describes the events that have happened to Indonesian musicians. A song from the Payung Teduh music group, entitled Akad, was sung by several parties. "Akad" is one of the Payung Teduh music group singles that has successfully broken into the Indonesian music market. The song once occupied the first position in the Indonesian music charts and became the most popular single from Payung Teduh's previous songs. Because it is very famous, the performer of the cover song also chose "Akad" as his flagship song. Not infrequently, the cover versions of "Akad" songs are considered more and more enjoyable. One of them is a cover song sung by Hanin Dhiya. The video cover song "Akad" version of Hanin Dhiya was uploaded on Youtube and watched by 31 (thirty-one) million viewers. This is in contrast to the number of viewers of Payung Teduh's original music video

managed by 22 (twenty-two) million. In addition to uploading to the social media network Youtube in the form of videos, Hanin Dhiya also uploaded his version of the cover song to the iTunes and Spotify sites without the permission of Payung Teduh.

As for cover songs performed for commercial purposes, simply including the name of the original singer on the cover song is certainly not enough to avoid lawsuits by the copyright holder. To not infringe the copyrights of others, to produce, record, distribute and-or announce a song belonging to others, especially for commercial purposes, one needs to obtain a license (license) from the Creator or copyright holder. There are three licenses not to violate the copyright of the original musician, namely the Mechanical Rights, the Announcement Rights, and the Synchronization Rights. Mechanical Rights relate to the arrangement and reproduction of works. Announcement Rights explain that the songs performed are the work of others, and Synchronization Rights are to use themes in films or advertisements.

Youtube allows cover songs to be circulated in terms of legality, as long as the copyright holder allows it through a Youtube Content ID system. This system will analyze every video uploaded to Youtube to determine whether a video contains copyrights ranging from audio recordings, compositions to videos. Furthermore, Content ID will claim the cover video and provide profits on the video to the copyright holder. Content ID also gives copyright holders the freedom to block, mute audio, and limit the area to access the cover video.

Based on the description above, the author is interested in researching and discussing "Protection of Copyrighted Songs or Music Resung (Cover Song) on Social Media Networks."

FORMULATION OF THE PROBLEM

Based on the background above, some problems can be formulated as follows:

1. Copyrighted songs or cover songs on social media networks are associated with related rights.

2. Legal consequences for the copyrighted works of songs or music sung again on social media networks.

DISCUSSION

A. Use of Songwriting or Cover Song on Social Media Networks

The act of singing cover songs is included in arrangement arrangements described above by the Copyright Act and applicable laws and regulations. The Copyright Law itself

does not prohibit the practice of music arrangement, which is carried out by any party in Indonesia, with a sign of paying attention to the background of the act, which is based on a show of good faith. It's an act of stupid cover done by the other party is an act that must be based on good faith, but many people make cover jokes who still sing that song repeatedly without the consent of the Creator of this song. This is a violation of copyright because it is contrary to the Copyright Law. However, in practice, it is still carried out by several parties in creative distribution.

This happens because there are many Creators or Copyright Holders whose works are re-sung and then commercialized by other parties but do not state that their rights are not protected. The cover is certainly not enough to evade copyright holder lawsuits. To not infringe on the copyrights of others, to produce, record, distribute, and publish a song belonging to others, especially for commercial purposes, one needs to obtain a license. Licensing, in general, can be interpreted as giving permission; this is included in an agreement. Right from the creator/copyright holder as follows:

1. License above Mechanical Rights, i.e., the right to copy, reproduce, re-arrange and record a musical composition/song on a CD, recorded tapes, and other media recordings; and or

2. The right to announce(performing rights), that is, the right to assert a live song/composition, including singing, playing, whether in the form of recordings or i-shows i-live (live), i.e., through the internet, via media live id and music programmable services.

With a license, the Creator will get economic benefits in the right of the song he created, known as the songwriter's legal term.

The use of copyrighted songs or re-sung music (cover songs) on social media networks associated with related rights is an act that violates copyright or may not constitute an act that infringes copyright. Often the act of singing again (cover song) presents music with the same lyrics but with some arrangements from the performer of the cover song. The act of arranging a piece can change some of the elements of the music but does not eliminate self-identity or moral rights. However, setting themes can cause the cover song to be more exciting and famous than the original singer. So with this fame, the cover song actor gets several benefits, including the economic benefits obtained from broadcasting institutions, in this case, social media such as Youtube. Often this cover song action is done without first asking the songwriter's permission. The arrangement of a copyrighted work is required to obtain the permission of the creator or copyright holder, because the arrangement of the works is an activity included in the

economic sector. Publishers are also one of the disadvantaged parties because they do not get royalties due to song reruns. After all, the cover song actor does not include a license to YouTube social media or good faith carried out by the cover song actor. If the Creator and related parties object to the existence of the cover song, then the act becomes an act that violates the copyright. However, suppose the cover song is not commercial, and the Author or related parties do not object. In that case, covering the music is not an act that violates the copyright. As in Article 43 letter d of Law Number 28 of 2014, which states that "The creation and dissemination of Cipa Rights content through information and communication technology media that are non-commercial and beneficial to the Author or related parties, or the Author expresses no objection to the creation of Copyright © 2011 Unikom Center and dissemination." However, the performer of the cover song must still pay attention to and respect the rights of the Creator and related parties.

The law by-law No. 28 of 2014 concerning copyright brings new advances in copyright protection; an ID in Article 1 paragraph 1 states that: "Copyright is an exclusive right i. by the provisions of the laws and regulations."

The problem of song copyright often arises because of the progress and development of technology. It is no longer difficult to access or retrieve songs or music from social media. So that with the development of technology, it means making everything easy to be duplicated and taken by everyone to be used in various interests, without the Creator's knowledge. As a result of the peak popularity of the cover song compared to the original singer, this is also detrimental to the singer and several parties related to the music, one of which is the Publisher. With this incident, the royalties that this related party should have received have been lost because there is no good faith basis to implement it.

B. Legal Consequences Against Songwriting or Music Re-sung on Social Media Networks

The act of uploading songs on social networks is the right of everyone freely and independently, but if someone uploads a song video via Youtube without permission from the Creator, either with the aim not for commercial or for commercial purposes, it is a copyright infringement. The act of announcing a song that is said not to infringe copyright is when the uploaded music is the national anthem according to its original nature or has not been modified. For the actions of this uploader, the Creator can file a civil lawsuit in the form of a claim for compensation and a criminal suit.

This is by Article 96 paragraph (1) of Law Number 28 of 2014 concerning copyright, where creators who feel their economic rights have been harmed are entitled to compensation. The Creator files a civil lawsuit in the form of a claim for payment to the Commercial Court by Article 100 paragraph (1) of Law Number 28 of 2014 concerning Copyright. Compensation that can be requested for copyright violators based on Article 99 paragraph (2) of Law Number 28 of 2014 concerning Copyright is in the form of a request to provide the income earned to the Creator, either partially or entirely. In addition to claims for compensation based on Article 99 paragraph (3) of Law Number 28 of 2014 concerning Copyright, copyright holders can apply for a request to confiscate the work produced and stop the announcement, copying, or distribution of the work produced, which is called an interim decision.

And by Article 105 of Law No. 28 of 2014 concerning Copyright, the Creator can also sue criminally. Suppose the uploader uploads a video via Youtube without permission from the Creator for commercial purposes. In that case, it can be subject to criminal sanctions according to Article 113 paragraph (3) of Law Number 28 of 2014 concerning copyright, which can be imprisoned for a maximum period of 3 years and/or fine with a maximum amount Rp. 500,000,000.00 (five hundred million rupiahs). Apart from Law Number 28 of 2014 concerning Copyright, legal protection for songwriters for their songs uploaded on Youtube also gets protection from the Youtube site. Youtube's legal protection for creators is regulated in Youtube's policy regarding copyright, which can be viewed on the Youtube site itself. However, the legal protection provided by Youtube is still weak.

In Youtube's policy to protect the rights owned by the Creator, Youtube regulates when uploading works bound by copyright, such as songs, so that they do not violate copyright. The creators themselves can upload them. If other parties want to upload a video song, they must have permission from the Creator. Still, this provision does not become a barrier for the uploader because when a Youtube user uploads a piece belonging to someone else, the song's video can still be uploaded without the requirement of proof as to the Creator or having obtained permission from the Creator.

