PROSIDING 3

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Preface

Praise and gratitude to Allah Swt. for the grace and guidance given to us all. This book entitled **"Legal Readiness to Face Digital Transformation"** expected to later contribute to the development of science, especially law.

Finally, the authors would like to thank all parties who have been involved and supported directly or indirectly in the writing of this book. Thus, I hope this book can be useful. Happy reading., Amien.

Tegal, Oktober 2022

The Author

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Community Participation in Development Plan for Realize Good Governance

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Abstract

The principle of community participation (participation) is very important in realizing the principles of Good Governance. An interesting phenomenon in the development planning process carried out is by involving the community (stakeholders) and aligning the development plans produced by each level of government through the Development Planning Consultation (Musrenbang). The existence of a synergy between the community and the government shows that the principles of Good Governance are going well, because the community has a role in planning development in their area.

Keywords: *Community Participation, Development, Good Governance*

INTRODUCTION

Negara is a community organization or group equipped with a sovereign power to regulate the community (Suginato, 2013). SaThe eminent degree in legal philosophy, HLA Hart, stated that the state contains 2 (two) elements. *First*, there is a population who inhabits an area; Second, there is a government governed by a legal system in which there are legislative bodies, courts and basic rules (Adolf, 2015). Kata government etymologically comes from the word government. The word government comes from the word

command which means ordering to do a job. In English it is called government which is translated as government or government. Meanwhile, Samuel Edward Finer defines government as a public servant, namely service (Suharizal & Chaniago, 2017).

The concept of Good Governance is the process of implementing state power in carrying out the provision of good services which is often called governance (government or governance). Meanwhile, the best practice is called Good Governance. In order for "Good Governance" to become a reality and run well, it requires commitment and involvement of all parties, namely the government, the private sector and the community. Effective good governance requires good coordination and integrity, professionalism as well as a high work ethic and morale.

Asian Development Bank which confirms the general consensus that Good Governance is based on four pillars, namely accountability, transparency, predictability and participation. Meanwhile, the Ministry of Home Affairs (Depdagri) and the United Nations Development Program (UNDP) formulate Good Governance into ten characteristics. The ten characteristics consist of; equality, supervision, law enforcement, responsiveness, efficiency and effectiveness of participation, professionalism or professionalism, accountability, foresight and transparency (Lucow, 2013).

There are several principles of Good Governance according to UNDP (United Nation Development Program), 1997, namely (1) participation, (2) legal certainty, (3) transparency, (4) responsibility, (5) agreement-oriented, (6) justice , (7) effectiveness and efficiency, (8) accountability, (9) strategic vision. These principles are inherent in a

government in order to achieve what is expected so that good relations with the community can be felt. The government, of course, has been carrying out or planning programs in the context of national development, both long-term and short-term (Duarmas, 2016).

In implementing the principles of Good Governance, the state is the party that has the most important role in realizing these principles. The implementation of Good Governance is the main prerequisite for realizing the aspirations of the people in achieving the goals and ideals of the nation and state. In order for this to be achieved, it is necessary to develop and implement an appropriate, clear and real accountability system. So that government administration and development can take place in an efficient, effective, clean and responsible manner and free from Corruption, Collusion and Nepotism (KKN). In relation to efforts to implement Good Governance, in this reform era, the government (Legislative and Executive) has produced three legislative products that have changed the face of the government system in Indonesia.

First, Law Number 23 of 2014 concerning Regional Government, with a main focus on granting greater authority to districts and cities in managing government and development. Second, Law No. 33/2004, regulates the implementation of Fiscal Balance between the Central and Regional Governments, with the main focus on the allocation of funds and greater authority to manage them to regencies/ municipalities. The third Law Number 28 of 1999, regulates the implementation of good governance, with a focus on the implementation of governance and development, both in the regions and at the center. These three laws and regulations

form the basis for the concept of Good Governance. The implication of the presence of this Law on regional development is a shift in authority in regional planning and development policies. Through policy decentralization, regions have the authority to set policies on regional development planning and implementation. Meanwhile, the central government's authority in implementing development only covers policies on national development planning and controlling national development on a macro basis (Nasution, 2008).

Development planning is not new in Indonesia because this system has been started since independence was proclaimed. The role of regional development planning in Indonesia is becoming increasingly important. This is due to the implementation of regional autonomy in 2001 which made the government's role very important in encouraging the development process in their respective regions and national development as a whole. Complete and comprehensive national development planning has been regulated in Law Number 25 of 2004 concerning the National Development Planning System (SPPN), which was promulgated on October 5, 2004 in the State Gazette of the Republic of Indonesia of 2004 Number 104 (Thohir, 2013). Furthermore, in Article 3 paragraph (2) of the Law it is stated that "National Development Planning consists of development plans compiled in an integrated manner by Ministries/Agencies and development planning by Regional Governments in accordance with their authority".

In accordance with the above-mentioned Law, the development planning prepared by the Regional Government is carried out, among others, with a top-down

approach. The top-down approach is the result of planning that is harmonized in development deliberations carried out starting from the village, sub-district, district/city area, provincial area, to national level. The planning process is timed and documented. The planning documentation includes: (i) Regional Long-Term Development Plans (RPJPD), for a period of 20 years; (ii) Regional Medium-Term Development Plan (RPJMD), for a 5-year period and (iii) Regional Government Work Plans (RKPD), for a 1-year period (Rahayu, 2018).

Then in article 263 paragraph (3) of Law number 23 of 2014 concerning Regional Government it is stated that "RPJMD is an elaboration of the vision, mission, and program of the Regional Head which contains objectives, targets, strategies, policy directions, regional development and finance, and Regional Apparatus and cross Regional Apparatus programs accompanied by an indicative funding framework for a period of 5 (five) years which are prepared by referring to the RPJPD and RPJMN". So the RPJMD must be prepared by referring to the RPJPD and RPJMN.

"Good governance" in essence is how to manage the country collaboratively between the government, the private sector and civil society based on certain principles. In order for a harmonious relationship to occur between the three actors, the interaction between the three must be in accordance with their respective functions. The government as a good governance actor has a facilitating role that allows the community itself to play an active role as a socio-economic actor and create a conducive political and legal environment. The private sector creates jobs, income through the production of goods and services (Anwar, 2005).

However, in the midst of the rise of the issue of Good Governance as the basis for the value of effective governance. It turns out that at this time, several problems in development planning have begun to emerge, where the Regional Medium-Term Development Plan that has been determined and is an elaboration of the vision and mission of the regional head must adjust to the National Medium-Term Development Plan which is set later, so that synergy is needed in the form of synchronization. where the Regional Medium Term Development Plan against the National Medium Term Development Plan to realize a good governance system.

In addition, the principle of community participation (participation) is very important in realizing the principles of Good Governance. An interesting phenomenon in the development planning process carried out is by involving the community (stakeholders) and aligning the development plans produced by each level of government through the Development Planning Deliberation (Musrenbang).). In this Musrenbang activity, synergy between the Government and the community is needed to create an activity that involves both in order to create a balance of authority between the Government and the community which is focused on Musrenbang activities as one of the activities that requires high community participation.

Based on the above background, the formulation of the problem in this paper is how is community participation in the preparation of development planning to realize a good governance system?

DISCUSSION

The 1945 Constitution in Article 1 paragraph 3, states that: "The State of Indonesia is a state of law". The General Explanation section of the 1945 Constitution of the Republic of Indonesia concerning the State government system explains that: First, Indonesia is a country based on the rule of law (Rechtsstaat). The Indonesian state is based on law (Rechtsstaat), not based on mere power (Machtsstaat). Second, the Constitutional System, namely the Government is based on a constitutional system (basic law), not absolutism (unlimited power).

Thus, the rule of law is a country whose administration of government power is based on law. The concept of the rule of law itself rests on the belief that state power must be exercised on the basis of just and good law. The relationship between the governed and the governed is carried out based on an objective norm, not on an absolute power alone. Objective norms must also meet formal requirements and can be defended by legal ideas. A state based on law uses the rule of law to achieve the goals of state life (Nasution, 2013).

The state of law (rechtsstaat) or the rule of law, is a state where every action is based on rules or in accordance with established laws. If there is someone whose actions violate these rules, then he/she is entitled to be punished for violating the law. After reviewing the form of the Indonesian legal state which has been mentioned in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, there are several characteristics that can describe why Indonesia is included in the rule of law:

First, the existence of a constitutional system that regulates state affairs systematically. The institutions formed

have their respective functions and duties to run the government of the country. In Indonesia, this can be seen by the existence of institutions such as the MPR, DPR, DPD, President/Vice President, MA, MK, BPK, and KY.

Second, the state makes the law as a benchmark in various fields (the rule of law). This characteristic of a state of law places the law in the highest place as a means of protection for its people.

Third, protection and recognition of human rights. Human rights are the most basic rights (fundamental) and for human rights violators are subject to strict laws.

Fourth, is to have an impartial justice system. The judiciary must proceed in accordance with the law that is determined and applied equally so that it is not biased between the people and state officials.

Fifth, there is a clear division of power. This division of power upholds democratic values. And each institution has its own duties and functions (not overlapping). John Locke distinguishes power into three namely legislative, executive, and judicial.

Sixth, the existence of criminal and civil courts. Criminal justice deals with violations of the law that affect many people. While the civil courts deal with violations of the law involving individuals.

Seventh, there is legality. Legality is the principle to maintain legal certainty. The principle of legality is used to protect all individual interests and provide limits on the authority of state officials (Azhary, 1993).

Regional autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local

communities in the system of the Unitary State of the Republic of Indonesia. Through regional autonomy, the people of a region gain the freedom to regulate and develop their region (Suparyanto, 2019).

Bagir Manan said, the form of autonomous regional government according to Law Number 23 of 2014 concerning Regional Government (as well as various previous regional government laws) are:

> A territorial government unit at a lower level than the central government unit which is free and independent to regulate and manage some of the government functions that are its household affairs. This is in line with the intent of Article 18 of the 1945 Constitution of the Republic of Indonesia which only regulates autonomy based on territorial divisions (Manan, 2001).

Development planning is needed because of the following three factors: (1) the existence of market failures; (2) future uncertainty; and (3) provide a clear direction of development. Planning is essentially an activity to sort and select alternative options, then determine which alternative is the most appropriate in carrying out an activity/activity to achieve the predetermined goals (Thohir, 2019).

Planning is one of the functions of the entire management process to achieve certain goals. In Law Number 25 of 2004 concerning the National Development Planning System, it is formulated that "Planning is a process to determine appropriate future actions through a sequence of choices taking into account available resources".

Based on article 1 of Law Number 25 of 2004, the National Development Planning System (SPPN) is a unified

development planning procedure to produce long-term, medium-term, and annual development plans implemented by elements of state administrators and the community at the local level. center and area.

According to Wrihatnolo, regional development planning is a development planning process that is intended to make changes towards a better development direction for a community, government, and environment in a certain area/ region, by utilizing or utilizing various existing resources, and must have orientation that is comprehensive, complete, but still adheres to the principle of priority (Wrihatmolo, 2009).

So that development planning can be said to be of high quality, according to Iskandar, planning must pay attention to: (a) conformity of objectives with results; (b) utilization and mobilization of resources; (c) the level of ease of implementing the plan; (d) the appropriate use of development planning methods; (e) development efficiency and effectiveness (Wrihatmolo, 2009).

Good Governance in Development Planning

The term Good Governance is a discourse that emerged in the early 1990s. In general, the term Good Governance has an understanding of all things related to actions or behavior that are directing, controlling or influencing public affairs to realize these values in everyday life. In this context, the notion of good governance is not limited to the management of government institutions alone, but involves all institutions, both government and non-government (society and business/market) (Sedarmayanti, 2003).

The meaning of Good Governance, which is translated into governance, is the use of economic, political and

administrative authority to manage state affairs at all levels. Governance includes all the mechanisms, processes and institutions through which citizens and community groups express their interests, exercise legal rights, fulfill obligations and bridge differences between them (Sedermayanti, 2003). In realizing good governance, it requires every public official, both politicians and bureaucracy, to be responsible and accountable to the public for all attitudes, behavior and policies in carrying out the main tasks, functions and authorities entrusted to him. Government is essentially a service to the people. Government is not intended to serve himself, his group, his family, but to serve the community and create conditions that enable every member of the community to develop their abilities and creativity in order to achieve common goals (Nasution, 2008).

*Good governance*only meaningful if its existence is supported by institutions that involve the public interest. The types of institutions are as follows (Sedarmayanto 2003):

1. Country
    a. Creating stable political, economic and social conditions;
    b. Making effective and fair regulations;
    c. Providing effective public services;
    d. Upholding Human Rights (HAM);
    e. Protecting the environment; and
    f. Manage public health and safety standards.
2. Private Sector
    a. Running the industry;
    b. Creating job opportunities;
    c. Provide incentives for employees;
    d. Improving people's living standards;

e. Maintaining the environment;
f. Obey the rules;
g. Transfer of knowledge and technology to the community; and
h. Providing credit for the development of Small and Medium Enterprises (SMEs).

3. Civil Society
   a. Keeping people's rights protected;
   b. Influence public policy;
   c. Supervise the abuse of government social authority;
   d. Developing Human Resources (HR); and
   e. Means of communication between community members.

The role of the state which is too dominant in development planning, where the state does not value public participation has resulted in development policies that are more oriented to the interests of the political elite than the aspirations of the people. As a result, the community's weak control over the development process encourages elites to abuse power which leads to corruption, collusion, and nepotism (Nurpratiwi et al., 2015).

In Indonesia, cases of tension between the center and the regions or cases of regional "rebellion" continue to arise because the government imposes a master plan (which is formulated centrally) to the regions, or only places the region as a mere planning object. Elsewhere history also records that so many development projects (industry, mining, roads, reservoirs, electrical energy, garbage and others) are often problematic, causing serious tensions between the government and the people, partly because planning is only

understood as a material plan. Compiled without hearing the aspirations of the people (Nasarani, 2014).

The intense demands made by the community related to this problem against the government to carry out good governance, because the old patterns of government administration are no longer suitable for the changing social order. Therefore, this demand is something natural that must be responded to by the government to make changes that are directed at the realization of good governance. Along with these demands, the government requires the government to change its governance paradigm, from the concept of government which emphasizes authority and power to Good Governance, which emphasizes cooperation and interdependence. Paradigm changes on the one hand must be followed by changes in people's attitudes and behavior in participating (Nasarani, 2014).

Along with the paradigm shift, the Good Governance paradigm opens up space for the community to participate in the development process. For this reason, participatory planning is needed to make plans that are truly relevant and legitimate in the eyes of the people, and reduce the risk of clashes between the government and the people. So that planning does not need to be used as a battlefield, but must be treated as an arena to bring together the big visions and missions of the government with the aspirations and initiatives of the community. Planning is no longer a political decision of the governing party to be applied to the governed, but as a common arena for building partnerships between government and society (Nasarani, 2014).

UNDP recommends several characteristics of governance, namely political legitimacy, cooperation with

civil society institutions, freedom of association and participation, bureaucratic and financial accountability, efficient public sector management, freedom of information and expression, a fair and trustworthy judicial system. It is clear that the number of components or principles that underlie good governance varies greatly from one institution to another, from one expert to another. However, there are at least a number of principles that are considered as the main principles underlying good governance, namely (1) Accountability, (2) Transparency, and (3) Community Participation. These three main principles influence and support each other's implementation (Sukarno, 2009).

Sedarmayanti concludes that there are four main elements or principles that can describe public administration that is characterized by good governance, namely as follows (Sedarmayanti, 2003):

1. Rule of Law: Good governance has the characteristics of guaranteeing legal certainty and a sense of community justice for every public policy taken.
2. Transparency: Good governance will be transparent to its people, both at the central and regional levels.
3. Transparency: Wants to open up opportunities for the people to submit comments and criticisms of the government which they consider to be not transparent.
4. Accountability: There is an obligation for government officials to act as the person in charge and responsible for all actions and policies that they set.