In addition, to protect Copyright, Youtube also regulates assistance and troubleshooting when copyright infringement occurs. The service provided is that Youtube will delete videos uploaded without permission from the Creator or have violated copyright. However, this will only be done by Youtube when Youtube receives a notification of a copyright infringement. The copyright holder sends this notification by filling out the form provided on the Youtube

website. This results in weak legal protection for creators on the Youtube site because if there is no reporting and proof from the copyright holder, the video that violates the copyright will still be seen and heard by Youtube users.

Uploading video songs to the Youtube site without permission from the Creator is a violation of the economic rights of the Creator. As a means of providing information in the form of videos, Youtube should act more firmly in making rules for uploading a video so as not to violate copyright. Currently, anyone can upload a video to the Youtube site, and any video can be uploaded even if it turns out to be copyright infringement. This, of course, is very detrimental to the Creator.

Broadcasting of video songs uploaded without permission from the Creator by this Youtube site can result in the Youtube site being closed in its entirety so that no one can access it; this is by Article 54 and Article 55 of Law Number 28 of 2014 concerning Copyright. Based on Article 54 of Law Number 28 of 2014 concerning copyright to prevent copyright infringement through internet media, the government is authorized to:

a. Supervise the creation and distribution of copyrighted content;

b. Cooperation with various parties both from within and from abroad; and

c. Supervision of the act of recording with any media on the work.

And based on Article 55 of Law Number 28 of 2014 concerning copyright, anyone who knows of a copyright infringement through an electronic system for commercial use can report it to the Minister who administers government affairs in the telecommunications and informatics sector. Reports received will be checked. Commercial users here mean the direct commercial use (paid) and the provision of free content services that obtain economic benefits from those who benefit from the use of copyright. When sufficient evidence is found, the Minister in charge of governmental affairs in the field of telecommunications and information technology may close the entire youtube site so that no one can access it.

According to Article 58 paragraphs (1) and (2) of the Copyright Law, it is stated that copyright protection for songs or music is valid for the life of the Creator and is calculated from the time the announcement is made and continues for 70 (seventy) years after the author's death. It starts from January 1 of the following year.

A work that has been registered means that whose name is in the general register of copyrights is considered as the Author or Copyright Holder, unless proven otherwise. As long as there is no lawsuit and the claim has not been established, the person whose name is registered in the general register of works is still considered as the Creator or Copyright holder, the author whose name is registered in the public register of the work develops a disability, and he becomes the Creator or the holder of the copyrighted work or the creation, after being proven through a court.

This is by what has been regulated in Article 1865 of the Civil Code, where the party who argues must prove what the arguments for his lawsuit are. One way to establish a proposition about rights and obligations in a dispute in court is regulated in Article 1866 of the Civil Code, one of which is documentary or written evidence. So as the Creator, until there are parties who can prove otherwise in court. The burden of proof in court rests on the other party's shoulders, not on the party who has registered the copyright.

A. CONCLUSION

The use of copyrighted songs or music that is sung again (cover songs) on social media networks associated with related rights is an act that violates copyright or may not constitute an act that infringes copyright. Suppose the cover song is done for commercial purposes without the author's permission or related parties, and they object to the existence of the cover song. In that case, the act of covering the music becomes an infringement that violates the copyright. However, if the cover song is not done for commercial purposes and the Creator and related parties do not object, then the act of covering the music is not an act that violates copyright As in Article 43 letter d of Law no. 28 of 2014, which reads "The creation and dissemination of Copyright content through non-commercial information and communication technology media and benefits the Author or related parties, or the author expresses no objection to the design and dissemination.

The legal consequences of copyrighted songs or music that are re-sung on social media networks are unlawful acts if the performer of the cover song does not have a permit/license in advance because it can violate the economic rights of the Creator and related parties. One example is the act of uploading cover songs on Youtube. As for uploading a video of a cover song, it means that the performer of the cover song announces or is broadcasting a work. This will be unlawful if it turns out that the upload was made for commercial purposes and the Creator and related parties object to it. This is by Article 96 paragraph (1) of Law Number 28

of 2014 concerning copyright, where creators who feel their economic rights have been harmed are entitled to compensation. The Creator files a civil lawsuit in the form of a claim for compensation to the Commercial Court by Article 100 paragraph (1) of Law Number 28 of 2014 concerning Copyright. A payment that can be requested for copyright violators based on Article 99 paragraph (2) of Law Number 28 of 2014 concerning Copyright is in the form of a request to provide income earned to the Creator, either partially or entirely. In addition to claims for compensation based on Article 99 paragraph (3) of Law Number 28 of 2014 concerning Copyright, copyright holders can apply for a request to confiscate the work produced and stop the announcement, copying, or distribution of the work produced, which is called an interim decision. And by Article 105 of Law Number 28 of 2014 concerning Copyright, the Creator can also sue criminally. If the uploader uploads videos via Youtube without permission from the Creator for commercial purposes, they can be subject to criminal sanctions by Article 113 paragraph (3) of Law Number 28 of 2014 concerning copyright, which can be imprisoned for a maximum period of 3 years and a fine with a maximum amount of Rp. 500,000,000.00 (five hundred million rupiahs).

B. SUGGESTION

The first thing that should be done is to strengthen copyright institutions. The government has the authority to enhance copyright institutions, namely by compiling or further perfecting the UUHC. In this case, it is also necessary to have strong institutions and not only regarding the Directorate General of Intellectual Property Rights but also ministries or institutions with a portfolio of industry, trade, broadcasting, education, and culture, to provide facilities for copyright protection, especially moral rights in a musical/music work. Songs and sound recordings.

Cover song actors as actors in the act of re-singing a song should be able to carry out procedures to rebroadcast other people's works. So that in the future, there will be no copyright infringement. The intended design is to request permission first from the Creator and make an agreement. The act of re-signing is supposed to be a place to increase one's creativity without harming other people, primarily the songwriter.

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Implementation of Pancasila Values in Management of Fishery Resources

Yasser Arafat

Faculty of Law, Universitas Borneo Tarakan, Indonesia
E-mail: cutyasser@gmail.com

Abstract

Pancasila has a position as the source of all sources of law. This position requires that every regulation and policy made must be in line with the values of Pancasila. However, since the reformation period, the position of Pancasila as the source of all sources of law has only been symbolic. Therefore, it is necessary to analyze the regulations and policies currently applicable in the perspective of Pancasila. One of them is regulations and policies related to the management of fishery resources.

This research was conducted to determine whether regulations and policies for managing fisheries resources in Indonesia are in accordance with Pancasila. The discussion is limited to the orientation and implementation of fisheries resource management in Indonesia.

The results obtained that to analyze the conformity of regulations and policies with Pancasila, the Guidelines for the Evaluation of Legislation No. PHN-01.HN.01.03-07 Year 2019 compiled by BPHN. Based on these guidelines, it was concluded that the three objectives of managing fishery resources in Indonesia were in accordance with the first and fifth precepts of the Pancasila. In addition, the fisheries resource management approach in Indonesia uses a controlled access system in accordance with Pancasila. Pancasila guarantees individual rights, but in the interests of society and the state, individual rights can be limited by the state. Management with a controlled access system illustrates that fishery resources must be optimized but still within the set limits.

Based on these conclusions, in the future it is necessary to create a more comprehensive concept of fisheries resource management based on the paradigm of Pancasila values and perfecting regulations related to fisheries resource management in accordance with Pancasila values.

Keyword: Pancasila, Management, Fishery Resources.

a. Introduction

Pancasila has a very important position for the Indonesian nation and state. The most fundamental position of Pancasila is as the basis of the state. There would not be an Indonesian state as it is today if Pancasila had never been initiated and agreed upon as the basis of the state.

Pancasila as the basis of the state is interpreted as a static table on which all the different elements of the nation gather. Soekarno once said: "*I gave that description earlier so that you understand that for the Republic of Indonesia, we need a basis that can become a static basis and which can become a dynamic leitstar*." Furthermore, Soekarno said, "*if we look for a static basis that can collect all*."[1]

[1] Yudi Latif, *Negara Paripurna: Historitas, Rasionalitas dan Aktualitas Pancasila*, (Jakarta: PT Gramedia Pustaka Utama, 2015), 14.

Because as a static table, Pancasila as the basis of the state is the consensus of the entire Indonesian nation and is final and cannot be contested. Changing the basis of the state can then be interpreted as an effort to eliminate the Unitary State of the Republic of Indonesia (NKRI).

Pancasila, which has five precepts, has become the basis of the state after going through a fairly long process and legally formally has been accepted and established as the basis and ideology of the Indonesian state since August 18, 1945. Pancasila as the basis of the state is stated in the Preamble to the 1945 Constitution of the Republic of Indonesia in the fourth paragraph:

> "…therefore the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia which shall be built into a sovereign state based on a belief in the One and Only God, just and civilised humanity, the unity of Indonesia, and democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and achieving social justice for all the people of Indonesia."

Apart from being a static table, Pancasila is also interpreted as a dynamic leitstar (dynamic instructions). Pancasila contains the state's vision and mission that provides orientation, direction for the struggle and development of the nation in the future. Pancasila can also be said to be the goal of the Indonesian state. As stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that the aspired State of Indonesia is an independent, united, sovereign, just and prosperous country.

Pancasila is considered appropriate to be the basis of the state and also the guiding star. Soekarno asserted, "*if we are looking for a dynamic leitstar that can be a direction of travel, we must dig deep into the soul of our own society... If we want to include elements that are not in the soul of Indonesia, it is impossible to use this as a basis to sit on it*." Nicolaus Driyarkara, SJ said "*we believe that Pancasila has the best foundation for our country. Likewise with Pancasila, we believe that heritage is a rich fundamental truth*."[2]

Pancasila is a guide in the life of the nation and state in Indonesia. On the other hand, based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the law is the basis that regulates the life of the nation and state in Indonesia. Therefore, it is concluded that the applicable law must be in line with the values contained in the precepts of Pancasila. Pancasila is a source of legal order or what is known as the source of all sources of law.

Article 2 of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislation (UU 12/2011) states that Pancasila as the state foundation means Pancasila as the source of all sources of state law. In the explanation of Article 2 it is stated that Pancasila is the basis and ideology of the state, as well as the philosophical basis of the state. So that any material content of laws and regulations must not conflict with the values contained in Pancasila. Pancasila determines the fundamental principles for the formation of law (meta-juris).

The existence of Pancasila as the basis of the state and as the source of all sources of law has had its ups and downs. Especially since the reform era rolled around. On the one hand, reform has provided many renewals and changed the face of the life of the nation and state as well as the administration of government, from an authoritarian to a democratic one. But on the other hand, the reforms have made the position of Pancasila even more eroded as the source of all sources of law. At least, there are 3 (three) things that are the reasons for the erosion of Pancasila as the source of all sources of law since the reformation

[2] Astim Riyanto, *Teori Konstitusi*, (Bandung: Yapemdo, 2006).

until now, namely: the attitude of resistance to the New Order, the strengthening of legal pluralism and the existence of a legal reality that makes Pancasila only a symbol.[3]

The existence of Article 2 of Law 12/2011 should not only be a symbolic source of the rule of law so that the position of Pancasila as the source of all sources is truly realized. In terms of the formation of laws and regulations from the start, Pancasila should have truly positioned its position as the source of all sources of law. Therefore, in the process of forming laws and regulations that are carried out in a planned, integrated and sustainable manner, it is expected to produce laws and regulations that are in accordance with the values of Pancasila as the source of all sources of law.

Indonesia has been given a gift by God Almighty, abundant fishery resources that can be utilized to support one of the goals of the Indonesian state as mandated by the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely promoting public welfare. In order to achieve the state's goals, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia mandates the state to control the management of fishery resources for the greatest prosperity of the people.

In order to manage fishery resources, the government issued a number of legal products. Ideally, these legal products are in line with the goals of the state and the objectives of managing natural resources as mandated by the 1945 Constitution of the Republic of Indonesia. Moreover, legal products that are born by the state must also be in line with the values of Pancasila. Therefore, the authors are interested in analyzing how the implementation of Pancasila values in the management of fishery resources in Indonesia.

b. Implementation of Pancasila Values in Management of Fishery Resources in Indonesia

There are a number of laws relating to the management of fishery resources. The law that is used as the legal basis in the management of fishery resources is Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009 (Fisheries Law), Law Number 32 of 2014 concerning Marine Affairs (Marine Law), Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands and its amendments to Law no. 1 of 2014 (WP3K Management Law), Law Number 23 of 2014 concerning Regional Government (Law on Regional Government), and Law Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers (Law No. 7 of 2016).

Sumardjono et al. (2011) in analyzing the content of the law on fisheries, divides it into several aspects, namely orientation, alignment, management and implementation of management, protection of human rights, good governance arrangements, human relations and fish resources and state relations with fish resources. In this article, the analysis will focus on 2 (two) aspects, namely orientation and management and implementation of management.

In order to analyze and test the suitability of fisheries resource management in Indonesia with the values of Pancasila, the authors need variables and indicators. The author uses variables and indicators for assessing Pancasila values compiled by the National Legal Development Agency (BPHN) as contained in the Guidelines for Evaluation of Legislative Regulations No. PHN-01.HN.01.03-07 Year 2019. The variables and indicators are as follows:

VARIABLES	INDICATORS

[3] Fais Yona Bo'a, "Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional", *Jurnal Konstitusi*, Volume 15, Nomor 1, Maret 2018, 38.

Ketuhanan	a. There are provisions that acknowledge the existence of adherents of religion and belief and piety to God Almighty (does not recognize atheists) or there are no provisions that negate the recognition of the existence of adherents of religions and beliefs. b. There are provisions that protect everyone to respect each other's choice of religion and belief as well as freedom to worship according to their respective religions and beliefs or the absence of provisions that result in coercion of certain religions or beliefs. c. There is a guarantee of respect for the interests of each religious follower and adherent of belief in carrying out their teachings or there are no provisions that negate respect for the interests of each religion and believer in carrying out their teachings. d. There are provisions that put forward the principles of truth, justice, goodness, honesty, brotherhood, chastity, beauty or there is no value content that negates these principles. e. There are provisions that can foster and develop association and cooperation between adherents of different religions and beliefs so that harmony in life is fostered or there are no provisions that cause division of different religions and beliefs. f. Adanya ketentuan yang mampu menumbuhkan semangat ketuhanan yang welas asih dan toleran dalam kehidupan intra dan antar-agama atau tidak ada ketentuan yang dapat menimbulkan intoleransi kehidupan beragama g. The value of truth, nobility and only thoughts, words and deeds as the basis of public ethics.
Kemanusiaan	a. There are provisions that provide recognition of equality, rights and obligations of fellow citizens or there are no provisions containing values that negate equality, rights and obligations of fellow citizens. b. The existence of provisions that guarantee the protection of the community, or the absence of provisions that can cause the protection of the community to be unsecured. c. There are provisions that provide guarantees for the protection of the enforcement, fulfillment, and promotion of human rights or there are no provisions that contain values that negate the protection of the enforcement, fulfillment and promotion of human rights. d. There are provisions that provide guarantees for the promotion of tolerance or there are no provisions that contain values that negate tolerance. e. There are provisions that provide guarantees for the promotion of mutual respect and cooperation with other nations or there are no provisions containing values that negate mutual respect and cooperation with other nations.

	f. There are provisions that are able to develop a sense of humanity and human character towards fellow humans and other creatures and are fond of carrying out humanitarian activities or there are no provisions that contain values that negate humanity and character. g. There are provisions that provide protection to everyone in fighting for truth and justice for the sake of human dignity or there are no provisions that hinder the protection of everyone in fighting for truth and justice for the sake of human dignity. h. The existence of provisions that guarantee the freedom of association and assembly or the absence of provisions that prohibit the freedom of association and assembly.
Persatuan Indonesia	a. There are provisions that provide guarantees that prioritize the unity, integrity, safety of the nation and the state above personal and group interests or there are no provisions that override the unity, integrity, safety of the nation and state from personal and group interests. b. There are provisions governing the limitation of the participation of foreign parties, or the absence of provisions that cause the participation of foreign parties to be unlimited. c. There are provisions that contain values that develop a sense of love for the homeland and nation or there is no value content that negates the love for the homeland and nation. d. There are provisions that contain the spirit in the context of maintaining world order based on independence, eternal peace and social justice or there are no provisions that negate the spirit of maintaining world order based on freedom, eternal peace and social justice. e. There are provisions that develop Indonesian unity on the basis of Bhinneka Tunggal Ika or: - There are no provisions that have the potential to eliminate respect for the diversity of the population, religion, ethnicity and class, special conditions of the region and national culture, or there are no provisions that ignore the diversity of the population, religion, ethnicity and class, special conditions of the region and national culture; - There are no provisions that negate the recognition and protection of local cultural values (local wisdom), or no provisions that have the potential to ignore the recognition and protection of local cultural values (local wisdom); - There are no provisions that do not guarantee the involvement of indigenous peoples.Adanya ketentuan yang memiliki prinsip Negara Kesatuan Republik Indonesia (NKRI) atau prinsip NKRI mencakup: Negara Hukum, Negara Kesatuan, kedaulatan rakyat, demokrasi.