Participation is the principle that everyone has the right to be involved in decision-making in every government administration activity. Involvement in decision making can

be done directly or indirectly. The principle of community participation requires the community to be empowered, given the opportunity and included to play a role in bureaucratic processes starting from the planning stage of implementation and supervision or public policy. This principle is related to the view that society is the heart of development, which not only benefits from a development but also becomes an agent of development. Since development is for and by people, they need access to institutions that promote development.

Participation is a bridge between government policies and the interests of the community, so that regional planning must be carried out using a bottom-up planning model or often referred to as participatory development planning. Participatory planning is planning that aims to involve the interests of the people, and in the process involves the people (either directly or indirectly). The ends and means must be seen as a unit. Goals for the benefit of the people, which if formulated without involving the people, it will be difficult to ensure that the formulation will be in favor of the people (Nurpratiwi et al., 2015).

Participation in Development Plan

The Regional Medium Term Development Plan (RPJM Daerah) is an elaboration of the vision, mission, and programs of the Regional Head whose preparation is guided by the Regional Long Term Development Plan (RPJP Daerah) and takes into account the National Medium Term Development Plan (National RPJM) (Sjafrizal, 2016).

The Regional RPJM contains the direction of regional financial policies, regional development strategies, general

policies, and programs of Regional Apparatus Work Units, cross Regional Apparatus Work Units, and regional programs accompanied by work plans within the regulatory framework and indicative funding framework. The Regional RPJM is described in the Regional Government Work Plan (RKPD) and refers to the Government Work Plan (RKP), containing the regional economic framework design, regional development priorities, work plans, and funding, whether implemented directly by the government or pursued by encouraging community participation.

Good governance become one of the indicators in assessing a government. Seeing the many principles that become role models for the government in carrying out their duties and responsibilities. In Indonesia itself, we know him as good governance and it is stated in the principles of good governance which are explained in Law no. 28 of 1999 concerning the Implementation of the state. The Good Governance paradigm opens up space for the community to participate in the development process. Planning does not need to be used as a battlefield, but must be treated as an arena to bring together the government's grand visions and missions with the aspirations and initiatives of the community. Planning is no longer a political decision from the governing party to be applied to the governed, but as a common arena for building partnerships between government and society (Nasution, 2008).

Development planning is an arena of participation, which actually plays an important role in showing what will be done in the future against limited resources. Involving the community in development is an effort made by local governments to manage development as one of the efforts

for regional independence by giving a greater role to local initiatives and ensuring their participation in drafting, planning, implementing and supervising development (Tjokromidjojo, 1994).

In line with this, the Government should seek to mobilize community participation in development through the Participatory Development Planning (PPP) program, by opening up more space for the community to be directly involved in the development process. An example of a forum between actors in the context of preparing national development plans and regional development plans is the Musrenbang. Musrenbang is a tiered community participation forum to harmonize the planning processes "from the bottom up" and "from the top" (top down). In this forum, various parties negotiate, reconcile, and harmonize various interests and needs in development, the result of which is a mutual agreement on program priorities, activities, and regional development budgets (Hadi, 2001).

The national development planning system aims to: a) support coordination among development actors; b) ensure the creation of integration, synergies, and synergies between regions, between spaces, across time, between functions, government as well as between the center and regions; c) guarantee linkages and consistency between plans, budgeting, implementation and implementation; d) optimizing community participation; and e) ensuring the efficient, effective and just and sustainable use of resources (article 2 paragraph (5) of Law number 5 of 2004).

Community participation is important in development planning, this is in line with Conyers' opinionwhich further suggests three (3) main reasons why community participation

in planning has a very important nature: 1. the community is a tool to obtain information about the conditions, needs and attitudes of the local community; 2. the community will trust the development activity program more if they are involved in its preparation and planning, because they will know more about the ins and outs of the activity program and will have a sense of ownership of the activity program; 3. to encourage public participation because there will be an assumption that it is a democratic right if the community is involved in development (Conyers, 1994).

One of the community participations that can be done is in the involvement of the musrenbang which can be done in the form of participation and activeness in determining facilitators, compiling the schedule and agenda for the musrenbang, preparing musrenbang materials and materials, announcing openly the schedule, agenda and place of the musrenbang and conducting deliberation/deliberation.

Community participation is present and active in accordance with the theory put forward by Geddesian as quoted by Soemarmonamely the existence of optimal community participation in planning is expected to build a strong sense of ownership among the community towards the results of existing development. increasing community participation, especially participating in the development process, namely in development activities, the community should not be seen as mere objects, but must be involved as active actors in development (Soemarmo, 2005). Another important thing is that the community can enjoy the results of development proportionally according to their respective roles.

Community participation since the beginning of musrenbang preparation is in accordance with the theory of

community participation proposed by Robert as quoted by Soemarmo (2005) which is basically very necessary from the beginning of community participation in development planning. Community involvement in every stage of development planning in the area indicates that community participation in the development planning process is good.

The community can independently formulate the problems they face and develop a proposed program of activities to solve these problems. The phenomenon that occurs is in accordance with the theory of Good Governance (good governance) proposed by Bob Sugeng Hadiwinata as quoted by Santosathat the basic assumption of good governance must create synergy between the government sector, namely as an institution that provides rules and policies, and the community sector that has self-help activities to develop economic productivity, effectiveness, and efficiency (Santosa, 2009). The Dusun Selatan sub-district apparatus guarantees that all parties, without exception, involve the community in the development planning process, namely the sub-district musrenbang activities without any party being sidelined. The suitability of the research results with the concept of good governance theory is the implementation of the creation of good and clean government and then conyers argues that there are three main reasons why community participation in problem identification has a very important nature (Conyers & Hills, 1992).

First, community participation is a tool to obtain information about the conditions, needs and attitudes of the local community, without which development programs and projects will fail. *Second,* that the community will trust a development project or program if they feel involved in the

development process or program, because they will know more about the ins and outs of the project and will have a sense of ownership of the project, this kind of trust is important especially if it has a goal to be accepted by the community. *Third*, that the reason that encourages public participation in many countries is because there is an assumption that it is a democratic right when people are involved in the development of their own society. Conceptually, the purpose of identifying problems is to create an understanding and increase awareness of the community. because the Dusun Selatan sub-district apparatus as the government sector in the area has been able to carry out its duties, principals, and functions, namely by implementing a good public service approach for the community.

The existence of a synergy between the community and the government shows that the principles of Good Governance are going well, because the community has a role in planning development in their area. Conyers (1994) in the theory of community participation, also revealed that the importance of the role of the community in development planning is that the community will have a sense of trust in the program of development activities if they are involved in the process of preparation and planning until its implementation. The community will better understand the conditions of programs and activities and have a sense of belonging to these programs and activities.

CONCLUSION

Based on the previous description and analysis, it can be concluded that participationcommunity is important in development planning, three (3) main reasons why

community participation in planning has a very important nature: 1. Community is a tool to obtain information about the conditions, needs and attitudes of local communities; 2. The community will trust the development activity program more if they are involved in its preparation and planning, because they will know more about the ins and outs of the activity program and will have a sense of ownership of the activity program; 3. To encourage public participation because there will be an assumption that it is a democratic right if the community is involved in development. The existence of a synergy between the community and the government shows that the principles of Good Governance are going well, because the community has a role in planning development in their area.

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Bakar Batu Tradition as Papuan Local Wisdom That Supports *Ne Bis in Idem* in Case *Salah Lirik* in Military Justice

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Abstract

Bakar batu is a form of cultural tradition in Papua. This tradition is a gathering event with the aim of celebrating something, expressing gratitude or forgiving each other and reconciling the warring parties. In the implementation of Military Operations Other than War as one of the law enforcement tasks carried out by the TNI in Papua, violations of the law silih lirik can occur. "Salah lirik" can be described as the occurrence of an error when identifying the target, which causes civilian casualties or unwanted casualties in friendly forces. Against this violation the perpetrator must be processed in accordance with the applicable Military Justice System. However, indigenous Papuan local wisdom has its own settlement system to solve it, namely through the tradition of bakar batu. The assumption to be built in this text is, if a soldier commits a violation and it has been resolved through the tradition of bakar batu, then the principle of ne bis in idem should apply to him, namely the principle that puts him no longer able to be examined in the Military Justice, because the case has already been decided. based on local wisdom which is also in line with restorative justice. This paper uses normative research methods with qualitative analysis based on secondary data.

Keyword: *Bakar Batu, Papuan Local Wisdom, Ne Bis in Idem, Military Justice, Military Court*

INTRODUCTION

The implementation of law enforcement tasks carried out by the Indonesian National Armed Forces (TNI) as a form of elaboration of the TNI's duties to carry out Military Operations Other Than War (MOOTW) in Papua and West Papua from the threat of Separatist and Terrorist Groups (Kelompok Separatis Teroris: KST) often invites pro and contra opinions. Likewise, the determination of the Egianus Kogoya group and several other KST groups that have the potential to become a threat to the disintegration of the nation, also has an impact that is not simple. In various situations, KST often attacks TNI and Indonesian Police (Polri) personnel who are carrying out security duties. Not only that, KST also attacked civilian government officials who were carrying out their service functions to the community, even in a sadistic and inhumane manner carrying out attacks, persecution, rape and murder of several civilians, teachers, midwives, health workers and telecommunications workers who were carrying out their duties her job. Not satisfied with taking these actions, KST also carried out destruction and burning of schools, health centers, communication transmitting stations, settlements and places of worship (Mayor, 2022).

The actions of KST, which are often indiscriminate, eventually led to a strong attitude from the state, which saw that such actions could no longer be tolerated. This means that various persuasive actions that have been carried out so far by accommodating various economic interests and needs have been given, even by granting special autonomy, far exceeding the interests of other provinces but have not had a progressive impact. The violence perpetrated by KST forced

the state to use military force to quell acts of violence that had gone too far.

The deployment of military operations in the context of maintaining regional security and stability, as regulated in Article 7 of Law Number 34 of 2004 concerning the Indonesian National Armed Forces, provides the basis for the authority of the state to the TNI to conduct mobilization and take action in the event of an act that has the potential to become a threat to disintegration. These actions are not only supported by national regulations, but also in accordance with international standards in the International Convention on Basic Principles on The Use of Force and Firearms by Law Enforcement Officials (BPUFF, 1990) as agreed in Havana, Cuba in 1990. This Convention also provides the basis for the authority of countries that use military force in carrying out law enforcement tasks. This was also corroborated by The Code of Conduct for Law Enforcement Officials in 1979 (United Nations, 1979).

However, even though the level of prudence and vigilance in carrying out military operations has been set to the maximum standard. Legal debriefing for soldiers has also been optimally provided. Accompanied by the attachment of a number of Legal Officers to the troops who were carrying out operational duties, the excesses and side effects of this military operation were still there. The level of tension and the risk of death threats for soldiers in carrying out their duties, make the soldiers on duty always under threat and pressure to achieve task success, so that it is not uncommon for *salah lirik* to occur which cause civilian casualties which are not legitimate targets of the KST.

Salah lirik is a term or parable that is often used in military circles, when there is a mistake when identifying the target, which causes civilian casualties or unwanted casualties in friendly troops. When the victim falls and causes loss of body, property or life, further investigation and legal proceedings need to be carried out to determine the status and further action.

Many factors can cause *salah lirik*. This means that mistakes in identifying the target can occur due to many things including external and internal factors. Several external factors that can cause *salah lirik* include the distance between the perpetrator and the victim which is quite far, so that the target cannot be clearly identified. The weather factor is cloudy or dark, making it difficult for target sensing. Natural factors that usually include closed field conditions, or also blankspots that cause no communication signal to connect.

Internal factors that can cause *salah lirik* are usually factors that come from within the actors and their troops. This includes sensing errors or information caused by psychological pressure due to the mental and physical exhaustion of soldiers who have been living or serving in the interior for months. Field disease disorders such as malaria also often reduce the body's resistance, so that the human senses are also unable to work properly.

Thus, *salah lirik* can occur due to either the human error factor as an internal factor on the one hand and the natural and environmental conditions as an external factor on the other hand, as well as the failure of the defense equipment system which experienced an error in sensing the defense equipment digitally.

The natural environment which is still wilderness and hilly, as well as the distance between one village and another which is separated by fields, forests and hills which are quite far away, makes the movement of troops limited. In fact, it is not uncommon for the troops to be exhausted and inattentive in guarding themselves or when setting a perimeter buffer zone with the community, making the troop position always in a less favorable condition. As a result, casualties on the part of the troops often increase and follow-up casualties in civil society also occur.

In creating peace in society after military operations that caused additional casualties on the part of civil society, the Papuan people have a tradition rooted in local wisdom as a form of peacemaking efforts or restoration of damage which is commonly known as the *bakar batu* tradition. This tradition is often carried out if there are two or more tribes who carry out customary wars, or there is a violation of customs committed by one of their tribe members, or there is a tragedy in one tribe involving another tribe, which can cause long problems, then the violation must be redeemed by held a *bakar batu* tradition.

In essence, *bakar batu* tradition in Papuan society can function as a means of restoring peace or community integrity that had been torn apart by tribal wars, the tragedy of killings between tribesmen, theft, escaping girls from their tribes or various other forms of customary violations that could break their unity. This tradition is still often carried out as a traditional form of a concept known as restorative justice.

Likewise with the deployment of military operations carried out by the TNI, if there is *salah lirik* that causes

follow-up casualties among civilians who are not members of KST, then the action taken is to approach the Customary Chief or *Ondoafi* of the local tribe to conduct deliberation and peace and looking for the best solution to restore the condition of the community that had been shaken by the shooting of its citizens. The solution adopted is to carry out by *bakar batu* tradition, which is to carry out a *bakar batu* ceremony followed by tubers (patatas and sweet potatoes) accompanied by a number of slaughtered animals including pigs and other livestock. The number of pigs/livestock used as part of the compensation ritual depends on the agreement between the perpetrator and the victim's family, witnessed by each traditional head and *Ondoafi*, including the number of tubers that must be provided and the amount of red money (formerly) now rupiah as a condition for redemption, which of course is also part of the existing agreement.

If you look at this phenomenon, then this condition actually reflects the existence of restorative justice which is based on local wisdom in a simple scope and is influenced by local traditions and culture. This means that the basis used does not use patterns of thought from outside the legal system and their environment, but instead uses local traditions which are now known as forms of local wisdom. In fact, by carrying out the *bakar batu* tradition, traditionally the violation has been resolved and customary peace has been restored, and in some legal considerations, the case should no longer need to be resolved through a formal judicial process involving the state, in this case the police, civil authorities, the Attorney General's Office. Military Prosecutor, Military Courts/Jurisdiction and legal advisors in court proceedings. This means that if the case and the

problem have been settled by custom through the *bakar batu* tradition, and when it is about to be tried again through the general court, the *ne bis in idem* principle applies to the case. This means that it cannot be tried again to obtain punishment for the mistakes that have occurred, because it has been resolved by custom, according to restorative justice considerations based on local wisdom.

Seeing this phenomenon, the question arises, does every act of *salah lirik* committed by soldiers during military operations in Papua and has been resolved through the *bakar batu* tradition, still needs to be examined and tried in the Military Court? Because apart from being against the principle of *ne bis in idem*, it is also considered ineffective, because the soldier can be considered to have served two sentences, namely the punishment imposed based on customary sanctions and the punishment imposed under the national legal system. For this reason, it is necessary to reconsider whether soldiers who have carried out the *bakar batu* tradition still need to receive a second sentence from the Military Court, of course it will be an interesting subject.

The research method used in this manuscript is a normative research method on the cultural traditions of local wisdom which is carried out qualitatively by using secondary data in the form of related literature, either in the form of books, journals or previous research as the main source supported by the latest information from online media about the discussion of the material. Qualitative methods are used as a tool to collect data as well as to conduct analysis, where information is obtained from the initial literature which is continued in the subsequent search for more in-depth information.

Some things that are taken into consideration will also be juxtaposed with the Regulation of the Prosecutor's Office of the Republic of Indonesia concerning Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This also refers to the provisions governing the principle of dominus litis (Kurnia, 2020) which means that the Prosecutor's Office of the Republic of Indonesia is the only public prosecutor in Indonesia, including in coordination with the Military Prosecutor who acts as a prosecutor in the Military Courts (Mulyana, 2020).