	f. The existence of provisions that take into account the interests of the entire territory of Indonesia and the laws and regulations made in the regions are part of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia or there are no provisions that contain risks that endanger the interests of the entire territory of Indonesia. g. There are provisions that create order in society through guarantees of legal certainty or: - There are clear provisions regarding coordination; - There are clear provisions regarding conflict resolution; - There are clear provisions regarding sanctions for violations; - There are clear provisions regarding those who carry out supervision and law enforcement. h. The role and obligations of the state in creating national unity in diversity and maintaining the territorial integrity of the Republic of Indonesia
Kerakyatan	a. There are provisions that contain a balance between rights and obligations or there are no provisions that negate the balance between rights and obligations b. The existence of provisions that guarantee the involvement of all affected parties in policy formation or the absence of provisions that cause the non-involvement of all affected parties in policy formation. c. There are provisions that prioritize deliberation in making decisions, for matters involving common interests or there are no provisions that override the primacy of deliberation in making decisions concerning common interests. d. The existence of provisions that contain values that require responsibility for the decisions/results of the deliberation or there are no provisions that have the potential to be neglected by the responsibility for the decisions resulting from the deliberation. e. There are provisions that contain values that require responsibility in the implementation of duties and positions or there are no provisions that contain the value of neglecting the responsibilities of duties and positions. f. There are provisions that encourage and give respect to the aspirations and interests of the people in politics by continuously improving the public and democratic practices or there are no provisions that have the potential to ignore respect for the aspirations of the people in politics. g. There are provisions that guarantee that everyone respects different views by not imposing their will on others or there are no provisions that have the potential to ignore respect for differences in views and the will of others. h. There are provisions that guarantee access to public information in the decision-making process, or there are no

	provisions that make access to public information insecure in the decision-making process. i. There are provisions that reflect deliberation to reach consensus in every decision making or there are no provisions that negate deliberation to reach consensus in every decision making. j. There are provisions that provide space for citizens to actively participate in development in a proportional and responsible manner or there are no provisions that ignore the rights of the community to participate. k. There are provisions that guarantee the provision of opportunities for the community to give their opinions on decision making, or there are no provisions that cause the provision of opportunities for the community to be not guaranteed in providing opinions on decision making. l. There are provisions that guarantee a cooperative and collaborative work system, or there are no provisions that cause a cooperative and collaborative work system to not be guaranteed.
Keadilan	a. There are provisions that promote joint and cooperative efforts. b. There are provisions that prioritize the precautionary principle or there are no provisions that cause the precautionary principle to be neglected. c. There is a provision that guarantees the provision of compensation for the community affected by the negative impacts. d. There are provisions that stipulate equal opportunities for every citizen to gain access to the use of resources, or there are no provisions that cause the guarantee of equal opportunities for every citizen to gain access to the use of resources. e. The existence of provisions that guarantee the prioritization of national ownership and roles or the absence of provisions that can cause the non-guarantee of prioritizing national ownership and roles. f. The existence of provisions that guarantee public order, or the absence of provisions that can cause damage to public order. g. The existence of provisions that guarantee the sustainability of current and future generations, or the absence of provisions that can cause the sustainability of current and future generations to be insecure. h. There are provisions that prioritize welfare (feeling comfortable and safe) for the whole community or there are no provisions that cause a loss of sense of security and comfort for members of the community in general. i. There are provisions that do not contain activities that are contrary to the public interest.

	j. There are provisions that must be able to encourage joint business development in the spirit of mutual assistance. k. There are provisions that are able to develop helpful attitudes/behaviors and stay away from attitudes/behaviors that harm others or there is no value content that negates attitudes and behaviors that harm others. l. There are provisions that are able to grow the independence of the nation and promote the welfare of the people in a just manner or there are no provisions that negate the growth of national independence. m. The existence of provisions that can encourage the improvement of the welfare of the nation or the absence of provisions that hinder the improvement of the welfare of the nation. n. There are provisions that are able to encourage everyone to respect the creative process, initiative, and work responsibly for the sake of improving people's welfare or there are no provisions that have the potential to hinder the appreciation of the creative process, initiative and work in improving people's welfare. o. There are provisions that function to provide protection to create comfort and peace in the community or there are no provisions that negate the protection of a sense of comfort and peace in society. p. There are provisions that reflect proportional justice for every citizen or there are no provisions that negate the value of proportional justice q. There are provisions that may not contain discriminatory rights based on background including religion, ethnicity, race, class, gender or social status or there are no provisions containing discriminatory values against religion, ethnicity, race, class, gender and/or social status. . r. There are provisions that reflect balance, harmony and harmony between individual/group interests and the interests of the nation and state or there are no provisions that ignore balance, harmony and harmony between individual/group interests, and the interests of the nation and state. s. There are provisions that develop noble actions, reflecting the attitude and atmosphere of kinship and mutual cooperation or there are no provisions that can ignore the values of kinship and mutual cooperation. t. There are provisions that guarantee equal access for marginalized communities or there are no provisions that have the potential to hinder equitable access for marginalized communities.

Orientation

Management of fishery resources based on the Fisheries Law is oriented towards increasing production and efforts to maintain the sustainability of fish resources (conservation). This can be seen in the principles that are used as a foothold in fisheries management, namely:

a. benefit;
b. Justice;
c. togetherness;
d. partnership;
e. independence;
f. equity;
g. cohesiveness;
h. openness;
i. efficiency;
j. sustainability; and
k. sustainable development.

Management of fisheries resources is based on the principles of efficiency and sustainable development. The principle of efficiency provides the basis for the management of fishery resources to produce optimal fish production with minimal cost risk. Nevertheless, the management of fishery resources must also remain based on the principles of sustainable fisheries sector development. Fishery resources as a gift from God Almighty may be utilized through non-exploitative and destructive fishing activities without taking into account the sustainability aspects of their resources. Management orientation is aimed at the conservation of natural resources (resources oriented) to ensure the sustainability and sustainability of the function of natural resources for inter and intergenerational interests.

There are 9 (nine) objectives of fisheries resource management in the Fisheries Law. Of all these objectives, there are at least 3 (three) aspects of the objectives, namely:

1. Optimizing the utilization of fishery resources
2. Improved public welfare
3. Conservation of fishery resources

Optimizing the utilization of fishery resources is a form of expression of gratitude for the grace given by God and this is in line with the precepts of the One Godhead. As for improving the welfare of the community by increasing the standard of living of small fishermen and small fish cultivators as well as encouraging expansion and employment opportunities. The final goal is conservation of fishery resources. The improvement of community welfare and conservation of fishery resources is in accordance with the precepts of social justice for all Indonesian people, where management of fishery resources is carried out by taking into account the sustainability of current and future generations and prioritizing welfare (comfort and security) for the entire community.

Improving the welfare of the community, especially improving the standard of living of small fishermen, has become the focus of the government. As the most vulnerable groups, small fishermen and traditional fishermen need special attention and more legal protection. Through the Fisheries Law, small fishermen are given the freedom not to have a Fishery Business Permit (SIUP), a Fishing Permit (SIPI), and a Fish Transporting Vessel Permit (SIKPI), are not subject to fishery levies, and the government has an obligation to empower small fishermen in their activities. form of credit schemes, education, training, counseling, and development. Unfortunately, the Fisheries Law does not regulate traditional fishermen so that the three forms of legal protection do not apply to traditional fishermen.

Legal protection for traditional fishermen is contained in the WP3K Management Act. This law gives the community (including traditional fishermen) the right to propose traditional fishing areas into the RZWP-3-K. Minister of Marine Affairs and Fisheries Regulation No. 23/PERMEN-KP/2016 concerning Planning for the Management of Coastal Zone and Small Islands as the implementing regulation of Law no. 27 of 2007 and Law no. 1 of 2014 also emphasizes the importance of the allocation of space 0-2 nautical miles for livelihood space and access to small fishermen and traditional fishermen.

The Maritime Law regulates the need to expand job opportunities in the fishing industry to improve the welfare of fishermen. In facilitating the realization of the fishing industry, the Government is responsible for expanding job opportunities in order to improve the standard of living of fishermen and fish cultivators.

As a form of state attention to fishermen, Law no. 7 of 2016 serves as the main legal umbrella for the welfare of fishermen. UU no. 7 of 2016 regulates the protection and empowerment of fishermen from the planning, implementation, funding and financing stages, and supervision accompanied by criminal sanctions. Protection aims to help fishermen face difficulties related to fishing business. While empowerment aims to improve the ability of fishermen in carrying out fishing business. The community is also given space to participate in planning, implementation, funding and financing, as well as monitoring.

Regarding conservation orientation, the Fisheries Law has outlined in detail starting from the prohibition of fishing or fish farming activities that damage fish resources and their habitat environment to the prohibition of the use of fishing gear that interferes with and destroys the sustainability of fish resources on fishing vessels in the fishery management area of the Republic of Indonesia. . The Fisheries Law also orders the Government to control the entry and/or export of new types of fish from and to foreign countries and/or inter-island traffic to ensure the preservation of germplasm related to fish resources.

Management and Implementation of Management

Theoretically, there are two approaches to fisheries resource management, namely open access and controlled access. Open access is a form of regulation that tends to allow fishermen to catch fish and exploit other biological resources anytime, anywhere, regardless of the amount, and with any tools. The management with a controlled access system is a controlled regulation in the form of input restrictions and output restrictions, namely limiting the number of catches for each actor based on a quota.

Of the two forms of fisheries resource management approach, the controlled access approach is an approach that is in line with the values of Pancasila. Pancasila guarantees individual rights, but in the interests of society and the state, individual rights can be limited by the state. Management with a controlled access system illustrates that fishery resources must be optimized but still within the set limits.

Management of fishery resources with a controlled access approach has been enshrined in the Fisheries Law such as Input control includes controlling the type, quantity, size of fishing gear; type, number, size, and placement of fishing aids; area, path, and time or season of fishing; requirements or standard operating procedures for fishing; fishing vessel monitoring system. Output control includes controlling the size or minimum weight of fish species that can be caught.

c. CONCLUSION AND POLICY RECOMMENDATIONS

Pancasila is not only the basis of the state that unites all the different elements of the nation, but also contains the state's vision and mission that provides orientation, direction for the struggle and development of the nation in the future. Therefore, all regulations and policies made must be in line with the values of Pancasila. Including in terms of management of fishery resources. To make it easier for regulators and policymakers to formulate a legal product in accordance with the values of Pancasila, the BPHN Guidelines for the Evaluation of Legislative Regulations.

In terms of the orientation of fisheries resource management, there are 3 (three) objectives for managing fishery resources, namely optimizing the utilization of fishery resources, increasing community welfare, and conserving fishery resources. These three goals are in line with the third and fifth precepts of Pancasila. In terms of management and implementation, the systems used are controlled access systems, controlled regulations in the form of input restrictions and output restrictions, namely limiting the number of catches for each actor based on a quota. Pancasila guarantees individual rights, but in the interests of society and the state, individual rights can be limited by the state. Management with a controlled access system illustrates that fishery resources must be optimized but still within the set limits.

Based on these conclusions, in the future it is necessary to create a more comprehensive concept of fisheries resource management based on the paradigm of Pancasila values and perfecting regulations related to fisheries resource management in accordance with Pancasila values.

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SUPERVISION OF THE RIGHTS OF ELECTION AT THE YEAR 2020 THE BORDER AREA OF BAMBANGAN VILLAGE, WEST SEBATIK DISTRICT, NORTH KALIMANTAN PROVINCE

[1]Dian Antarja
[2]Nurasikin

[1]Student, Law Faculty, Universitas Borneo Tarakan, Tarakan
[2]Lecture, Law Faculty, Universitas Borneo Tarakan, Tarakan, asikinthalib@gmail.com

BACKGROUND

Nunukan Regency is one of 270 regencies/cities holding simultaneous regional elections in Indonesia which not only conducts the election of the Regent and Deputy Regent but also conducts the Election of Governor and Deputy Governor for the North Kalimantan Province, amid the Covid 19 pandemic outbreak conditions which did not show a significant decline. maximum, while the needs and implementation of the Pilkada must be implemented.

The area of the Nunukan district which is directly adjacent to neighboring countries is the island of Sebatik. Sebatik Island is an island located in the border area, has a strategic position and its uniqueness because it has two sovereign territories, namely the territory of the State of Malaysia or Sabah which is located in the north, and the sovereign territory of the Republic of Indonesia in the south. Because of its strategic position and national interest, Sebatik Island is one of the priority border areas to be developed. This is in line with PP No. 19 of 2008 concerning sub-districts, wherein article 9 paragraph 2 reads "the formation of sub-districts as referred to in paragraph 1 is based on consideration of national interests and the implementation of general government tasks".

Bambangan Village is a village whose territory is on the land border between Malaysia and Indonesia, there are 3 (three) RTs that are directly adjacent to one mainland with neighboring Malaysia. With this geographical condition, some of the residents of Bambangan Village in fulfilling their daily needs work in Malaysian companies located in Sukamaju villages and Begosong villages which are within the territory of neighboring Malaysia. There are as many as 440 people who work in Malaysian companies, of course, creating its own problems in the democratic party of the Regional Head Election, both the

Regent Election and the Governor Election in Nunukan Regency. Due to the Covid19 Pandemic which has lasted for approximately 8 months, the residents of Bambangan Village who work are not allowed to leave the Company and access roads to exit and enter the Block by the company, even for research and matching to the workers in the Malaysian company. The KPU itself is having difficulties.

Based on the background of the problem above, the problems that arise are:

1. How is the supervision of voting rights carried out by the Nunukan Bawaslu in the 2020 simultaneous Regional Head Elections in the Border Area of Bambangan Village, West Sebatik District, North Kalimantan Province?

2. What are the Legal Barriers and Strategies in the Implementation of Supervision of Voting Rights in the 2020 Simultaneous Regional Head Elections in the Border Area of Bambangan Village, West Sebatik District, North Kalimantan Province?

RESEARCH METHODS

This type of research is normative law research, namely legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation article by article, formality, and binding power of law, as well as the legal language used, but does not examine its applied or implementation aspects. According to Abdulkadir Muhammad, normative legal research can use legal case studies. In this case, legal cases are conceptualized as legal events and legal products.

Normative legal research has the same definition as doctrinal research, namely library-based research that focuses on reading and studying primary and secondary legal materials. This research was conducted by reviewing library materials and legislation relating to the issues to be discussed.

RESEARCH RESULT

A. SUPERVISION OF THE VOTING RIGHTS PERFORMED BY THE NUNUKAN BAWSLU IN THE ELECTION OF THE HEAD OF THE SIMILAR ELECTION OF THE BORDER AREA OF BAMBANGAN VILLAGE, WEST SEBATIK SUBDISTRICT, NORTH KALIMANTAN PROVINCE.

1. Election Supervision

The election of regional heads is one of the instruments to fulfill political decentralization where it is possible to transfer the locus of power from the center to the regions. Regional head elections, as well as national elections, are a means to elect and replace the government in a peaceful and orderly manner. Through regional head elections, the people will directly elect leaders in their regions as well as provide legitimacy to those who are entitled and able to govern. Through the election of regional heads, the embodiment of popular sovereignty can be enforced. In other words, the election of regional heads is a set of rules or methods for citizens to determine the future of a legitimate government.[1] The implementation of direct regional head elections is essentially not only the goal of optimizing democratization in the regions but is a manifestation of the principle of regional autonomy to the fullest. All regional levels in Indonesia are given the right to hold direct regional elections, with the aim that the people in the region concerned can freely and responsibly elect their qualified regional heads. The high and low quality of the elected regional heads is entirely left to the people in the regions, without central government intervention. Therefore, direct Pilkada essentially must be fully funded by the APBD, as a consequence of the political decentralization granted by the central government.[2]

In a democratic political system, the leaders are directly elected by the people, politicians, or public officials as representatives of the people who will do their best by the aspirations of the people. This is because, first, from a "mandatory" perspective, elections that are held regularly can be used as a means to select good political policies by the wishes of the wider community. During election campaigns and general elections, for example,

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[1] Mustafa Lutfi, *Hukum Sengketa Pemilukada di Indonesia*, Ctk. Pertama, UII Press, Yogyakarta, 2010, h. 130

[2] Amirudin dan A. Zaini Bisri, *Pilkada Langsung Problem dan Prospek, Sketsa Singkat Perjalanan Pilkada 2005,* Ctk. Pertama, Pustaka Pelajar, Yogyakarta, 2006, h. 13-14

candidates for regents and members of the legislature offered various issues and programs for the welfare of the people, so that this became an attraction for voters to vote for them. Second, in terms of accountability, local elections and elections are a means for the government to account for its decisions and actions in the past. Consequently, the government and politicians will always take into account the assessment of the community, so they will choose policies or programs that have an impact on voters' positive evaluation of themselves so that they will be re-elected in the next election.[3]

In terms of supervision of the Pilkada, Bawaslu is given the authority by Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors to oversee the preparation of the Pilkada, oversee the implementation of the stages of the Pilkada, prevent the practice of money politics, supervise the neutrality of ASN, and the neutrality of TNI members (Army). Indonesian National Police) and the neutrality of members of the Indonesian National Police. In addition, he is also tasked with overseeing the implementation of decisions or decisions and overseeing the implementation of KPU regulations. The following table describes in detail the tasks and objects of supervision carried out by Bawaslu in supervising each stage of the implementation of the Pilkada.