DISCUSSION

Bakar Batu Tradition in Papua

In Papuan society, there are communities that have a tradition or culture from generation to generation, namely, a *bakar batu* party or *Barapen*, where pigs are the main or important symbol for them in the party procession. The *bakar batu* tradition, originated from a tribe in the interior, namely the *Baliem* Valley, which is already famous for its cooking method by *bakar batu*, which for the Papuan people, the ceremony is an important part in every big event among them.

The *bakar batu* party is a traditional activity of the Papuan tribal community that started in the interior, namely in the *Baliem* Valley. The people in *Paniai* Regency call the *bakar batu* tradition *Gapiia*, and in *Wamena* Regency call it *Kit Oba Isogoa*.

Along with its development, this party is not only used as a tradition for the Papuan people in the *Baliem* Valley. However, almost all of Papuan people are carried out as a form of gratitude for abundant blessings, weddings,

welcoming great guests, funeral ceremonies, and also carried out as evidence of peace after inter-tribal wars.

What the Papuan people do about *bakar batu* is an activity that involves many people from all walks of life in a group. Starting from small children, teenagers, adults to the elderly, men and women. This *bakar batu* party aims to make a dish in the form of pork as the main menu, and vegetables and sweet potatoes as a complement which are cooked together on a stone that has been burned first. Therefore this activity is called the *bakar batu* tradition (Herningsih, 2018).

In its activities, the *batu bakar* tradition has many unique characteristics, including the process of executing the sacrificial animal, the process and method of cooking it, as well as the tools used in cooking. It is called *bakar batu* because in the cooking process it uses a medium in the form of stones as the main tool which is heated by burning together with a pile of wood. Until the wood runs out, so the stone can become hot and can be used for cooking pork and complementary menus on it.

For the Papuan people, the *bakar batu* tradition is not only a habit and culture that they usually do to just have fun gathering for a big meal, but it contains certain purposes and objectives, namely:

1. As a means of expressing gratitude which is meaningful as a form of gratitude to God for the abundance of blessings, sustenance that has been given to them. This activity is usually done to enliven the wedding, welcoming big guests. In addition, this party is also held as one of the processions in the death ceremony and is a traditional ritual. Not only that, this *bakar batu* party is also used when there is peace after the war between tribes.

2. As a place to gather for local relatives in order to continue to build communication and relationships within one tribe.
3. As an invitation to forgive each other, release the burden of adat for a mistake that occurred and it is necessary to restore the relationship between humans and their customs (Elas, 2018).

Ne Bis in Idem and *Restorative Justice*

The principle of *ne bis in idem* is a principle that provides an understanding that a case that has been examined and decided by the court cannot be re-submitted for re-examination. This principle should also be applied in the Military Court when there is a soldier who is examined and tried for a case which is actually traditionally the case has been resolved through customary consensus. The assessment that the case has not been completed in the eyes of national law is a form of unilateral judgment that does not accommodate the form of local wisdom in a society as a real effort of restorative justice.

Likewise with the settlement of customs in the Papua and West Papua regions which still prioritize the form of local wisdom which resolves problems through customary consensus and ends with the *bakar batu* tradition.

Actually, with the *bakar batu* tradition for soldiers who are considered to have committed *salah lirik* or some other customary violation, then true justice can be achieved, namely a form of justice that is actually felt by the surrounding community. The form of justice that is not only determined by judges, prosecutors and the state in the form of formal justice but only achieves pseudo justice, but is a

form of justice that is truly accepted by the victim and the community. This reality later became a phenomenon that restorative justice based on local wisdom really exists in Papua, not just a theory in the air.

This was then proposed as an alternative form to cut the length of the chain of Military Courts with various forms of formality which actually only prolongs the process of achieving justice.

When compared with the general justice system, the Attorney General's Office of the Republic of Indonesia already has legal software that provides the basis for the Prosecutor as the public prosecutor to terminate prosecutions based on restorative justice. This is regulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perjak No. 15 of 2020).

Based on Article 5 paragraph (2) of Perjak No. 15 of 2020 it is stated that the termination of prosecution based on Restorative Justice against the type of crime/crime against property, in terms of meeting the criteria and special/ caseistic circumstances, can be carried out by the Public Prosecutor with the approval of the Head of the District Attorney's Branch or the Head of the District Prosecutor's Office while still considering that:

1. The suspect has committed a crime for the first time; and
2. Criminal acts are only punishable by a fine or punishable by Imprisonment of not more than 5 (five) years; or
3. A criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp2,500,000,000.00 (two million five hundred thousand rupiah).

Furthermore, based on Article 5 paragraph (3) of the Attorney General's Office Regulation No. 15 of 2020 it is stated that the termination of prosecution based on Restorative Justice against types of crimes/crimes against people, bodies, lives, and independence of people, in terms of meeting the criteria and special/caseistic circumstances, can be carried out by the Public Prosecutor with the approval of the Head of the District Prosecutor's Office or the Head of the District Attorney's Office while still taking into account that:

1. The suspect has committed a crime for the first time; and
2. Criminal acts are only punishable by a fine or punishable by imprisonment of not more than 5 (five) years.

Next, based on Article 5 paragraph (4) of the Attorney General's Office Regulation No. 15 of 2020, the termination of prosecution based on Restorative Justice against the type of crime/crime caused by negligence, in terms of meeting the criteria and special/caseistic circumstances, can be carried out by the Public Prosecutor with the approval of the Branch Head. The District Attorney's Office or the Head of the District Attorney's Office while still considering that the suspect has committed a crime for the first time.

Based on the formulation of Article 5 paragraphs (2), (3), and (4) above, it can be seen that there are objective conditions, namely the requirements determined by the Public Prosecutor with the approval of the Head of the District Prosecutor's Office or the Head of the District Attorney's Office, which are part of the authority assigned to him. owned by the Public Prosecutor after obtaining approval from the Head of the District Attorney's Office or the Head of the

District Attorney's Office, either cumulatively, as stipulated in Article 5 paragraph (1), or alternatively, as stipulated in Article 5 paragraph (2), (3), and (4).

In the following provisions, it is explained that based on Article 5 paragraph (6), it is determined that in addition to the requirements specified in Article 5 paragraphs (1), (2), (3), and (4), it must also be equipped with the requirements specified in Article 5 paragraph (6), which is in the form of conditions involving the Victim, the Perpetrator and the Community. The terms of the agreement between the victim, the perpetrator and the community include:

1. There has been a recovery back to its original state carried out by the suspect by:
   a. Return the goods obtained from the crime to the victim;
   b. Compensate the victim's loss;
   c. Reimburse the costs incurred as a result of the criminal act; and/or
   d. Repair the damage caused by the criminal act;
2. There has been a peace agreement between the Victim and the Suspect; and
3. Society responds positively.

Based on the formulation of Article 5 paragraph (6) above, it can be determined that there are subjective conditions, namely requirements that stipulate the involvement and agreement between the victim and the perpetrator as well as the presence of the community, which includes:

1. There has been a recovery back to its original state carried out by the Suspect by:

a. Return the goods obtained from the crime to the victim;
b. Compensate the victim's loss;
c. Reimburse the costs incurred as a result of the criminal act; and/or
d. Repair the damage caused by the criminal act;

2. There has been a peace agreement between the Victim and the suspect; and
3. Society responds positively.

The application of this subjective requirement is part of the participation of victims, perpetrators and the community in reaching an agreement aimed at recovery and restoration of victims by perpetrators and getting a positive response from the community.

From some of the statements above, it can be seen that first, the types of criminal acts that can be carried out by Restorative Justice Closing Prosecutions are only certain in the types of criminal acts that are personal to individuals and not against the types of criminal acts that are detrimental or threaten the safety of the state, state leadership, public order, morality, narcotics, and carried out by corporations.

Second, there are objective conditions, namely conditions that are absolutely attached to the policy of the Prosecutor's Office to determine whether or not a restorative justice can be carried out and also subjective conditions, namely the conditions attached to the related parties, in this case including victims, perpetrators and community responses, meaning that Restorative Justice can only be implemented if the objective and subjective conditions are met properly.

Thus, it is possible that the *salah lirik* case that occurs in the settlement process can use the Discontinuation of Prosecution based on Restorative Justice. Because of this type of *salah lirik* case, it does not include cases that are excluded from being given restorative justice which includes: types of criminal acts that are personal to individuals and not against types of criminal acts that are detrimental or threaten the safety of the state, state leader, public order, morality, narcotics and carried out by corporations.

However, because there are no regulations governing the Military Courts and Military Prosecutor's Office, the process of discontinuing prosecution based on Restorative Justice, as has been done in the Prosecutor's Office of the Republic of Indonesia, cannot be implemented. Thus, it is necessary to follow up with the issuance of the TNI Commander Regulation concerning the Termination of Prosecution based on Restorative Justice within the TNI.

Advantages and Disadvantages of the *Bakar Batu* Tradition

Several things also need to be taken into consideration in implementing the *bakar batu* tradition as a form of restorative justice based on local wisdom, including the advantages and disadvantages.

The first thing that is considered profitable is the target of the value of justice to be achieved, not just a form of pseudo justice that leads to a pattern of punishment which actually exacerbates the psychological burden of soldiers who are considered to have violated the law, but the target of justice achieved is justice that is essential and truly accepted by the people victims and their communities.

The two processes of implementation do not require a complicated process and involve many institutions, which in fact can actually distance them from the value and search for the justice process itself. The process of organizing the *bakar batu* tradition seems to cut down the judicial bureaucracy which tends to be administrative, because it is only carried out by bringing together the perpetrators, victims and the community who are usually represented by traditional leaders or *Ondoafi*. This becomes simpler, more practical and substantial, than if it had to go through a military court process which had layers of backing and legal processes.

Third, the settlement of cases becomes direct to the point, meaning that they are no longer concerned with the formalities of indictments, demands, exceptions, pleas, but directly on the substance. This means that it is conscience and common sense that will judge directly without being wrapped in various pretexts that will actually complicate the settlement process. The situation will take place in a more conducive and familial way to find the best solution and not to blame each other or seek one-sided justification. The solution sought is a form of customary restoration, peace between the parties and regional peace.

Fourth, in the *bakar batu* tradition, each party is brought together under kinship conditions, meaning that the parties no longer prioritize their respective egos which can have an impact on the protracted settlement process. Each party is invited to introspect each other and realize their respective positions where their weaknesses and strengths lie, but not to be defeated or to beat each other on the opposing side, but to improve each other and weave them in a closer situation in order to avoid this from happening again. The goal to be

achieved in this case is not merely the payment of fines or punishment through slaughter of livestock, but rather to minimize existing differences and prevent this from happening again through mutual understanding between the conflicting parties.

Fifth, the perpetrators who are accused of violating the law will not be stigmatized as violators of the law, because the problem is considered to have been resolved. It is different if he is examined and tried and found guilty through a formal judiciary, then as long as he is alive the record of the violations of the law that he has committed will remain and be a consideration if he will continue his military career.

Sixth, holding traditional meetings to gather as well as a place to solve problems. This means that the place to resolve the problem does not need to be taken to a big city where there is an official court place and institution according to the jurisdiction or requested assistance for examination and trial if the defendant has returned to his home base. In contrast to the formal judiciary, which determines that the place of problem solving must be in a certain area, with certain facilities and attended by certain parties so that its validity is strongly recognized. However, such a judicial process costs a lot of money, because it costs a lot of money to bring the accused, related witnesses, victims and other supporting officers to the table. Unlike the case with the customary court model which is carried out in a simple, simple and substantial way, it is not bound by administrative formalities.

Seventh, the decisions resulting from the customary court are final and binding, do not recognize any appeal or

cassation, so that they can speed up the recovery and restorative process, both for perpetrators who want to improve themselves, as well as for victims who do not need to linger in the face of inner "torment" and stigma as a victim.

However, in addition to the advantages of implementing the *bakar batu* tradition as a restorative justice effort based on local wisdom, it is necessary to realize that there are some shortcomings that are considered to be able to hinder the achievement of substantial justice.

First, to reach an agreement on the implementation of the *bakar batu* tradition as an effort of restorative justice in the form of local Papuan wisdom, the costs required to organize the *bakar batu* tradition are not cheap. This is related to the calculation pattern of the Papuan indigenous people who measure it by the size of livestock (pigs) which are quite expensive. Not to mention the calculation of the number of other livestock that must be provided as a substitute for adat for the mistakes made.

Second, the language barrier in the Papua region makes restorative justice efforts through the *bakar batu* tradition an activity that is not as easy as imagined. This means that efforts to communicate with various types of tribes in the Papua region must have language skills which each tribe has a different language and dialect. Why is this knowledge and language skills important, because if you make a mistake in using a language or interpreting a language, the meaning will also be different. The impact will not only be detrimental to the negotiation process but can be even worse. For that we need translators who are not only really proficient in mastering the language, but also the traditions and customs

of their respective tribes. It is even better if the person can be a trusted liaison for both parties.

Third, after negotiations are held and the agreement is reached, it is determined how many livestock are needed as a condition for restorative justice, the next problem is that sometimes it is not easy to meet the demands of livestock as desired, meaning both in terms of gender, weight and age. Besides that, it is also not necessarily in the area that there are livestock according to the intended requirements, so they must bring them from other areas. In addition to thinking about the cost of bringing them or transportation costs, usually by plane, the cost of purchasing the livestock is also calculated. As usually the price of livestock that will be used as livestock in the *bakar batu* tradition is relatively more expensive than the price of livestock in general because they have special requirements that livestock in general do not have.

Fourth, the implementation of the *bakar batu* tradition must really be attended by traditional leaders or *Ondoafi* who have qualified and respected capacities in the community. The process to approach and build trust in traditional leaders and *Ondoafi* is not as easy as one might think. It cannot be built in a day, two days or two or three meetings. To be able to gain the trust and attention of the customary head or *Ondoafi*, good relations need to be established long ago, not after the occurrence of problems or customary violations.

Fifth, the security risk is quite high if the *bakar batu* tradition is held in the interior of Papua. This means that internal security will carry enough risk considering that the location and area is far from the reach of the security forces in the event of a threat that could endanger safety.

Bakar Batu Tradition and the Potential of *Ne Bis in Idem* in Military Courts

Seeing the advantages and disadvantages of the process of solving problems through the *bakar batu* tradition in Papua as a form of restorative justice efforts that refer to local wisdom, a new perspective can be obtained that can place the *bakar batu* tradition as part of restorative justice efforts within the scope of the Military Courts. The point is that if someone has been tried and convicted and brought together in the *bakar batu* tradition, then that person should not need to be tried again within the scope of the Military Court.

Apart from this, it will be *ne bis in idem*, it will also have a bad influence on soldiers who feel that for one act they have been punished many times.

Although this tradition is protected by the local government in accordance with the Papua Province Regional Regulation, Number 16, Article 2 and Article 4, 2008 concerning the Protection and Development of Indigenous Papuan Culture (Herningsih, 2018). However, it still needs to be explored more deeply about the philosophical basis and other legal institutions that place the standard *bakar batu* tradition as part of restorative justice efforts.

At least put it into an official policy that is contained in the form of legal provisions or other statutory regulations so that the existence of the *bakar batu* tradition is not just a cultural tradition, but can also become a legal tradition that can provide a more optimal solution to the application of law.

CONCLUSION

Bakar Batu tradition in the Papuan community is a form of tradition that is based on the form of local wisdom in

solving legal problems as desired in the form of restorative justice. Given that the *bakar batu* tradition can also be applied to soldiers who violate the law in Papua, this tradition can be used as an alternative form of settlement of cases outside the court.The basic considerations used to implement this, apart from the *ne bis in idem* principle against a case that has been resolved by indigenous peoples, should not need to be re-trial within the Military Court.

It is recommended that the use of the *bakar batu* tradition as an alternative to resolving cases outside the court, it is necessary to have a good intention that is set forth in the form of policies and legal provisions, both in the form of legislation and policies established through the Supreme Court.