The supervisory duties possessed by Bawaslu are certainly very different from those carried out by other state institutions or the Inspectorate whose scope of work is only sectoral. The supervision carried out by Bawaslu is very complex, and the supervision model carried out must also be varied and by the times. Supervision carried out by election supervisors is not easy and light because it is not only at the time of the election but from preparation to the recapitulation, this is in the context of the Regional Head Election and General Election. Meanwhile, outside the context of the General Election and Regional Head Elections, there is a supervision over the decision of the Honorary Election Organizing Council (DKPP) which cannot be predicted when the decision is scheduled.

2. Supervision of Bawaslu in Protecting Voting Rights for Simultaneous Regional Elections in 2020 Border Area of Bambangan Village, West Sebatik District.

In the implementation of the Regional Head Elections in 2020, it is stated in Law Number 10 of 2016, that it is the task of the Regency/City Bawaslu to oversee the stages of

[3] Ahmad Nadir, *Pilkada Langsung dan Masa Depan Demokrasi, Studi atas Artikulasi Politik Nahdliyyin dan Dinamika Politik dalam Pilkada Langsung di Kabupaten Gresik Jawa Timur*, Ctk. Pertama, Averroes Press, Malang, 2005, h. Viii.

holding elections, one of which is to supervise the updating of voter data, the determination of temporary voter lists and permanent voter lists. In making Supervision effective, the Nunukan Regency Bawaslu implements a Supervision Strategy, namely the first is prevention. Prevention efforts are a preventive effort for the Nunukan Regency Bawaslu in conducting supervision by issuing several appeal letters addressed to the KPU, then the second is direct supervision or active supervision at the stage of updating data and voter lists where the initial stage is the stage of matching and research carried out on July 15, 2020, to August 13, 2020, where active supervision was found in the form of alleged violations in the form of browning at the Bambangan Village office against 198 workers in Malaysian companies located in the territory of Malaysia without meeting directly with the residents concerned so that the KPU has not included them in the Permanent Voters List. (DPT) based on the regulations contained in Article 1 number 25 and Article 11 paragraph 6 letter g as well as Article 11 paragraph 7 of KPU Regulation Number 19 of 2019 Amendment to KPU Regulation Number 2 of 2017, the Sebatik Barat District Supervisory Committee decided to pour out the report on the results of the supervision in the findings Number: 01/TM/Updating Voter Data/Kec. Sebatik Barat/24.05.08/VIII/2020 and the third is Enforcement as a form of law enforcement against violations that occur to create elections by the General Election Principles.

Regarding the alleged violations contained in Article 1 number 25 and Article 11 paragraph 6 letter g and Article 11 paragraph 7 of KPU Regulation Number 19 of 2019 Amendment to KPU Regulation Number 2 of 2017, the Sebatik Barat District Supervisory Committee decided that the findings Number: 01/ TM/Updating Voter Data/Kec. West Sebatik/24.05.08/VIII/2020 is an Administrative Violation, which is then issued a Recommendation Letter Number 018/K.KU-03.08/TU.00.01/VIII/2020 to be further forwarded to the West Sebatik District Electoral Committee, hereinafter abbreviated as West Sebatik PPK so that recommendations based on Finding Number: 01/TM/Updating Voter Data/Kec. Sebatik Barat/24.05.08/VIII/2020 is followed up to ensure the whereabouts of the resident by meeting in person and or his family and asking to be shown his resident identity in this case the Electronic Resident Identity Card or Certificate or Family Card.

B. LEGAL OBSTACLES AND STRATEGIES IN SUPERVISION OF THE ELECTION RIGHTS OF LOCAL HEAD OF ELECTION ON THE BORDER AREAS OF SEBATIK BARAT DISTRICT, BAMANGAN VILLAGE, NORTH KALIMANTAN PROVINCE

1. Inhibiting Factors In Updating Voter Data

a. Simultaneous Pilkada During the Pandemic

Maintaining the right to vote which is the constitutional right of citizens in border areas, especially the West Sebatik area, Bambangan village cannot run properly, effectively, and efficiently, this is because there are still many residents of Bambangan Village in several RTs who work in Malaysian companies in border areas who cannot This match and research was carried out by the voter data updating officer (PPDP) due to the closure of the route by a Malaysian company where Indonesian citizens work as a result of the COVID-19 pandemic, where the Malaysian Company's lockdown policy was carried out as an effort to stop the spread of Covid-19 in Indonesia. the territory of Malaysia, especially the areas that become Malaysian companies where Indonesian citizens are working for the company.

Political Rights of Citizens are part of the rights possessed by citizens where this right exists in countries that adhere to democracy. Countries that adhere to democracy generally accommodate the political rights of their citizens in holding a general election, either directly or indirectly. Political rights related to the decision-making process are manifested in the form of participation by giving the right to vote at the time the election takes place.[4] Part of Human Rights it is the political right to occupy public office which shows the existence of freedom from the political and civil rights of citizens through periodic elections with universal and equal voting rights.[5] So, political rights are one of the substantial elements that determine the success of democracy in a country. This right is closely related to the right to vote or to vote (right to vote) which is the basic right of every individual or citizen that must be guaranteed by the state. This is because the right to vote and be elected is a right that is regulated in civil-political rights as rights owned by citizens who have sovereignty, also have the same position in the view of the state, there is no discrimination,

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[4] Fuad Fachruddin, *Agama dan Pendidikan Demokrasi: Pengalaman Muhammadiyah dan Nadhlatul Ulama*, Pustaka Alvabet, Jakarta, 2006, h. 35-36

[5] Oki Wahju Budijanto, "*Pemenuhan Hak Politik Warga Negara Dalam Proses Pemilihan Kepala Daerah Langsung"*, Jurnal Penelitian Hukum DE JURE, Vol. 16 No. 3, September 2016, h. 297.

and are legal subjects.[6] The arrangements are in Article 1 paragraph (2), Article 2 paragraph (1), Article 6A paragraph (1), Article 19 paragraph (1) and Article 22C paragraph (1) of the 1945 Constitution. The formulation of a number of these articles is very clear that there is no discrimination regarding race, wealth, religion, and ancestry is justified. When referring to the 1945 Constitution, the right to vote is regulated from Article 27 paragraphs (1) and (2); Article 28, Article 28D paragraph (3), and Article 28E paragraph (3). Then, the right to be elected is in Article 1 paragraph (2); Article 2 paragraph (1); Article 6A paragraph (1); Article 19 paragraph (1) and Article 22C paragraph (1) of the 1945 Constitution and Article 28D paragraph (3). This shows that the 1945 Constitution places elections as a valid measure to determine whether or not democracy is running.[7]

As an embodiment of the right of every citizen to be given equal and effective opportunities in voting[8] and As a means and measure of whether or not people's sovereignty is implemented or not, the essence of a general election is an acknowledgment of the existence of the right to vote and the right to be elected by every citizen. Constitutionally, as long as the citizenship status of Bambangan Village residents from the West Sebatik Sub-district who work for Malaysian companies has not changed, the residents still have constitutional rights in the form of voting rights and the right to be elected. The constitutional right is the political right of every citizen to determine freely in an election process both in the General Election and the Regional Head Election and submit himself as a contestant in an election process both in the General Election and the Regional Head Election. However, to be able to use these political rights, the residents of Bambangan Village must first be registered as voters in the stage of updating voter data carried out by the Nunukan Regency General Election Commission through the Voter Data Update Officer. When voter data collection does not go well then there are political rights that are lost from the citizen.

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[6] Rodrigo F. Elias, dan Ruddy Watulingas, "*Pencabutan Hak Politik Sebagai Pidana Tambahan Dalam Perspektif Hukum Hak Asasi Manusia Di Indonesia"*, Jurnal Lex Et Societatis Vol. VI, No. 4, Juni 2018, h. 21.