Because the prosecutor's office already has software on restorative justice with Perjak Number 12 of 2020, it is appropriate that within the TNI, especially in the Military Prosecutor's environment, it is also necessary to draft a TNI Forcecommander Regulation which also regulates the Termination of Prosecution based on Restorative Justice.

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Digitalization of Law Enforcement and Public Services Systems to Prevent Corruption

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Abstract

Law enforcement in the fight against corruption appears to be interminable. This reality is a logical consequence of one of the corruption characteristics, which is systemic. It leads to the impossibility of eradicating corruption merely through repressive law enforcement. The process requires a reformation in the law enforcement and public services systems through the digitalization approach to preventing the criminal act of corruption. The digitalization approach is expected to improve accountability and transparency in both the law enforcement and the public services provision systems for society, thereby complementing the repressive efforts of corruption eradication.

Keywords: *Digitalization, Criminal Justice System, Public Services, Accountability, Transparency*

INTRODUCTION

Efforts to eradicate corruption have been effectuated in wide-range ways, for example, by aggravating sanctions against perpetrators of corruption. However, corruption has never reached its endpoint. Instead, its forms become significantly more complex and vary. Nevertheless, the Corruption Perceptions Index (CPI) published by Transparency International Indonesia (TII) on Tuesday, January 25, 2022,

indicated a ranking improvement for Indonesia compared to 2020. In 2020, Indonesia occupied the 102nd position, while it went up to the 96th of 180 countries in 2021.

Therefore, it can be concluded that efforts to eradicate corruption that have been implemented up to the present day still require much improvement. Fighting against corruption through repressive mechanisms, such as imposing punishment or criminal sanctions for perpetrators, should be complemented by a corruption prevention mechanism both in the law enforcement system and in the government or public services system. It is essential to highlight that one of the causes of rampant corruption cases is the poor implementation of general principles of good governance (*algemene beginselen van behoorlijk bestuur*) and good governance principles in government practices, particularly in terms of accountability and transparency.

Humans currently live in modern civilization, which spurs everything to be fast-paced, effective, and efficient. The demand for solving various problems in an instant appears as an absolute requirement that must be fulfilled and even serves as an identity or characteristic of the current development era. Other than that will be considered old-fashioned and outdated since, principally, every country in the world is currently competing to be the leading country in information technology.

Essentially, humans possess four key elements within themselves: body, sense, rationality, and harmony (Kartohadiprodjo, 2010). With rationality, humans will continue striving to solve various problems they encounter. Furthermore, technological advancement will go hand in hand with human needs that will continue to increase since

an invention is created because humans require extra convenience in carrying out their manifold activities.

The internet emerges as the example of the most rapid technological development, which gradually reaches almost all corners of various countries. Howard Rheingold claimed that the internet or cyberspace comes to be an imaginary or virtual space with its artificial nature, where everyone can do whatever they usually do in everyday social life (Wibawa, 2016). The internet allows everyone to cross space and time boundaries; thus, they can interact and communicate with anyone, anywhere, and at any time. Accordingly, the law enforcement sector needs to adjust its implementation to the rapid development of the digital world, especially the internet. The need arises as the logical consequence of crimes that also adjust their forms, patterns, and methods to the existing developments. Therefore, if the law fails to keep up with these dynamics, the law will struggle amidst development (*Het Recht Hink Achter De Feiten*).

With the rapid development of a borderless world through cyberspace, there is a chance to seek transparency and increase government accountability to minimize and prevent corruption.

This research employed a normative juridical method. Normative legal research focuses on examining the rules or norms enforced in society by identifying whether there are norm conflicts, legal voids, or non-idealities in a law being enforced (Ishaq, 2016). Soerjono Soekanto and Sri Mamudji explained that normative legal research is carried out by reviewing library materials or secondary data materials. Therefore, the researcher selected this normative juridical method to examine how the digitalization of the law

enforcement system and public services may affect corruption prevention.

Since this research is normative juridical research, the data utilized was secondary data consisting of primary legal data and secondary legal data. The researcher obtained the data by collecting, processing, and reviewing library materials and relevant documents. The followings are the explanations of primary legal materials and secondary legal materials:

1. Primary legal materials are legal rules implemented or enforced by the state.
2. Secondary legal materials are all publications that are unofficial documents. Publications include textbooks discussing various legal issues, consisting of undergraduate theses, postgraduate theses, and dissertations on the law; law dictionaries; legal journals; and comments on the judge's decisions.

Data analysis is the process of breaking down particular matter into its components and examining the correlations among them to analyze such matter from various points of view. Legal research is a form of scientific activity that must always be connected to the meaning ascribed to the law, which serves as a standard or guideline for human behavior. Legal research and science are means to develop legal science in particular and legal disciplines in general.

Based on the above background, the formulation of the problem in this paper is What is the urgency of digitizing the corruption prevention system? What is the form of digitalization of law enforcement and public services to prevent corruption?

DISCUSSION

The Urgency of Digitizing the Corruption Prevention System

The word "corruption" is revealed in many languages, such as Latin (*corruptio*), French (*corruption*), and Dutch (*corruptie* or *koruptie*). Corruption literally means rottenness, depravity, fraud, badness, damage, deviation from chastity, involvement in bribery, dishonesty, immorality, defamation, or insulting words/hate speech (Umar, 2019).

According to Pearson, corruption has a significant detrimental effect on the development and economy of a country, even causing injustice in both developed and developing countries. He stated that (Pearson, 2019):

> "Corruption is a phenomenon that appears to be increasing throughout the world. It is a problem that affects both developed and developing countries to varying degrees, depending on the extent and type of corruption. There is vast literature on the subject of corruption. Corruption is viewed as having a deleterious effect on the economic growth and development of a country. This conclusion is generally accepted despite the limited empirical data. Corruption is also seen as a contributing factor to ongoing inequalities, whether in developed or developing countries."

Although the regulation of corruption crimes has been agreed upon through the United Nations Convention Against Transnational Organized Crime (UNCATOC) in 2000, the global community believes that it is preferable to regulate corruption separately. Some of the considerations include the followings (Yanuar, 2007).

1. In facing the legal process, perpetrators of corruption often commit bribery and other corruption acts to protect themselves from interference from the criminal justice system and other supervisory bodies. When compared to employing other tactics like intimidation and violence, corruption is a crime with a high level of calculation since the implementation does not provoke a reaction that impacts state authorities.
2. The effects of corruption spread faster than other serious crimes. This matter often results in public officials committing acts that are detrimental and contrary to the public interest. Corruption destroys the stability of the government system and public trust. High cases of corruption in government institutions will damage international relations, threaten the quality of life, and hinder people's social and economic development.
3. Corruption triggers illegal market demands, such as immigration violations, human trafficking, and arms trafficking. In this case, corrupt officials facilitate organized crime groups' efforts to hinder law enforcement, intimidate witnesses, disrupt the process of international cooperation, and refuse the extradition of perpetrators of transnational crimes.
4. Corruption exists in every country. The global community continuously demands more openness and accountability from state administrators. This fact can be perceived from many national, regional, and international initiatives that focus on various aspects of corruption issues in recent years, such as the Council of Europe, the Criminal Law Convention on Corruption, and the Inter-American Convention against Corruption

adopted in 1996. Global institutions such as the Organization for Economic Co-operation and Development of the World Bank, the European Union, and non-governmental organizations are paying more attention to corruption issues.

These considerations also lead to the attachment of extraordinary crimes status to criminal acts of corruption based on the United Nations Convention Against Corruption (UNCAC). Thus, through the convention, corruption is declared a transnational crime, as stated in the UNCAC, "Corruption is no longer a local matter but a transnational phenomenon that affects all social and economies ...". This content emphasizes that corruption should not be considered a mere national problem, yet it must be considered a world problem. The declaration of corruption as an extraordinary crime is certainly because of the effects, which obviously violate the social and economic rights of the people of a country.

If we analogize corruption to disease, corruption in Indonesia has developed in three stages; elitist, endemic, and systemic. At the elitist stage, corruption appears as a typical social pathology in the elite/official circles. Then, corruption is endemic to the broader public at the endemic stage. Finally, the critical stage is where corruption has become an organized or systemic scheme (Prasetya, 2013). The aforementioned conditions are alarming situations that can build a permissive attitude from the public toward the practices of corruption, as these crimes are capable of destroying democratic values and the morality of a nation.

Furthermore, according to Heidenheimer, corruption is classified into three categories, namely (Ghoffar et al., 2020):

1. Black Corruption

   This category refers to particular acts in which the general or majority consensus among the elite and the general public condemns the action and wants the perpetrator to be punished for violating the fundamental laws and principles.

2. Grey Corruption

   This category refers to particular acts in which some elements, usually the elite, want the perpetrators to be punished, while others oppose, and the majority opinion will remain ambiguous.

3. White Corruption

   In this category, most elites and the general public do not support the efforts to punish corruption perpetrators since they consider it tolerable.

It is understandable that law enforcement in the fight against corruption faces difficulty in reaching the optimal point due to the obstacles in its implementation, either from inside or outside the law enforcement agencies. For example, the sectoral ego of law enforcement agencies can result in the non-functioning coordination of supervision and enforcement among law enforcement agencies (criminal justice system) and poor implementation of internal control in law enforcement bodies. In this case, conflicts of interest often arise in its implementation.

In addition to structural barriers to law enforcement agencies, the obstacles are exacerbated by cultural barriers within the government, resulting in the implementation of a

government system that is frequently not based on general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*). The solid tolerant attitude accompanied by the inability to say "no" among government officials widely open the opportunity to commit corruption. It can be seen from the execution of the corruption until the beginning of the law enforcement process. Officials will cover each other since they "feel bad" about exposing their colleagues. Moreover, the cultural impact can be seen in how the public usually responds to corruption. They tend to be antipathetic or even permissive when finding out a state official has committed a deviation. In fact, the public has been granted the right through Article 41 paragraph (1) of Law Number 31 of 1999 concerning the eradication of criminal acts of corruption (Corruption Law), stipulating that "The public can participate in helping prevent and eradicate corruption." It is further emphasized by the clause in Article (2) letters a and b, stating that "Public participation as referred to in paragraph (1) is manifested in the form of:

1. The right to seek, obtain, and provide information on allegations of corruption;
2. The right to obtain services in seeking, obtaining, and providing information on allegations of corruption to law enforcement officials who handle corruption cases.

It is expected that the public can take advantage of the rights granted by the law through the State Officials Wealth Report (LHKPN) mechanism that provides access to monitoring the increase in the wealth of state officials in their respective regions by simply entering the name, position, or employee identification number of the respective state

official. However, if the permissive culture persists, then the mechanism will be a mere formality and cannot be implemented optimally.

For this reason, transformative actions must be taken to strengthen the commitment to preventing corruption through digitalizing law enforcement and good governance. Such actions may include:

1. Improving the public service sector because this sector is directly related to the public as a daily business process, and its implementation is relatively vulnerable to corrupt practices. Digitalization in this sector is intended to minimize face-to-face public services, as well as to provide timely services and certainty regarding the service costs;
2. Strengthening transparency in every activity related to budgeting and expenditure because, in principle, information on the utilization and management of resources shall be accessible to the public, and they should be involved in matters related to the country's economy;
3. Raising public legal awareness through digital channels to help them understand the law, which is an important aspect of avoiding inequality in the implementation of the legal system. Although we are familiar with the saying *"ignorantia jurist non excusat"* (ignorance of the law is no excuse), developing legal compliance requires the active role of the government to disseminate the regulations properly, clearly, and on target;
4. Eliminating every sectoral ego in each law enforcement agency is one of the priorities for optimizing law enforcement in the fight against corruption. Therefore, coordination between law enforcement agencies through

digital channels is one of the ways to suppress the ego of each agency for the complete handling of corruption cases. In addition, digitalization in the law enforcement system can accelerate the existing judicial process, allowing the judicial system to provide the triad of justice, utility, and certainty for the public.

Law Enforcement and Public Services Digitalization

The most significant digitalization in the law enforcement system occurs in the trial process, in which efforts are required to find the truth in a criminal case. As we all know, in 2020, most countries were affected by the COVID-19 pandemic that had paralyzed various strategic aspects, including political, economic, social, cultural, and law enforcement aspects, both in the pre-adjudication and adjudication stages.

The adjudication process could not be performed normally since face-to-face trials could increase the spread of the virus. Therefore, the law enforcement process should not add more casualties, as the saying goes, "*salus populi suprema lex esto*," which means the safety of the people shall be the highest law.

The digitalization of the adjudication process to ensure the continuity of law enforcement during the pandemic is implemented by establishing the Supreme Court Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Court. It appears as the effort of the Supreme Court of the Republic of Indonesia to ensure the seamless implementation of law enforcement and, especially, the defendant's right to obtain legal certainty at the earliest opportunity.

The implementation of e-court for criminal cases according to the Supreme Court Regulation has binding legal force. It is in line with Indriyanto Seno Adji's statement, "Supreme Court Regulations have binding legal force, are legitimate, and do not deviate from the principle of *lex superior derogat legi inferiori* (a law higher in the hierarchy repeals the lower one).

The concept of e-court is not new in the adjudication process in Indonesia. Article 27 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states:

> "In the event that Child Victims and/or Child Witnesses are unable to provide information before the court of session, Judges may order Child Victims and/or Child Witnesses to provide information through electronic recording or direct remote investigation using audiovisual communication devices."

The concept of e-court, in this case, is relevant since the juvenile criminal justice system demands the rapid provision of legal certainty for juveniles involved in legal cases. It is reflected in Article 3 letter g, which states:

> "Every juvenile involved in criminal justice processes has the right not to be arrested, detained, or imprisoned, except **as a last resort and in the shortest possible time.**"

Juvenile criminal justice shows the importance of fast, simple, and low-cost justice principles. This principle applies not only to the juvenile criminal justice system but also to every justice system under the authority of the Supreme

Court as regulated in Law Number 48 of 2009 concerning Judicial Power. Fast, simple, and low-cost justice is a fundamental principle in the justice system in Indonesia since it incorporates essential elements. It is also in line with Sudikno Mertokusumo's opinion that:

> "Simple here refers to clear, easy-to-understand, and uncomplicated legal proceedings. The fewer and simpler the formalities required in court proceedings, the better (Mertokusumo, 2009)."

Furthermore, the word "fast" in the abovementioned principle indicates practicality in the judicial system, especially in the law enforcement of corruption cases, in which the resolution takes years due to the difficulty of presenting witnesses, considering the number of witnesses in corruption cases is often relatively large. In addition, sometimes, there are many inhibiting factors that hinder the application of the principle.

The term "low-cost" in the implementation of e-court refers to the efficiency of dealing with corruption cases because, in examining witnesses, experts, evidence, and the defendants, the prosecutor no longer needs to present directly at the trial, which certainly will reduce the case management budget.

It is in line with Menashe, who suggested that "The online court is expected to generate large profits. Therefore, to realize it requires a basis that the judiciary is carried out with a simple procedure and low-cost." This statement basically explains that the e-court constitutes an embodiment of technological advances that offer positive impacts in terms of simplicity and cost-effectiveness.

The judicial reform toward digitalization in Indonesia initially referred to the 2010-2035 Judicial Reform Blueprint. The Supreme Court seeks to restore public trust in the judiciary in Indonesia by introducing a structured and measurable judicial system. The new system is expected to solve the old cases to avoid the occurrence of "justice delayed is justice denied".

The digitalization of public services, moreover, serves as one option to realize the concept of good governance. Good governance has been a prolonged demand of the public to state officials. This demand is also voiced by the international community. It is reflected in several characteristic parameters of good governance presented by the United Nations Development Program (UNDP), namely (Lutfia, 2021):

1. Participation

   In terms of decision-making, citizens are entitled to participate in making decisions either directly or through political channels representing the community in state institutions. Public participation is a significant factor that determines the legitimacy of a decision made.

2. Transparency

   To the fullest extent, any decision made by the state must be accessible to the public, particularly information that directly corresponds to the citizens' legal interests. Therefore, disclosure of information to the public functions is the key to realizing good governance.

3. Effectiveness and Efficiency

   Any decision made or action taken by the government for the benefit of the community should be uncomplicated and right on target. In addition, it should

be supported by considering the costs and benefits of the decisions taken.

4. Accountability

   The government must have a basis or benchmark for the successful outcome of decision-making so that every decision made or action taken by the government can be held accountable to the public.

Some of the characteristics above become benchmarks of whether a country or government in providing public services has fulfilled the principles of good governance. Without optimal public participation, the government is inclined to make decisions discreetly without considering the public interest. Therefore, the digitalization of public services is capable of responding to these problems by increasing public participation in the political process and the government implementation digitally; the building of effective, targeted, uncomplicated, and comprehensive bureaucracy; and the implementation of consistent laws and regulations.

Digitalization in the implementation of the government system is known as e-government. According to the World Bank, e-government refers to:

> "E-government refers to the use by government agencies of information technologies (such as Wide Area Network, the internet, and mobile computing) that have the ability to transform relations with citizens, business, and other arms of government."

The definition indicates that the scope of e-government includes the relationship between the government and

citizen, government and business, government and government, as well as government and employees. The elaboration of each type of e-government as the implementation of transparency and accountability in the context of preventing corruption is as follows.

1. Government and Citizen

   The most basic form of e-government is the relationship between the government and the citizen, as it is bound by a social contract. It composes a logical consequence of state power arising from an agreement among citizens. The primary purpose of digitalization in this relationship is to help the citizens access government services and protect them from corrupt practices by government elements in providing public services. In addition, e-government also makes it easier for citizens to obtain public information and data from the government as a form of government transparency and accountability.

   An example of e-government between the government and citizens includes https://jabarprov.go.id/. The West Java Provincial Government's website provides online public services such as Citizenship and Residency, Education and Learning, Health, Tax Payments, Social and Family, and Employment within the scope of West Java Province.

2. Government and Business

   Services to business actors are also prioritized in e-government. These services are delivered using information technology, aiming to facilitate interaction between business entities and the government. It also

serves to maintain the conditions of the procurement of goods and/or services by the government to avoid corrupt practices and ensure that business relationship among business actors remains healthy and competitive.

An example of e-government between the government and business actors is in the form of e-procurement. Through https://e-katalog.lkpp.go.id/, the Government Goods/Services Procurement Policy Institute (LKPP) provides the opportunity for business actors to procure goods/services for the government through electronic tools (e-procurement). The e-catalog is an integrated electronic information system that contains lists, brands, types, technical specifications, and prices and quantities of certain available goods/services from various providers.

3. Government and Government

The globalization era demands fast communication and cooperation between countries worldwide. Communication and cooperation between countries are not restricted to diplomatic relations. On top of that, there are many aspects related to international trade, law enforcement, society, and culture that must be reciprocal. Therefore, digitalization in the relations between countries has become a priority in every country's e-government.

An example of e-government between countries includes the development of applications or websites such as https://kemlu.go.id/london/en, which connects local government offices with embassies or consulates general to provide data and services required by their

citizens residing in a foreign country. In addition, a website such as https://www.interpol.int is developed to facilitate the cooperation of international law enforcement in relation to disclosing transnational crimes.

4. Government and Employees

The relationship between the government and its employees or civil servants should also be developed through digital applications. It is intended to support and improve the performance and welfare of the civil servants working in government institutions.

An example of e-government between the government and its employees is the Management Information System of the Attorney General of the Republic of Indonesia website. It contains employee profiles, career paths, and assignment data that can be utilized as references and considerations for the employee in question to be given a promotion or transfer to another work unit.

CONCLUSIONS

According to the research results above, eradicating corruption, which is classified as an extraordinary crime, cannot be performed only through repressive methods. It is because, in principle, corruption is a systemic crime within the government structure. Therefore, the law enforcement system and the implementation of the government system must be updated through a digital approach to reduce the possibility of corruptive actions and provide the public access to monitor the implementation of government duties

and authorities as a form of public participation in preventing corruption. Implementing law enforcement and the government system is expected to prioritize accountability and transparency through digitalization as a requirement for fulfilling the principles of good governance. Digitalizing the law enforcement system through the application of e-court to prevent corruption is implemented to achieve the principles of simple, fast, and low cost. The use of information technology in case and adjudication management is expected to close the transactional space between litigants and law enforcement officials and enhance the efficiency and effectiveness of court business processes. Then, the e-government for government to citizen, government to business, government to government, and government to employees should be applied to establish a more transparent and accountable relationship pattern and enable the public to obtain the benefits of public services. Both service users and service providers should supervise the implementation of digital law enforcement systems and public services. It is because, in principle, any system designed by humans will always contain gaps and shortcomings that irresponsible individuals may use to engage in corrupt practices. Assessment and development of digital systems should continue to be conducted to determine an optimal digital system that civil servants can easily implement. On top of that, it is crucial to follow the current development since digitalization aims to prevent the government system from being disrupted by technological developments over time.

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Digitalizing Local Government Financial Management (Corruption Impact Assessment of Banggai Laut District Budget 2020)

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Abstract

The massive corruption that occurred in the regional financial management of Banggai Laut Regency has greatly disturbed the sense of justice, a community living in remote parts of the country has also become a victim of corruption crimes committed by the Regent and regional secretaries. Through this research, the author tries to test the application of digitalization to improve governance in order to prevent corruption. This research is not only normative juridical which analyzes theories, legal principles, concepts, and legal norms with a theoretical approach and comparative law but also empirically using a case approach and an analysis of the impact of corruption. The results of this study argue that the main factors for the occurrence of massive corruption in Banggai Laut Regency are poor governance, low accountability and weak transparency and public participation.The innovations suggested by the authors are increasing transparency and accountability through web streaming at auction sessions for procurement of goods and services at local governments, electronic dashboards, digital tools for more accessible and corruption-free public service delivery, and web applications for participatory budgeting.

Keywords: *Digitization, Governance, Corruption*

INTRODUCTION

Banggai Laut Regency is one of the regencies in the province of Central Sulawesi, Indonesia. Banggai Laut is the result of the division of the Banggai Islands Regency which was ratified in the plenary session of the DPR RI on December 14, 2012 at the DPR RI building on the Draft Law on New Autonomous Regions (DOB). Total population of Banggai Laut in 2021 as much as 70,435 souI, with a density of 97 inhabitants/km^2.*The revenue set for the 2020 fiscal year is Rp642,592,942,276.29 (six hundred forty-two billion five hundred ninety-two million nine hundred forty-two thousand two hundred seventy-six point twenty- nine rupiah). While the realization is only Rp. 571,507,938,037.29 (Five Hundred Seventy One Billion Five Hundred Seven Million Nine Hundred Thirty Eight Thousand Thirty Seven Point Twenty Nine Rupiah). "Realized revenue reached 89 percent. The income referred to is sourced from PAD, Balancing Fund and other legitimate income. (LKPJ, 2020) As a Regency with a remote geographical position and such a very low income level, it turns out that the regional head elected through the direct general election mechanism turned out to be corrupt in the misuse of the 2020 APBD. On Thursday, December 4, 2020, Wenny Bukamo as the Regent of Banggai Laut together 15 (fifteen) other people consisting of the ranks of service heads, contractors, and the success team for regional head elections were arrested by the KPK for accepting bribes with evidence of cash amounting to Rp1,000,000,000 which was stored in two boxes.[3]

Not only the Regent, the practice of corruption was also carried out by the Regional Secretary of the Banggai Laut Regency who also served as the Head of the Regional

Financial Management Agency, Idhamsyah Tompo, was sentenced to 7 years and 6 months in prison in the corruption case of the fictitious Official Travel Order (SPPD) BPKAD for the 2020 fiscal year. In addition, Ansar Mapiase (Expenditure Treasurer) and Silvana Bidja (Active Technical Implementation Officer (PPTK) are inactive, also defendants in the alleged corruption case of irregularities in the official travel budget of the Banggai Laut Regency Financial and Asset Management Agency (BPKAD).Based on concerns about the rights of the community to the results of development that occupy a cluster of islands in remote areas of Central Sulawesi Province, the authors are very interested in knowing the factors causing corruption by using the corruption impact assessment approach (ADK) or corruption impact assessment on the financial management of the Banggai Laut Regency government in 2015. 2020 budget. In addition, the author is also very interested in formulating steps to digitize local government financial governance as an effort to prevent further corruption.

Based on this background, the writer formulates the problem as follows:

1. What are the factors that cause corruption in the Banggai Laut Regency government's financial management in 2020?
2. What are the practical steps for digitizing the financial management of the Banggai Laut Regency government?

DISCUSSION

Transparency International defines corruption as the abuse of entrusted power for personal gain, thereby eroding trust, weakening democracy, hindering economic

development and further exacerbating inequality, poverty, social divisions and environmental crises (Transparcy International). Exposing corruption and holding corruptors accountable can only happen if we understand how corruption works and the systems that enable it (Transparcy International).

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to government instability. Corruption attacks the foundations of democratic institutions by distorting the electoral process, perverting the rule of law and creating a bureaucratic quagmire whose sole reason for its existence is bribery. Economic development is hampered because foreign direct investment is discouraged and domestic small businesses often find it impossible to cope with the "start-up costs" required by corruption.'

Indeed, the definition of corruption is very broad, from a socio-political point of view, a formal juridical point of view, or a cultural point of view. All have the same nature, namely a disgraceful act and deserves retaliation in the form of criminal sanctions. The entire current government continues to struggle to eradicate and minimize the occurrence and risk of systemic damage, among others, by the application of information technology in the form of a digitalization process. Through this research, the author tries to test the application of digitalization to improve governance (improvement of governance) in order to prevent the occurrence of corruption. The notion of governance or governance can be understood as an act or process of regulating or supervising the control and direction

of something (such as a state or organization) (Definition of governance). Governance according to the Governance Institute of Australia is that governance includes the systems by which organizations are controlled and operate, and the mechanisms by which those organizations, and their people, are held accountable. Ethics, risk management, compliance and administration are all elements of Governance. (The standard for assessing governance in an organization is the concept of Good Corporate Governance (GCG) (Definition of good corporate governance). According to the Organization for Economic Cooperation and Development (OECD), Good Corporate Governance (GCG) is a value standard as an instrument helping to build the environment of trust, transparency, and accountability necessary to promote long-term investment, financial stability and business integrity, thereby supporting greater growth. stronger and more inclusive societies (Definition of good corporate governance).

The principles of Good Corporate Governance (GCG) are intended to help policy makers evaluate and improve the legal, regulatory and institutional framework for corporate governance, with the aim of supporting economic efficiency, sustainable growth, and financial stability (OECD, G20/OECD Principles of Corporate Governance). The Principles recognize the interests of employees and other stakeholders and their important role in contributing to the company's long-term success and performance. Other factors relevant to the company's decision-making process, such as environmental, anti-corruption or ethical issues, are considered in the Principles but are treated more explicitly in a number of other instruments including the OECD Guidelines for Multinational Companies, the Convention on

the Eradication of Bribery of Foreign Public Officials in International Business Transactions, Principles United Nations Guidelines on Business and Human Rights, and the ILO Declaration on Fundamental Principles and Rights at Work (OECD, G20/OECD Principles of Corporate Governance).

The implementation of the principles of good corporate governance has been very interestingly applied by the North Macedonian government. Good Governance has been implemented in the implementation of public affairs and responsible management of public resources, with reference to the 12 Principles of Good Governance as set out by the Council of Europe. The 12 Principles are implemented in the Innovation Strategy and Good Governance at the local level, endorsed by a decision of the Council of Europe Committee of Ministers in 2008, covering issues such as ethical behavior, rule of law, efficiency and effectiveness, transparency, financial management and accountability healthy (The Council of Europe, 12 Principles of Good Governance).

The Government of North Macedonia has been awarded the European Label of Governance' Excellence (ELoGE) as an award given to a government authority that has achieved an overall level of good governance as measured by relevant benchmarks. The 12 Good Governance Principles are as follows:*[5]

1. Principles of Fair Election, Participation and Representation with implementation as**/OIIOWS:**
    a. Elections for regional heads are conducted freely and fairly, in accordance with international standards and national laws, and without fraud.

b. Citizens are at the center of public activity and they are involved in obvious ways in public life at the local level.
c. All men and women can have a say in decision-making, either directly or through a legitimate intermediary body that represents their interests. Such broad participation is built on freedom of expression, assembly and association.
d. All voices, including those of the disadvantaged and most vulnerable, are heard and taken into account in decision-making, including the allocation of resources.
e. There is always an honest effort to mediate between legitimate interests and to reach broad consensus on what is in the best interests of the entire community and on how this can be achieved.
f. Decisions are made according to the will of the many, while the legitimate rights and interests of the few are respected.

2. Responsibility
   a. Objectives, rules, structures and procedures are adapted to the expectations and needs of legitimate citizens.
   b. Public services are provided, and requests and complaints are responded to within a reasonable timeframe.
3. Efficiency and Effectiveness
   a. The results meet the agreed objectives.
   b. The best possible use is made of the available resources.

c. The performance management system makes it possible to evaluate and improve the efficiency and effectiveness of services.
d. Audits are conducted periodically to assess and improve performance.

4. Openness and Transparency
   a. Decisions are taken and implemented in accordance with the rules and regulations.
   b. There is public access to all information that is not classified for certain reasons as provided for by law (such as protection of privacy or ensuring fairness of procurement procedures).
   c. Information on decisions, policy implementation and outcomes is made publicly available in such a way that it is possible to effectively follow and contribute to the work of local authorities.
5. Rules of Law
   a. Local governments comply with laws and court decisions.
   b. Rules and regulations are adopted according to procedures prescribed by law and enforced impartially.
6. Ethical Behavior
   a. The public interest is placed above the individual interest.
   b. There are effective measures to prevent and combat all forms of corruption.
   c. Conflicts of interest are declared in a timely manner and the people involved should not take part in the relevant decisions.

7. Competence and Capacity
    a. The professional skills of those providing governance are continuously maintained and strengthened to improve outcomes and impact.
    b. Public officials are motivated to continuously improve their performance.
    c. Practical methods and procedures are created and used to convert skills into capacities and produce better results.
8. Innovation and Openness to Change
    a. New and efficient solutions to problems are found and advantages are taken from modern service delivery methods.
    b. There is a readiness to pilot and experiment with new programs and learn from the experiences of others.
    c. A climate that supports change is created to achieve better results.
9. Sustainability and Long Term Orientation
    a. The needs of future generations are taken into account in current policies.
    b. Community sustainability is always taken into account.
    c. Decisions seek to internalize all costs and not transfer problems and tensions, be they environmental, structural, financial, economic or social, to future generations.
    d. There is a broad and long-term perspective on the future of local communities along with an understanding of what is needed for such development.

e. There is an understanding of the historical, cultural and social complexities on which this perspective is based.

10. Financial Management Thought
    a. The levy does not exceed the cost of the services provided and does not excessively reduce demand, especially in the case of essential public services.
    b. Prudence is observed in financial management, including in contracts and use of loans, in the estimation of resources, revenues and reserves, and in the use of extraordinary income.
    c. A multi-year budget plan is prepared, with public consultation.
    d. Risk is properly estimated and managed, including by publication of consolidated accounts and, in the case of public-private partnerships, by realistic risk sharing.
    e. Local governments take part in inter-city solidarity arrangements, equitable sharing of burdens and benefits and risk reduction (equity system, inter-city cooperation, risk mutualization
11. Human Rights, Culture, Diversity, and Social Ties
    a. Within the sphere of influence of local authorities, human rights are respected, protected and enforced, and discrimination on any grounds is fought.
    b. Cultural diversity is treated as an asset, and continuous efforts are made to ensure that all have an interest in the local community, identify with it and do not feel excluded.
    c. Social cohesion and integration of disadvantaged areas is promoted. Access to essential services is

maintained, particularly for the most disadvantaged sections of the population.