[7] Khairul Fahmi, *Pemilihan Umum dan Kedaulatan Rakyat*, Rajawali Pers, Jakarta, 2011, h. 36

[8] Robert Dahl, *Perihal Pemilu,Menjelajahi Teori dan Praktek Demokrasi secara Singkat,* diterjemahkan oleh A Rahman Zainuddin, Yayasan Obor Indonesia, Jakarta, 2001, h. 132

b. Limited Authority of Election Organizers

Each authority is limited by Matter (Substance), Space (Region: locus), and Time (Tempus). Outside these limits, an act of government is an act without authority (onbevoegdheid). Actions without authority (onbevoegdheid) can be in the form of onbevoegheid ratione materiae, onbevoegheid ratione loci (region), onbevoegheid ratione temporis (time) legality of government acts. The scope of the legality of government action includes: (a) authority, (b) procedures, (c) substance. Authorities and procedures are the basis for formal legality. Based on formal legality, the presumption install causa principle was born. Based on this principle, the provisions of Article 67 paragraph (1) of the Law of the Republic of Indonesia Number 5 of 1986 concerning the State Administrative Court states: "The lawsuit does not delay or prevent the implementation of the decision of the State Administrative Body or Official being sued. The non-fulfillment of the three components of legality results in a juridical defect of an act of government. Juridical defects involve authority, procedure, and substance.[9]

Conditions where the Voter Data Update Officer (PPDP) cannot directly meet, the condition of Indonesian citizens who are outside the territory of the Unitary State of the Republic of Indonesia (NKRI) hampers the Matching and Research process because Juridically in Law Number 10 of 2016 the Voter Data Update Officer (PPDP) does not have the authority to carry out the Matching and Research process outside the territory of the Unitary State of the Republic of Indonesia (NKRI), so that the Election Organizer does not have a legal basis in conducting the Coklit process in Malaysian companies. which is in the territory of Malaysia.

At the level of authority, the election organizers substantively, both KPU and Bawaslu and their staff have the authority to carry out the stages of matching and researching voter data to accommodate citizens' voting rights. However, in the manner or place of implementation, the election organizers do not have the authority to carry out the stages of updating voter data in the territory of neighboring Malaysia. While on the one hand, the stage of updating voter data has a time limit in its implementation. The authority of the Election Organizer in the Coklit process is very important because the process is a very

[9] Dr. Muhammad Ilham Agang. SH., M.H *"Pembatasan Masa Jabatan Kepala Daerah Dalam Sistem Pemerintahan Negara Republik Indonesia"* Disertasi Fakultas Hukum Universitas Airlangga, 2015, h.11

important stage of all stages of the election where the results of this stage are not only the logistical determinants of the Election Organizing Commission at the time of the voting stage but the essence of the matching process and research carried out by officers Updating Voter Data (PPDP) is an effort by Election Organizers to produce quality voter data.

c. Differences in Election Regulations and Pilkada

Elections and Pilkada in Indonesia are held every 5 years, as for the conditions to be able to participate in the elections and the Regional Head Elections are Indonesian citizens, aged 17 years or have been married, physically and mentally healthy, and not currently in a criminal case. In the implementation of elections, there are several stages, namely: voter registration, registration of election participants, determination of election participants, campaigning for election participants as well as voting and counting votes. The purpose of holding elections and Pilkada are to realize democracy. However, there are some differences between the General Election and the Pilkada, the election is aimed at electing representatives of the people at the central and regional levels. Meanwhile, Pilkada is aimed at electing regional heads, including governors and deputy governors, regents and deputy regents, as well as mayors and deputy mayors. Elections are held simultaneously throughout Indonesia and elections are held only within the scope of certain regional government areas. The process of implementing the General Election and Pilkada is different in its implementation or implementation.

2. Nunukan Regency Bawaslu Strategy in Monitoring Voting Rights

a. Doing Direct Supervision

Direct supervision is a form of supervision carried out by Bawaslu and all its staff in every stage of Updating Voter Data, wherein carrying out Voter Data Update Supervision refers to Bawaslu Regulation Number 9 of 2017 concerning Supervision of Data Updates and Compilation of Voter Lists in the Election of Governors and Deputy Governors, Regents and Deputy Regent, as well as Mayor and Deputy Mayor. In Article 1 point 24 of the Bawaslu Regulation Number 9 of 2017 it is stated that "Updating Voter Data is an activity to update voter data based on the DPT from the Election or Last Election and consider DP4 using factual verification of voter data and then used as material for the preparation of the DPS carried out by Regency/Municipal KPU/KIP assisted by PPK and PPS" shows the stages of Updating Voter Data is an important stage because, at this stage in addition to

determining the presence or absence of a person's voting rights in the 2020 local elections simultaneously, this stage also affects the logistics at the time of ballot voting. where if updating voter data is not updated properly it can trigger new problems on polling day.

The form of direct supervision carried out by the Nunukan Regency Bawaslu is as regulated in Perbawaaslu Number 9 of 2017 concerning Supervision of Data Updates and Compilation of Voter List in the Election of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor at each stage of updating voter data.

b. Indirect Supervision

1. DP4 Data Analysis

The form of Bawaslu supervision of DP4 data is to analyze the DP4 copy to check the accuracy and validation of the data by taking into account several changes in data elements as regulated in Article 7 of Bawaslu Regulation Number 9 of 2017 concerning Supervision of Data Updates and Compilation of Voter Lists in the Election of Governor and Deputy Governor, The Regent and Deputy Regent, as well as the Mayor and Deputy Mayor, namely Voters who are 17 (seventeen) years old or more on voting day, voters who are not yet 17 (seventeen) years old but have been married and Voters whose status has changed from status to TNI/POLRI members become civilian status.

DP4 contains data on residents who have met the requirements as voters on the day of voting. Meanwhile, DPT is voter data for the last election or election based on the location of the polling station (TPS) according to the voters' domicile address. These two data (DP4 and the last DPT) are synchronized to obtain voter data as material for factual updating in the field during the coklit period (matching and research) by the Voter Data Update Officer (PPDP). Synchronization is an effort to compare two data held by the Ministry of Home Affairs in the form of the Population List of Potential Electoral Voters (DP4) with data held by the KPU, namely the DPT (Permanent Voter List) data for the election or the last election. Voter data synchronization (DP4) is carried out by adding beginner voter data into the General Election DPT or the Last Election. The synchronization period of voter data between the DP4 and the last General Election or Election DPT is carried out from 26 January 2020 to 22 March 2020 (for 57 days) after the DP4 is received by the RI KPU from the Minister of Home Affairs (Mendagri) on 23-25 January 2020. After the synchronization process is completed on the DP4 by the RI KPU, the RI KPU will do two

things, namely: submit the results of the DP4 analysis and synchronization to the Provincial KPU and Regency/City KPU and announce the results of the analysis and synchronization to the public.

2. Participatory Monitoring

The Nunukan Regency Bawaslu also uses participatory supervision as one of the supervisory strategies in carrying out prevention and prosecution. In the 2020 Regional Head Election, the Regency Bawaslu Nunukan carried out several participatory monitoring activities as a form of involving Ormas, Media, Stakeholders, OKP, Student Organizations, Women's Organizations, Community Leaders, Religious Leaders, Traditional Leaders and the Community in Elections, especially in terms of election supervision. For the West Sebatik Subdistrict, the Bawaslu of Nunukan Regency held activities based on Participatory Supervision 2 (two) times, namely on November 3, 2020, and November 8, 2020, in which the activity was packaged in the form of Blusukan Bawaslu of Nunukan Regency as for the target of these activities, namely Youth West Sebatik, Religious Leaders, Community Leaders, Head of Farmers' Groups and Fishermen's Groups in West Sebatik District. The purpose of the Nunukan Regency Bawaslu Blusukan activity is to provide an understanding to the public about the impact of money political dowries, to increase the role of Participatory Supervision and Stake Holders in the Election of Governor and Deputy Governor and Regent and Deputy Regent in 2020 and Nunukan Regency Bawaslu Blusukan is one of the supervision methods what Bawaslu does in the form of prevention.

CONCLUTIONS AND SUGGESTIONS

CONCLUTION:

1. Updating voter data in the Border area of West Sebatik District, especially Bambangan Village for several Indonesian citizens residing in the Malaysian Territory, which was carried out by PPDP, was not darkened properly, because PPDP officers did not brown by visiting the houses of residents or voters and officers PPDP conducted browning by observing from one place by only asking other people without seeing evidence in the form of KK and E-KTP of voters. This, normatively as stated in Law No. 10 of 2016 and PKPU No. 19 of 2019 changes from PKPU No. 2 of 2017 is a violation. The action taken by the Nunukan Regency Bawaslu is by the Ne bis Vexari Rule principle.