12. Accountability
    a. All decision makers, collective and individual, are responsible for their decisions.
    b. Decisions are reported, explained and can be sanctioned.
    c. There is an effective remedy against maladministration and against acts of local authorities that violate civil rights.

The author sees that the eighth principle, namely Innovation and Openness to Change, is the key to the success of improving Good Governance in public services by the North Macedonian Government to prevent corruption in the public service sector. The 12 principles of Good Governance implemented by the Government of North Macedonia are driven by the success of the principles of innovation and openness to change through the public service digitization strategy.

The digitization of public governance and the resulting concepts of electronic governance are hallmarks of the contemporary information society. Both can be defined as processes and outcomes of digital transformation: the transformation of "analog" governance into "digital" governance. Digitalization is changing the way government organizations conduct their internal operations, the way they make and implement decisions, the way they interact with citizens, businesses, and one another, and the way they govern and manage the territories and sectors under their jurisdiction. Conceptually, digitalization is the

transformation of traditional "analog" governance into contemporary "digital" governance. Not only digitizing traditional government structures, processes and culture, digitalization is also aimed at improving governance performance (Jaromir Durkiewics, 2018).

The Japanese Government's strategy to improve good governance is also very interesting for writers. As stated by the Digital Administration Ad Hoc Task Force, which recently proposed 5 (five) digital principles to fix the work patterns of legislators and civil servants in the digital era. The 5 (five) digital principles that apply in Japan are as follows:

1. Digital Execution and Automation

   Procedures must not require written forms, in-person submissions, or in-person inspections by officials at a designated physical location -they must be digitally viable and, where possible, automated. The goal is end-to-end digital processing, both within government and between government and its constituents, suppliers, and other stakeholders.

2. Agile Governance

   Regulations should focus on the desired end result - the risk to be reduced or the performance to be achieved- rather than establishing rigid, uniform processes and procedures. Regulatory oversight should take full advantage of available data and be open to continuous updating and improvement.

3. Public-Private Partnership

   Governments should leverage private sector innovation to improve user experience by, for example, adopting user interfaces and other technologies developed by private companies.

4. Interoperability

   The system must be interoperable, so that central and local governments, quasi-public entities, and the private sector can share data seamlessly.

5. Sharing Infrastructure

   The public and private sectors must share a common basic digital infrastructure for things like digital IDs and basic registry. Procurement specifications should be standardized to avoid silos among different agencies, levels of government, and other entities providing public services.

In addition to the North Macedonian and Japanese governments, the author also analyzes the digitization policy by the South Korean Government. In 2018, South Korea participated in the OECD Digital Government Index (DGI). DGI assesses and compares the maturity of digital government policies and their implementation under a coherent and holistic approach. As such, it aims to help assess the ability of governments to operate in an increasingly digital and globalized world. This gives the South Korean government the opportunity to review its progress in 6 dimensions: digital by design, government as a platform, data-driven public sector, open by default, user-driven, and proactive (Promoting Digital Innovation to Deliver Value to Korean Citizens).

In addition, Korea can draw insights and lessons from its peers and the OECD on digital identity, data-driven public sector, and service design and delivery through the work of the E-Leaders thematic group. In June 2021, the Korean government announced its digital government

strategy for 2021-2025, a roadmap for implementing intelligent service design and delivery, data-driven public administration, and a robust and inclusive digital infrastructure, reinforcing the weaknesses identified by DGI. The government will strive to continue to build an inclusive digital ecosystem for public data and public services to improve the daily lives of citizens (Promoting Digital Innovation to Deliver Value to Korean Citizens).

Based on a comparative analysis of the policy implementation of the digitalization strategy of good governance implemented in North Macedonia, Japan and South Korea, it is clear that there is a positive correlation between the implementation of digitalization and efforts to improve the quality of government services according to the principles of good governance. Digital technology has been used to bring government services closer to the community. Digital instruments and spaces are always playing an increasingly important role in our lives and in that way the public can engage with public institutions in the management of government finances. The COVID-19 pandemic has accelerated this trend, giving the public many opportunities to quickly expand anti-corruption instruments in the form of new digital tools to support good governance and fight corruption. Although the methods of preventing and eradicating corruption basically have not changed much, the existence of digital tools in people's daily lives provides new options for implementing these methods.

Officials of public institutions often take advantage of their lack of transparency, accountability, and isolation from the supervision of citizens on the grounds that limited facilities, time and manpower make it too difficult to keep

citizens informed and involved in the management of government finances. Community members also tended to ignore their lack of participation for the same reason, stating that following the oversight of their local government's financial management and taking part in the process was too difficult and time consuming. These reasons may be temporary, but with the new aim of increasing transparency and the ease of community engagement made possible by the ubiquity of digital tools making such excuses less and less credible.

However, we must recognize that digitalization creates new challenges in expanding society's digital infrastructure so that all citizens can benefit equally from the new opportunities it provides. Rapid digitization without considering the equal rights of citizens so that they are not on the other side of the digital divide. Citizens who do not have stable internet access or the digital literacy required to use digital devices should be considered. Leaving no one behind requires expanding the use of digital tools in governance supported by efforts to expand access to digital infrastructure and the skills needed to use them effectively.

Factors that Cause Corruption in the Financial Management of Banggai Laut Regency Government in 2020

Dissemination of public information to the public is an important tool for achieving accountability, transparency and participation. To get the process of delivering public information that is accurate and timely, it is necessary to develop a system. Information systems have a significant impact on government and civil society.

In order to support reform of the governance system, it is very important to analyze several innovative and practical instruments and approaches aimed at involving the public in policy making, digital tools for tracking public revenues and expenditures, participatory instruments, and techniques for developing and monitoring government budgets. Strategies that can be carried out in this area are part of a long-term strategy to strengthen checks and balances and to create knowledge of financial information, effective oversight mechanisms, and transparent leadership at the local level. The causes of corruption at the local government level vary, but the common ground for abuse of power can be linked to three elements: (UNDP, 2020).

1. Widespread practice of bribery (unpredictable administrative procedures used to provide public services, poor quality public administration, non-performance promotion and appointments, and lack of efficiency).
2. Low level of transparency and lack of information (aura of secrecy).
3. Lack of accountability (related to monopoly power and impunity).

After the occurrence of a criminal act of corruption committed by the peak of power in Banggai Laut Regency, namely the Regent and Acting Regional Secretary of Banggai Laut Regency, the authors conducted an analysis and found that the causes of massive corruption at the Banggai Laut local government level were:

1. Weak good governance. For example, the corruption of fictitious official travel at the Revenue and Finance Office, Regional Assets of Banggai Laut district, with the

convict Idhamsyah S. Tompo who was handled by the Central Sulawesi High Court, it turns out that the system for recording employee attendance at the office still uses a manual system, so there is no digital track record that becomes authentic evidence. Therefore it is still very vulnerable to manipulation.

2. Low level of transparency and lack of information. This weakness is very clearly seen from the corruption crime committed by Banggai Laut Regent Wenny Bukamo who divided the procurement of goods and services only to his success team so that the job auction process using the e-procurement method was full of engineering and manipulation so that he was finally arrested by the KPK. together with his cronies as a successful team to win as Regent.
3. Lack of accountability in financial management or the Banggai Laut Regency APBD for Fiscal Year 2020. This factor is clearly seen in the 2020 Budget SILPA mark-up practice which resulted in the expenditure burden in the 2021 Budget exceeding the realization of revenue so that the 2021 APBD experienced a very heavy deficit. All of this was done by Regent Wenny Bukamo and his staff to accommodate requests for projects proposed by his cronies.

Based on the Corruption Impact Analysis approach, the author sees that steps to improve good governance in the Banggai Laut Regency government can be taken with digitalization innovation. The application of digitizing the regional financial management of Banggai Laut Regency is believed to be able to improve transparency, accountability,

participation or community participation, and the distribution of existing resources. Practical Steps to Digitize Banggai Laut District Government Financial Management.

Based on a comparative study of the application of digitization in the governments of Japan, South Korea and North Macedonia with UNDP sponsors, the authors can offer practical steps for digitizing the financial management of the Banggai Laut Regency Government as ROIIOWS:

1. Increase transparency and accountability through web streaming at auction sessions for procurement of goods and services to local governments

   With the installation of web streaming equipment, it allows the procurement committee of goods and services to live broadcast the bid opening session and determining the winner on their official Facebook and You Tube accounts. This helps to significantly increase their transparency and accountability to citizens.

   In addition, web streaming sessions at the budget discussion stage by DPRD and local governments will also be very effective in discussing and selecting priority projects in their communities in an open, transparent and participatory manner. Strengthening local participatory democracy is very effective in reducing corruption and increasing trust between citizens and their local government.

2. Improve local government financial transparency through electronic dashboards

   UNDP supports the introduction of e-dashboards to 24 municipalities in the country that provide transparent financial information and enable better citizen monitoring

of the budgeting process. It is a practical platform for sharing financial data in a way that can be understood by citizens who are not specialized in government finance. The electronic dashboard collects and visually presents data on the following indicators: revenues, expenditures, liabilities, as well as quarterly and annual financial data on government budget execution. This instrument can increase transparency and promote good governance and guard against corruption.

3. A digital tool for more accessible and corruption-free public service delivery

Through an auction process aimed at local government local developers, UNDP has partnered with donors to build North Macedonia Technology Innovation and Development to pilot the introduction of digital solutions for electronic payment of taxes and public services, and the creation of an online platform for digital community forums and volunteer activities. . This digital tool has been piloted in five cities — Centar Zupa, Bogovinje, Sveti Nikole, Prilep and Kumanovo. These tools make it easier for citizens to access public services, especially during a pandemic, and these digital tools also reduce opportunities for petty corruption in public administration by removing some human personnel services from the process.

By reducing the human factor to a minimum, digitalization reduces the opportunities to engage in corrupt behavior both on the side of administrative staff and on the side of citizens who want to access public services.

One example of digital access to public services supported by UNDP that is already fully operational is the issuance of documents and payment processing for public services through electronic kiosks installed in the municipality of Gostivar. Electronic kiosks work like ATMs where residents can obtain municipal-issued personal documents or forms as well as pay for public services such as bills, taxes or fees.

4. Increase transparency, accountability and citizen participation in decision making through web applications for participatory budgeting

   Among the best examples of participatory budgeting tools supported by UNDP in North Macedonia is the web application developed for Centar Municipality. Residents of the Municipality of Centar can participate in the budgeting process by using a specially designed web application that provides them with information on budget revenues, expenses and with the citizen participation module in the budgeting process. This level of financial transparency and citizen participation in municipal budgeting is unprecedented in the country and its continuation could set new standards for transparency, accountability and citizen participation in local governance.

CONCLUSIONS

It must be realized that digitization alone is not enough. This is part of a larger challenge that requires communities and local governments to build skills, capacities and capacities in public institutions and to strengthen proven

good governance practices. Digitization can be used as an instrument that can facilitate and accelerate the adoption of an anti-corruption approach as part of a broader and comprehensive anti-corruption strategy.

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Distortion of the Value of Customary Law in the Draft Code (Critical Review of the Incorporation Policy of Customs in the RKUHP)

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Abstract

The purpose of this study is to find out what are the weaknesses in the RKUHP related to the inclusion of customary criminal law that has the potential to distort the value of customary law, in addition to providing policy proposals for these conditions. The research method uses a normative juridical method with secondary data. The results of the study show that the weakness of the RKUHP that has the potential to distort the value of customary law is the accommodation of customary law provisions in positive law which is a colonial legacy, whereas the spirit of the RKUHP is to decolonize the WvS Criminal Code. in addition, there is also the potential for the inclusion of the principle of material legality without any limits and provisions so that the provisions for criminal acts can arise as a result of unlawful acts or actions that are not in accordance with the legal provisions in force in society. The last thing that distorts the value of customary law is the proposal to include provisions of customary criminal law in Regional Regulations, even though customary law is unwritten law. Policy suggestions that can be taken by the government are the legal discovery approach by judges and settlements with indigenous peoples as well as education for law enforcement officials to understand customary criminal acts. The last thing that distorts the value of customary law is the proposal to include provisions of customary criminal law in Regional Regulations, even though customary law is

unwritten law. Policy suggestions that can be taken by the government are the legal discovery approach by judges and settlements with indigenous peoples as well as education for law enforcement officials to understand customary criminal acts. The last thing that distorts the value of customary law is the proposal to include provisions of customary criminal law in Regional Regulations, even though customary law is unwritten law. Policy suggestions that can be taken by the government are the legal discovery approach by judges and settlements with indigenous peoples as well as education for law enforcement officials to understand customary criminal acts.

Keywords: *Value Distortion, Customary Criminal Law, Customary Law Society, RKUHP*

INTRODUCTION

Customary law in positive law (ius constitutum) is understood as living law or law that lives in society. Customary law contains values of justice that grow in society that are not written and apply to customary law. According to Mochtar Kusumaatmadja, the existence of values from customary law must be included in national legal politics in order to realize national law reform so that existing laws are not far from the legal values that live in society (Shidarta, 2020). Mochtar's thoughts are in line with Eugen Ehrlich's thinking which states that an effective positive law is a law that is in accordance with living law because it reflects the values that exist in society (Anda, 2018).

The characteristic of customary law according to some experts of customary law is that customary law is a regulation that is transformed into customary decisions through the customary head which then applies spontaneously in indigenous peoples. Terhaar argues in decision theory that a customary law applies by looking at the attitude of the rulers of

the customary law community towards the violator of customary rules. This means that if the authorities impose penalties for violators, then the customary law is already customary law (Haq, 2020). Another characteristic of customary law is stated by Van Vollen Hoven where customary law is the entire code of behavior of the community that has sanctions and has not been codified. Another view that confirms the opinion of Vollen Hoven is the opinion of Sekanto which states that customary law is a complex of customs which are generally not written down or codified but are coercive because they have legal sanctions (Soekanto, 2017). Furthermore, according to JHP Bellefroit, customary law are living regulations which, although not promulgated by the authorities, are obeyed and respected by people who believe that these regulations are law (Priambodo, 2018).

Looking at some expert opinions regarding the definition and characteristics of customary law, it can be concluded that customary law is a law that lives in an unwritten and uncodified society, but its existence exists and is recognized by the community. Of course, this concept refers to the order of the common law legal system which recognizes customary law in the form of living law as a source of law. However, in the context of Indonesia, which recognizes that law is written law, the existence of customary law is then recognized in the 1945 Constitution which is the Staatsgrundgesetz which is stated in Article 18 b paragraph (2) which reads (Muhtadi, 2014):

> "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community

> development and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law." (Article 18 of the 1945 Constitution of the Republic of Indonesia., nd)

The provisions of Article 18 b paragraph (2) are then used as the basis for constitutional recognition of the existence of customary law in the juridical context of the national legal system as long as it is in line with community development and the principles of the Unitary State of the Republic of Indonesia. The mandate of the article then becomes the basis for the formation of laws and regulations in Indonesia to regulate the applicability of customary law in the national positive legal system. One of the products of legislation which then includes customary law in its content material is the draft of the Draft Criminal Code (RKUHP). The content of customary law in the RKUHP is regarding the recognition of the provisions of customary criminal law in the criminal system which is accommodated in the 15 provisions of the article (Muladi, 2018).

The incorporation of customary law in the national criminal law system, namely the RKUHP, then creates a pro and contra discourse. The pro side states that the inclusion of customary criminal law provisions in the RKUHP is a form of protecting the existence of customary law that has existed in society. While the contra side states that the inclusion of customary criminal law provisions in the RKUHP causes the degradation of the values of customary law itself and creates legal uncertainty in criminal law enforcement because of the realm of customary law. The values of customary law, especially in the enforcement of customary offenses,

according to Soepomo are unwritten guidelines on how community members should behave so that the existing customary law aims to integrate the community. Then the existing customary law is used to bring order to indigenous peoples (Idris & Miftahur, 2021).

Customary law with unwritten characteristics but its existence is recognized as a form of "inner order of social associations" which contains social interaction in its application. This is the ontological basis of the existence of customary law. With the regulation of customary criminal provisions in the RKUHP then it creates problems, namely regarding the application system, legal characteristics and the boundaries between the provisions of criminal offenses and customary offenses themselves (Maskur, 2018).

Recognition of customary law also contains values regarding self-identification and self-determination. This means that indigenous peoples have the right to identify the existence of their own community and their traditional rights. While the provisions in the RKUHP include customary criminal offenses into the formulation of offenses which then apply in general with the inclusion of the codification of customary law in the concept of regional regulations. This, of course, contradicts the principles and values of self-identification and self-determination. Because of the legal problems that occur in the incorporation of customary law in the RKUHP that have been described, it is necessary to examine the distortion of the value of Customary Law in the Draft Criminal Code as a form of critical study to determine the potential for distortion of legal values in order to know the appropriate reconstruction of criminal law.

DISCUSSION

Weaknesses in the Content of Customary Criminal Offenses in the Draft RKUHP Which Have The Potential to Distort Customary Law Values

Values are an important aspect of human life. Robert MZ Lawang argues that value is a description of what is valuable, appropriate and desired by the community from which it influences the behavior of people's lives (Roman, 2016). Values in sociological studies that study community interactions are interpreted as something that is true which is followed by every individual or group in large numbers. Community members who believe in these values really uphold them so that these values become guidelines for behavior (Saleh et al., 2020). While the value in law is interpreted as a benchmark or basis for determining the relevance and applicability of a rule. If a rule is deemed not in accordance with the values then the rule will not be able to guarantee its validity in society, meaning that a rule must be in accordance with the values of the community (Fischer-Lescano, 2020).

The provisions regarding values in the law are of course very relevant to the context of the Indonesian legal state. The point is that a state of law that upholds the rule of law is obliged to carry out laws that are in accordance with the values that live in society. The importance of the concept is to ensure that existing laws must be able to run in society, not just written as mere decoration. This means that every existing rule must be able to be implemented because it is based on values that are believed by the community as a truth. If the regulation does not provide legal certainty and

justice, then it can be ascertained that the existing law is not in accordance with the values that live in society.

The importance of laws and regulations to accommodate existing values in society is so that the social order with existing values is maintained and not distorted. This can be seen from several existing laws and regulations that have the potential to distort values that exist in society. One of the laws and regulations that have the potential to distort existing values in society is the provision of customary offenses in the Draft Criminal Code (RKUHP).

The draft Criminal Code (RKUHP) in Indonesia is referred to as a reform of the existing criminal code which is considered obsolete because it is a colonial legacy and is not in accordance with the values of the Indonesian nation. The draft RKUHP which was started in 1963 has not yet been finalized for discussion because there are still several problematic articles. One of the articles that cause juridical problems is the regulation of customary criminal offenses in 15 articles in the RKUHP. Several problem points regarding the provisions for the inclusion of customary criminal law in the RKUHP are regarding the limitations of the definition of customary law in Article 2 which reads:

1. "That the living law is given the authority to determine whether a person who violates the living law can be given a criminal sanction or not".
2. "The law referred to in Article 2 Paragraph (1) applies where the law exists and as long as it does not conflict with the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights and general legal principles, the living law is allowed to implemented in the community.

The provisions in Article 2 are ambiguous because of the selection of legal terminology that lives in society without any limitations. This means whether customary law is still valid in a customary law community, or is the law living in a particular community which is then recorded as a customary law community unit or other concepts. The wrong terminology limits will lead to legal uncertainty related to the principle of legality. This provision certainly has implications for the expansion of the interpretation of the legality principle that applies in the current Criminal Code (KUHP) (ius constitutum). Previously, the old Criminal Code concept based a criminal act based on the Formal Legality Principle as written in Article 1 of the old version of the Criminal Code or the WvS version.

The next provision is that in the area of application of the unwritten law which is not clearly and definitely written in the RKUHP, the area of application of the unwritten law in Article 2 paragraph (2) of the RKUHP only states that:

> "Where the law exists and as long as it is not regulated in this law and in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by civilized society."

The uncertainty of the customary law area in Article 2 was then answered by one of the formulators of the RKUHP, namely Muladi who stated that the implementation of customary law crimes would later apply in the area where customary law originated as stated in a Regional Regulation (Perda). This provision is of course a provision that is not in line with the regularity of the legal system of legislation.

First, the regulation of customary law in local regulations shows that customary law is only interpreted administratively by involving too strong state domination over customary law, even though indigenous peoples have self identification and self-determination regarding the law used in customary law communities. Second, the accommodation of customary law provisions in positive law or written law is something that is contradictory to the decolonialization efforts in the reform of the Criminal Code. The accommodation of unwritten law or customary law in written positive law is a legacy of the value of the colonial legacy legal system. Whereas doctrinally customary law is an unwritten law, not codified and carried out according to the rules that live in society. This means that the accommodation of customary law in written law, namely the RKUHP which emphasizes punishment, is an effort to distort the values of customary law that live in society. Third, the form of accommodating customary criminal law in the Criminal Code with standards and validity by the state on plural customary criminal law is a form of distortion of the values and character of customary law in which customary criminal law is carried out and implemented and interpreted by the indigenous people themselves (Johnson, 2017).

State-style interpretation and validation of the existence of customary criminal law can be seen in several provisions in the RKUHP, namely:

> Paragraph (1) "Everyone who commits an act which according to the law living in society is declared a prohibited act, is threatened with a punishment."

> Paragraph (2) "That violations of the criminal law as regulated in paragraph (1) shall be punished with customary obligations." (Article 598)

The provisions in Article 598 are actually a form of construction of the material content of the criminal article as contained in Article 12 paragraph (2) which states that:

> "To be declared a crime, an act that is threatened with criminal sanctions and/or action by legislation must be against the law or contrary to the law that lives in society."

Looking at the provisions in Article 12 of the Draft Criminal Code, it can be concluded that the law that lives in society is an alternative basis for the concept of being against the law. This means that an act against the law is not an absolute reason for determining a crime, because even though there is no element of violating the formal or material law, an act can be considered a crime if it is contrary to the law that lives in society (Rif'an & Isdiyanto, 2021). The provisions of Article 12 of the RKUHP then leave one more problem apart from the distorted values of indigenous peoples due to intervention from the state through positive law. The problem is regarding the application of punishment that arises because of actions that are not in accordance with the laws that live in society. Whereas the role of law enforcement in a rule of law is one important thing (Rahayu et al., 2020). Because there are two reasons for the punishment that arises because of an unlawful act and an act that is not in accordance with the law that lives in society, the enforcement is certainly different. Even if it is the same, then

the intervention of law enforcement down to the level of jurisdiction of customary law communities in the event that customary law is violated through a positive law approach is a form of distortion of customary law values as well. This is because customary law recognizes the value system of togetherness and kinship for the purpose of order together by entrusting the judiciary to be an internal customary court.

Based on the discourse regarding the enforcement of customary criminal law in the RKUHP, the drafting team of the Draft Criminal Code then discussed three possible ways of applying customary criminal law in determining the existence of customary criminal law (Fitria, 2020). The three ways are first to revive customary justice. This first method will certainly leave problems related to the limits of punishment, because Indonesia recognizes the minimum and maximum criminal limits. The second way is the enactment of a regional regulation that contains customary criminal acts that are still valid in the local area. This second method also leaves problems regarding the maximum criminal provisions in the regional regulation and punishment in accordance with the law. This means that with the inclusion of criminal provisions in the regional regulation on customary crimes, it will create legal uncertainty considering that different regions have different provisions and cannot be broad in nature, besides that it will also lead to conflicts of interest. While the third way is the compilation of customary law. This third method is very incompatible with the value provisions of customary law because compilation means making customary law in an authoritative positivism paradigm but in fact it is not binding because different customs have different laws. The three methods are too

imposing because the true value of customary law is a value that lives and grows in society and is not written down.

Appropriate Policy Recommendations So That the Provisions of Customary Criminal Offenses in the RKUHP are in Accordance with the Provisions of Customary Law Values

A good policy is a policy that does not cause new problems that cause protracted problems (Astuti, 2021). The condition of the problem of the incorporation of customary criminal law into national criminal law, namely the existing RKUHP, which was originally intended to protect the existence of customary law communities, should not be the other way around. This means that the existence of customary law communities with communal values, togetherness, magic and community-based order values that already exist without acknowledging the written law must be maintained. In fact, so far, at the practical level, indigenous peoples have had their own mechanism to resolve violations or crimes that occurred in their territory. This practice has taken place without intervention from the formal criminal law enforcement process.

Some policy recommendations for reforming the Criminal Code to be better and in accordance with the values that live in society can be done by submitting provisions to judges to then evaluate and declare legal findings so that in assessing a case to seek material truth one can consider the existence of customary law. In addition, the RKUHP contains material that places customary law not only as a basis for punishment, but also as a basis for eliminating punishments, mitigating or even stopping the criminal justice process. When a criminal act occurs, it can align with the existing

settlement in customary law, namely settlement by the community. Provide education and require law enforcement officers to involve indigenous peoples in the process of cases that intersect with customary law. This means that in this case law enforcement officials play an essential role in the enforcement of customary criminal law.

CONCLUSION

The weakness of the material content of customary criminal offenses in the draft RKUHP which has the potential to distort the value of customary law is first in the provisions of the principle of legality which do not provide clear boundaries and allow the inclusion of the principle of material legality which in fact creates legal uncertainty. Second, the inclusion of customary criminal acts other than unlawful acts that cause criminal formulations to have the potential to experience application problems. Third, the customary crimes in the RKUHP actually give the state the authority and freedom to interpret the provisions of customary crimes, even though customary law communities are people who already have their own law enforcement system. In addition, the inclusion of customary criminal provisions in the RKUHP actually eliminates the spirit of reform from decolonization, this is because the accommodation of customary law in positive law with validation and interpretation from the state is a manifestation of the value of colonial law. As for enforcement, the drafters of the RKUHP propose that it be written in a Regional Regulation or a compilation of customary law. This is not an effective answer because the paradigm is not in accordance with the values in customary law and the administrative

approach in regional regulations and the compilation of customary law will cause conflicts of interest and take a long time. This also has the potential to affect law enforcement and orderliness. The policy recommendation for reforming the RKUHP in terms of customary crimes is to submit provisions to judges to then evaluate and state legal findings so that in assessing a case to seek material truth, the existence of customary law can be considered. The RKUHP must produce content that places customary law not only as a basis for sentencing, but also as a basis for abolishing punishment, mitigating or even stopping the criminal justice process. Then the next step is to align with the existing settlements in customary law, namely settlements by the community with education and law enforcement obligations within the body of law enforcement officials. but also as a basis for the reasons for eliminating sentences, mitigating or even stopping the criminal justice process. Then the next step is to align with the existing settlements in customary law, namely settlements by the community with education and law enforcement obligations within the body of law enforcement officials. but also as a basis for the reasons for eliminating sentences, mitigating or even stopping the criminal justice process. Then the next step is to align with the existing settlements in customary law, namely settlements by the community with education and law enforcement obligations within the body of law enforcement officials.

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Freedom of Opinion in Perspective Renewal of The Indonesian KUHP

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Abstract

The 1945 Constitution of the Republic of Indonesia Article *28E Paragraph (3) guarantees that everyone has the right to freedom of association, assembly and expression. Guarantees of freedom of assembly and expression are also provided for by law Number 39 of 1999 concerning Human Rights and Laws Republic of Indonesia Number 9 of 1998 concerning Freedom to Express Opinions in Public. This guarantee turns out to be not absolute, because the state through the renewal of the Criminal Code (RUU KUHP) not only limits freedom of opinion but more than that, threatens criminal sanctions against several forms of expression of opinion. Study this aim for study opinion delivery arrangements and arrangements the sanctions imposed to act criminal regulated illegal speech in the Criminal Code, the Law Information and Transactions Electronics, and the Draft Criminal Code. In practice, freedom of expression can be ensnared by law Information and Transactions Electronic under the pretext of limit freedom Public in put forward criticism, opinions, and expressions so as not to harmful the other side public and officials public.*

Keywords: *Criminal Law, Freedom Opinions, Draft Criminal Code*

INTRODUCTION

Indonesia adheres to 3 (three) systems different laws, namely: system civil law, system law customs, and systems Islamic law that lives and develops in society (Aditya, 2019).

By implicitly, Indonesia uses system civil law (Nurhardianto, 2015), in enforcement mandatory law obeyed, obeyed, and implemented whole known Indonesian citizen as inheritance codified Dutch colonial to in the Criminal Code. According to Moeljatno, law criminal is part from the law that holds basics and rules for determine deeds which one is not could done, which is prohibited accompanied threat penalty in the form of something criminal certain for goods who violates ban that (Fate, 2013:50).

According to Herbert L. Parker that law criminal based on 3 (three) problems substantial, namely: (1). Problem act related offenses with problem deed what should be designed or designed as act criminal; (2). Determination the conditions that must be made before somebody could said has To do act criminal; and (3). About criminal, related with what to do conducted against people who are known has To do act criminal.

Follow regulated crime in law punishment and giving criminal for perpetrator or people who do act criminal called as beginning destination existence dropping criminal. Follow the crime in question is acts prohibited by law because there is consequence in the form of the punishment imposed in accordance with the rules, terms and processes as have been set. That is, if To do act criminal, then already ready with enforced destination sentencing. In Settings shapes act regulated crime in regulation legislation have function for convey and announce orders and prohibitions to Public about actions that can done and not could done to guarantee security and order in society.

Despite so, some regulated rules in regulation legislation sometimes character give restrictions on freedom human. With destination for ensure security, order and implementation obedient, prosperous and prosperous society. Sometimes freedom in right basic humans apply to everyone restrictions that have been explained earlier, so thing this capable trigger the pros and cons of people who feel rule about thing the not yet socialized by wide. As for the assumption that government and people elite feel want to benefited with rule law that can made, however no glance at the taste and freedom the real society majority required obey regulation law that.

Naturally dropping criminal concerning a pain and suffering for someone who feels he only Secrete right but precisely convicted. In thing this, dropping according to Hart, namely: (Widayati, *2019)*

1. Criminal must wearing suffering or other consequences that are not wearing *(it must involve pain ior other consequences normally considered unpleasant).*
2. Criminal must for for deed or violation to rule law *(it must be for an offense against legal rules).*
3. Criminal must dropped to the person who did or suspected To do act criminal *(it must be imposed on an actual or supposed offender for his offense).*
4. Criminal must dropped by intentionally by someone other than the perpetrator *(it must be intentionally administered by human beings other than the offender).*
5. Criminal must imposed and executed by the authorities authorized by a system law to an act committed by the perpetrator *(it must be imposed and administered by an authority constituted by a legal system against which the iffense is committed).*

As for rights convict, Andrew Ashworth says as following:

> "It is often assumed that the right to punish is simply one aspect of the modern sovereign state, but any such assumption is disputed by those who proclaim that victims and their families, or victims and communities (through restorative justice), ought to be central to responses to crime. Justifications for assigning the central role to the state are often derived from social contract theories, the essence of which is that citizens give up their 'natural' right to use force against those who attack their interests and hand it over to the state, in return for the state's promise to protect them by maintaining law and order. Citizens retain a limited right of self-defense, but apart from that the state takes charge of enforcing the law, maintaining courts and providing the institutions of punishment." (Ashworth, 2005:71)

Right convict is one aspect simple from modern state sovereignty, will but assumption like this disputed by the party claiming that the victim, the victim's family and the community (through *restorative justice)*, must Becomes attention in respond crime. As for justification for deliver role convict to the country passed down from theories contract social, which is the point that citizen submit rights basic to the country for use coercion to attacking offender interest citizens and vice versa the state returns it in the form of promise for protect citizens through enforcement law and order society. Here citizen still have right for defend self, but no beyond state duties such as enforcement law, administration trial and determination criminal.

Based on things that have been described above, of course is justification when the state convicts member society. Though so, society still equipped right for defend self in realize statement similarity law for whole citizen. However, recently this Public as if feel right the more restricted because all rule the law must obeyed no move straight together with development technology moment this. A number of understood that with freedom think that what is done, can also trigger sentencing beginning for the wrong person or misunderstood as a speech hatred.