2. Suffrage is a basic right that is in the public interest. Judging from their substantive authority, the ranks of election organizers, both KPU and Bawaslu have the authority to update voter data, but judging from the locus (region), the ranks of Election Organizers both KPU and Bawaslu do not have the authority to update voter data and supervise the voting rights of several border community members of West Sebatik District, Bambangan Village, who work in the territory of Malaysia and when viewed from the tempus (time) there is a limited coklit stage carried out by PPDP. Normatively, PPDP cannot do coklit in Malaysia because no regulation gives that authority so that the voting rights of several Indonesian citizens who have the right to vote in the DPT are not accommodated, which is not by the principle of Public Service, namely the principle that the government always prioritizes public interest in carrying out their duties.

SUGGESTIONS:

Referring to the complexity of the problem and the implications of holding simultaneous regional elections in 2020 in Nunukan Regency so that direct elections are not just a formality in finding leaders in the regions, there must be improvements, namely:

1. Increase awareness of the people's constitutional rights related to voting rights and the right to be elected because the low participation of the community in checking themselves as the 2020 Pilkada Permanent Voters List will cause problems at the time of voting.

2. There is a need for special preparedness and regulations to accommodate the voting rights of Indonesian citizens who are abroad considering that the 2020 Regional Head Election is a simultaneous regional head election and is carried out during a pandemic this is because the existing regulations are not effective enough in monitoring voting rights so that updating Voter data cannot be implemented optimally and law enforcement against violations that occur can be applied proportionally by the Proportionality principle, namely law enforcement in reasonable proportions.

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Template for Manuscript Preparation for the 2nd International Conference in Border Area (2nd ICBA 2021)

Yahya Ahmad Zein[a*], Zulvia Makka[b]

[a] Faculty of Law, Universitas Borneo Tarakan, Indonesia
[b] Faculty of Law, Universitas Borneo Tarakan, Indonesia
[*]Corresponding Author. Tel: (+62)811234567, E-mail: yahyazein@yahoo.co.id

Abstract

*Authors should endeavor to follow these guidelines. The abstract submitted should be between **250 - 300** words and should contain the following details: Problem Statement and Objectives of Study, Methodology, Findings, and Significance and Contribution of the Study. While the font type for the abstract is Times New Roman, the font size is 10pt. The abstract should be in italics. At the end of the abstract, the author may decide to add the practical implication of the study, while highlighting the major contribution of the study to knowledge. Remember that the abstract submitted should be between **250 - 300** words even though this sample is not up to the minimum. Please take note that plagiarism articles are strictly rejected (only below 25% is accepted and including references). We really look forward to seeing you at the conference to explore different aspects and inputs for the development in border area.*

Keywords: Not more than five keywords separated by commas.

1. INTRODUCTION

These guidelines describe the preparation procedure of the final paper accepted for oral presentation at the International Conference in Border Area (ICBA 2021). When authors submit their work to the ICBA 2021, they should strictly follow these instructions in order to maintain a high quality standard.

All authors are required to use footnotes throughout the paper. You can see the example given in the footnotes here.[1] The **Chicago Citation style** should be used and **References** should be provided at the end of the paper.[2] You may refer to the following websites for additional information on how to use the Chicago Citation Style, particularly when it comes to citing subsequent of the same source:

http://www.chicagomanualofstyle.org/tools_citationguide.html

http://politics.ucsc.edu/undergraduate/chicago%20style%20guide.pdf

2. PAPER SIZE AND FORMAT

The total length of a full paper should not exceed 15 pages. The minimum length of full papers is 10

[1] Michael Maxfield and Earl Babbie, *Research methods for criminal justice and criminology* (Stamford, USA: Cengage Learning, 2014), 197.
[2] Ashley Clayton, Maria J. O'Connell, Chyrell Bellamy, Patricia Benedict, and Michael Rowe, "The citizenship project part II: Impact of a citizenship intervention on clinical and community outcomes for persons with mental illness and criminal justice involvement", *American journal of community psychology* 51, no. 1-2 (2013): 114-122.

pages. Each paper size should be A4 (21.0cm×29.7cm) and the following margins should be set:

Left margin	2.5 cm (1″)
Right margin	2.5 cm (1″)
Top margin	2.5 cm (1″)
Bottom margin	3.0 cm (1″)

3. FONTS AND STYLE

All papers must be in the **Times New Roman font**.

3.1 Times New Roman

All papers must adopt the Times New Roman font.

- The title of the paper should be in Times New Roman font and centered with font size 16pt.
- The title of the paper should **not** be in **bold** characters.
- Font size for names of authors: **12pt**
- Font size for authors' affiliations and contacts: **10pt**
- Font size for acknowledgements**: 9pt**
- Font size for abstract**: 10pt (*italics*)**

3.2 Formatting Requirements

This section provides the specific formatting requirements for the full paper. Strict adherence to the style is required for all papers.

- Indents: No indent for the first line of the paper, a section or a sub-section. Subsequent paragraphs should have 1st line indent at **0.3″**.
- Line spacing for the paper: **Single (1)**
- Additional **4pt spacing before and after each section or subsection heading**
- The top-level heading, usually called section, numbered in Arabic numerals, shall appear **aligned to the left with Times New Roman bold 12pt**.
- The numbered level-two heading starts **from the left** in **Times New Roman bold 11pt font**.
- **The main text uses Times New Roman 11pt font with 1.0 line-spacing and justified throughout**.
- Font size for **footnotes: 9pt**
- Font size for **References: 11pt**
- Page numbering: Bottom centered with **12pt** font size
- References should be in alphabetical order at the end of the paper. The References should be complete in style as shown in the Reference section of these guidelines.

4. FIGURES AND TABLES

4.1 Figures and tables

All figures and tables should be placed as close as possible after their first mention in the text. Each table should be in MSWord only. Table captions should be centered above the tables. See below for an example. There should be a direct reference to such table in the text, for example, "Table 1 illustrates…"

Table 1 The caption should be placed above the table.

	2012	**2013**	**2014**
Theft	45	21	26
Rape	23	16	31
Murder	91	41	45
TOTAL	**159**	**78**	**102**

Figure captions should be centered below the figures; they should be referred to in the text as, for example, Fig. 1, or Figs. 1-3.

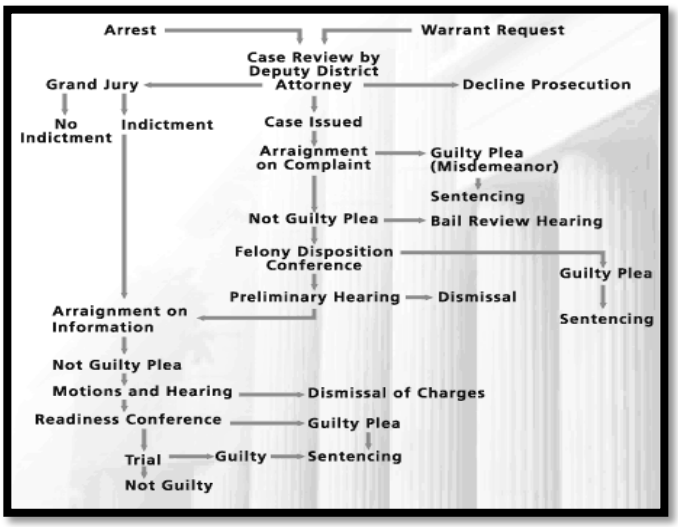

Fig. 1 The caption should be placed below the figure.

4.2 Case Law

All authoritative decisions and legislations should be clearly mentioned in the text of the paper and properly cited in the footnotes.

5. CONCLUSION AND POLICY RECOMMENDATIONS

All authors are required to give a good conclusion here and provide some policy recommendations based on the central theme of the paper. This may include recommendations for law reforms, etc.

6. REFERENCES

Maxfield, Michael, and Earl Babbie. *Research methods for criminal justice and criminology*. Stamford, USA: Cengage Learning, 2014.

Clayton, Ashley, Maria J. O'Connell, Chyrell Bellamy, Patricia Benedict, and Michael Rowe. "The citizenship project part II: Impact of a citizenship intervention on clinical and community outcomes for persons with mental illness and criminal justice involvement." *American journal of community psychology* 51, no. 1-2 (2013): 114-122.

Note formatting requirements for "References"

Line spacing: Single
Indents: First line – nil; second line – 0.3″
Font size: 11pt

Acknowledgements

*(*Example: The authors gratefully acknowledge the contribution of the University Research Fund.)