Article 19 *of the Universal Declaration of Human Rights* or Universal Declaration of Rights basic Man which was passed on December 10, 1948 explains that everyone has the right on freedom have and issue opinion in Thing this including freedom have opinions with no get distraction and for seek, receive and convey information and opinions with method whatever and no looking at limit (Hsb, 2021). Clear wish that guarantee for talk and deliver opinion universally stated in Universal Declaration of Rights basic Human (Mardanis, 2013). As explanation that everyone has the right have opinion that he thinks and can said by oral and written without there is threat from any. Issued Universal Declaration of Rights basic Man this make the whole country has obligation for ratify in rule laws in force in their country. In Indonesia, the rules law about right basic man or Settings freedom think many organized and upheld tall its validity at the time it.

Start with arranged rights the human being contained in 1945 Constitution of the Republic of Indonesia, TAP MPR-RI Number XVII/MOR/1998, Law Republic of Indonesia Number 39 of 1999 concerning Right basic Human, Law Republic of Indonesia Number 9 of 1998 concerning

Independence Convey Upfront Opinion General, and others. In whole rule law that, by implicit has set about freedom opinion and issue opinion which is also one right basic human being in everyone. This thing Becomes attention its validity for countries that respect tall right basic human, because independence think is most effective thing for a free country active in voice out that colonialism must removed. Because that, formed Constitution Republic of Indonesia Number 9 of 1998 concerning Independence Convey Upfront Opinion General.

Based on the above background, the formulation of the problem in this paper is how Settings freedom think in system Indonesian law, how theory and goals threat penalty criminal, how form threat criminal to insult in the Criminal Code Bill?

DISCUSSION

Arrangement Freedom Opinion in Indonesian Legal System

Right basic man arrange right every man universally (Asrun, 2016) in Thing this cover freedom opinions and expressions that are judged important. That thing important because (1). Freedom expression important as method for ensure fulfillment self someone and also for reach potency maximum someone; (2). For search truth and progress knowledge or in other words someone who is looking for knowledge and truth must hear all side question, consider whole alternative, test the rating with confront evaluation the to opposing views, as well as utilise various different thoughts optimal possible; (3). Freedom expression it is important that people can participate in the process of taking

decisions, particularly in the political arena; and (4). Freedom expression allow society and country for reach stability and adaptability or ability adapt **(**Marwandianto, 2020).

In various document official, like in 1945 Constitution of the Republic of Indonesia, norms right on freedom common expression (*the right to freedom of expression)* breathe with norm right on freedom opinion (*the right to freedom of opinion)* so that common called *the right to freedom of expression and opinion* (Roqib, 2020). There are also those who use expression right on freedom speech and expression (*freedom of speech and expression)*. Difference expression the by meaningful same with same meaning (Manan, 2014:91).

Freedom expression is one condition important that allows ongoing democracy and participation public in every making policy. Citizens do n't could doing right by effective in collection voice or participate in making policy public if they no have freedom for get information and issue his opinion as well as no capable for state his view by free.

Draft right basic man in Thing freedom opinion and expression related with the concept of the rule of law. Protection right freedom opinion and expression has protected by constitutional. (Olivia, 2020) Indonesia regulates freedom opinion and expression in Article 28E of the 1945 Constitution of the Republic of Indonesia in Chapter XA concerning Right basic Humans Paragraph (3) i.e. everyone has the right on freedom associate, gather and issue opinion and Article 28F, namely everyone has the right for communicate and get information for develop personal and environment social, as well as entitled for seek, obtain have manage, deliver information with use all type channel available.

In line with that, Article 14, Article 23, Article 24, and Article 25 of the Law Republic of Indonesia Number 39 of 1999 concerning Right basic Man state protection in freedom express and convey opinion nor convey information. (Rohman, 2017) Constitution Republic of Indonesia Number 39 of 1999 concerning Right basic Man in Article 14 Paragraph (2) states that everyone has the right for looking for, obtaining, possessing, storing, processing, and conveying information with use all type available means. This thing by invisible eye state that everyone has the right convey information without limited by other rights.

Freedom think also got protection in Article 1 Paragraph (1) of the Law Republic of Indonesia Number 9 of 1998 concerning Independence Convey Upfront Opinion General said that independence convey opinion is right every citizen for convey thought with oral, written and so on by free and responsible answer in accordance with provision regulation applicable legislation. Convey opinion is right every citizen, no no one has the right hinder others in convey his opinion and things the regulated in terms Article 18 of the Law Republic of Indonesia Number 9 of 1998 concerning Independence Convey Upfront Opinion General:

1. Goods who with violence or threat violence hinder right citizen for convey opinion in advance public who have Fulfill provision Constitution this convicted with criminal imprisonment for a maximum of 1 (one) year.
2. Follow criminal as meant in Paragraph (1) is crime.

Broadly speaking there is three method put forward advance opinion general, namely (1). By verbal, yes past method speeches, lectures, dialogues, and discussion; (2). In

writing, you can through posters, letters newspapers, magazines, and article; (3). Use another way, you can past method photo, film, demonstration (demonstration), parade or pulpit free. There are several allowed place current citizen put forward advance opinion general, i.e Street highways, fields, squares, and places general other, while a number of a place that doesn't allowed, i.e place of worship, house sick, installation military, terminals, ports, stations, airports, and environment palace the presidency. There is also a ban for doing activity discover advance opinion general. like when warning days big national, independence Republic of Indonesia and days big religious.

Put forward advance opinion general must held by true and responsible in accordance with provision regulation applicable legislation. As for the procedure delivery advance opinion general according to Article 10 of the Law Republic of Indonesia Number 9 of 1998 concerning Independence Convey Upfront Opinion General that is activity Required notified by written to Police. Notification the be delivered by written by the person concerned, the leader, or person responsible group. Constitution Republic of Indonesia Number 9 of 1998 concerning Independence Convey Upfront Opinion General arrange about method delivery advance opinion general. Ways to conducted namely:

1. Required tell activity delivery advance opinion general by written to Police. Notification delivered by the person concerned, the leader or guarantor answer group.
2. Notification at least 3 x 24 hours before activity started has received by the police local.
3. Notification by written no apply for activity scientific inside campus and activities religious.

4. Cancellation implementation delivery advance opinion general be delivered by in writing and directly by the guarantor answer to police at least 24 hours before time implementation.
5. Insurer answer activity Required responsible responsible for activities the done by safe, orderly and peaceful.
6. Every until one hundred participants protest or demonstrations and marches must there is a up to five guarantors answer.

For convey advance opinion general, there amount method or procedures that can done. This thing important conducted To use minimize impact or the consequences from opinion expressed. There are several method convey advance opinion general with good and true.

1. Thinking before What will be Delivered

   Before truly put forward opinion, important for thinking more formerly Thing what do you want delivered. Because, origin speak without thinking opinion that will be delivered can Becomes boomerang and harm self alone. because it 's important for To do study and analysis deep to opinion that will thrown in order to minimize appearance conflict.
2. Ensure Opinion The Based on Reason Healthy

   Ensure that the opinion you want be delivered based on reason healthy can help others to accept information submitted with good. In Thing convey opinion based on reason healthy, of course must based on the facts. With so, opinion Becomes more strong.

3. Prioritize Interest General

   In a forum where will put forward opinion, democracy must Keep going enforced by thorough. Moment convey opinion, make sure has prioritize interest common, is n't it? interest personal nor group certain. This thing aims for the community large can feel benefit life democracy in life society, so that, policies aimed at the interests of general could done good.

4. Put forward Opinion by Polite

   Convey opinion naturally with polite way and accompanied with head cold. Convey opinion with no way Correct can muddy atmosphere in the public forum.

5. Opinion no Can Contain Elements of SARA

   How to convey opinion that doesn't lost importance is with ensure opinion issued no contain element ethnicity, religion, race, and between group certain. Offending and carrying around elements of SARA in convey opinion no only muddy situation on the forum, but also cause conflict social in society.

But in the era of globalization moment this the more push emergence variety technology included in field technology and information, before for convey opinion limited only through mass media like newspapers, radio, television. However along with development technology and information means for convey opinion the more wide and free with the existence of social media on the internet. With the existence of social media on the internet when this so room for convey opinion the more open wide, everyone now free for convey his opinion good in form oral, written, argument nor opinions and others.

For minimize crime on social media so issued Constitution Republic of Indonesia Number 11 of 2008 concerning Information and Transactions Electronics. But inside his journey Constitution Republic of Indonesia Number 11 of 2008 concerning Information and Transactions Electronic many cause controversy because inside Constitution the there is a number of multi - interpreted article or chapter rubber and often abused by some person certain for silence criticize and punish those who put forward his opinion. Due to many lack inside Constitution Republic of Indonesia Number 11 of 2008 concerning Information and Transactions Electronics and many harm other people Constitution the changed Becomes Constitution Republic of Indonesia Number 19 of 2016 concerning Changes to the Law Republic of Indonesia Number 11 of 2008 concerning Information and Transactions Electronics and there a number of revised article in Constitution that.

Existing social media moment this so make it easy everyone for communicate Among one each other even everyone now free for convey his opinion wherever and whenever they want, even no seldom freedom the many harm others. So for prevent happening freedom think that can harm others then need existence restrictions opinion on social media and restrictions that's one of them regulated in terms Article 27 Paragraph (3) of the Law Republic of Indonesia Number 19 of 2016 concerning Changes to the Law Republic of Indonesia Number 11 of 2008 concerning Information and Transactions Electronics says that everyone with intentionally and without right distribute and/or transmit and/or make could accessible information

electronic and/or document electronics that have payload humiliation and/or pollution name good.

With development increasingly technology fast moment this make it easy everyone for deliver his opinion, though freedom think already guaranteed inside regulation Indonesian legislation will but independence and freedom convey opinion that not freedom without limitation. No wild freedom and without possible goals harm others, the freedom to want achieved that is appropriate freedom with rules and regulations existing law in Indonesia.

Theory and Goals Threat of Criminal Sanction

Arranged act criminal in the Criminal Code and other laws outside the Criminal Code provide meaning that every action or violation committed by the perpetrator have able sanctions make suffering for those who violate it. Action or violation the threatened with punishment suffering or torment for those concerned (Masriani, 2014:60). Barbara A. Hudson says that criminal usually distinguished from types suffering and loss others, as well from draft control more social wide. Hudson gave criteria criminal as following:

1. Criminal must involve existence evil and discomfort for the victim (*It must be involving an evil, an unpleasantness to the victim).*
2. Criminal must aimed at action criminal, whether it has been conducted nor suspected (*It must be for an offense, actual or supposed).*
3. Criminal must aimed at the perpetrator, both the real one nor suspect (*It must be of an offender, actual, or supposed).*
4. Criminal must personal (*It must be work of* personal *agencies).*

5. Criminal must imposed by the given authority/ authority through or by institution enforcer the law where act criminal done (*It must be imposed by authority conferred through or by the institutions against the rules of which the office has been committed).*
6. Suffering or inconveniences must Becomes intentional core part dropped, isn't it solely because results the pain or unpleasantness should be at an essential part of what is intended and not merely a coincidental or accidental outcome.

Sentencing speak regarding the dropping process criminal or *sentencing* as a legitimate effort based on law for wearing misery suffering to someone who goes through the judicial process criminal proven by legitimate and convincing guilty To do something act criminal (Arief, 2011:2). Sentencing explained as dropping punishment by a judge who is a concretization or realization from provision criminal in the law which is something abstract (Priyatno, 2006:6). So criminal speak about punishment and punishment speak regarding the dropping process punishment that alone (Asmarawanti, 2015:131).

Destination sentencing called as base someone 's justification sentenced criminal. This thing could understood in various reason certain, such as for give a sense of justice for victims; give pain, deter for perpetrator not to To do action criminal other; for prevent and give lesson for people not to To do act criminal; and give people awareness that law must obeyed. because of that, justification destination sentencing for anticipate future consequences and reduce

crime among society. Meanwhile, according to Alf Ross, *concept of punishment,* as following:

1. Criminal aimed at imposing suffering against the person concerned (*Punishment is at inflicting suffering upon the person upon whom it is imposed).*
2. Criminal that is something statement reproach to deed si perpetrator (*The punishment is an expression of disapproval of the action for which it is imposed).*

With so, if there is the question "why" criminal Becomes a goal and not compensation imposed to perpetrator act criminal?". This thing could answered with Alf Ross's statement that had described above. Kind from results sentencing is reduction and prevention more crime big or more known with "*ulilitarian prevention* (*deterence)*". Through view this, there is two aspect the explanation that is prevention after somebody worn crime (*special deterrence)* and prevention that preceded with existence threat nor example from the perpetrator charged criminal law (*general deterrence).*

This thing confirmed with the meaning of possibility inclined for reduce did future crime with convict perpetrators (Mubarok, 2015). As for effectiveness prevention through moral education empirical can also conducted for give insight and convey information about destination sentencing through the process of moral education, such as: (1) Internalized entered special moral rules that prevents it for To do deeds for him considered as a alternative; and (2) Developed moral habit that distances from violation law. Naturally in Thing this capable prevent and reduce crime in the future come and drop punishment which is give anguish.

In Indonesia itself, the Criminal Code as source main law Indonesian criminal law and laws outside the Criminal Code do not have Settings written clearly and completely about destination sentencing (Irmawanti, 2021). During this discourse about destination sentencing the still in level of character theoretical. Destination sentencing that alone expected could Becomes means protection community, rehabilitation and resocialization, fulfillment view law custom, as well aspect psychology for get rid of guilt for those concerned. Though criminal is something misery but no meant for suffer and humiliate dignity human. Basically there is three tree thinking about desired goal achieved with something punishment, namely:

1. For repair personal from criminal that alone.
2. For make people deterrent in To do crimescrimes.
3. For make criminals certain becomes no capable for to do other crimes, namely the villain with other ways already no could repaired again.

From the skeleton thoughts above, give birth a number of theory about destination sentencing. In general theories sentencing divided on three, namely:

1. Absolute Theory or Theory Revenge

   Theory revenge justify punishment because somebody has To do act criminal. According to Thomas Aquinas vengeance in accordance with teachings Lord because that must conducted revenge to criminal. Theory absolute or theory revenge this divided in two kinds, namely:

   a. Theory objective, fulfillment-oriented retaliation satisfaction from feeling feud from circle society. In

Thing this action si maker crime must replied with crime which is something disaster or balanced loss with misery caused by maker crime.

b. Theory revenge subjective, criminal oriented. According to theory this error si maker crime must be get reply. If loss or great misery caused by a minor error, then si maker crime already should sentenced light punishment (Usfa, 2004:145).

2. Theory Relatively or Theory Purpose *(Utilitarian/ Doeltheorieen)*

Theory this base view to meaning from the punishment that for protection Public or prevention happening crime. This means that prevention is also considered for the future. Advocate theory this Among others, Paul Anselm Van Feurbach who stated that: only with stage threat criminal just no will adequate, but required dropping criminal to si criminal. Definition in theory destination this different very with theory absolute (absolutely). If in theory absolute that action criminal connected with crime, then in theory relatively addressed to the days to come come, that is with meaning educate people who have do wicked earlier, in order to become good back.

3. Theory Combined (*Vereningingsheorieen)*

Beside distribution by traditional theories sentencing like stated above, namely theory absolute and theory relative, there theory to the three called theory combined (*verenigingstheorieen)*. Pioneer theory this was Rossi (1787-1884). Rossi's theory is called theory

combined because even though he permanent consider revenge as principle from criminal and that weight criminal no can beyond something fair vengeance, however he stands up that criminal have various influence including repairs something the broken one in community and general prevention. Theory combined this could distinguished Becomes two group big, that is as following:

a. Theory combination that prioritizes revenge, but revenge that no can beyond limit from what is necessary and sufficient for could maintaining order society.
b. Theory a combination that prioritizes protection obey orderly society, but suffering on he was sentenced criminal no can more heavy from the deed convict.

Meanwhile, the goal punishment that has been set in the Draft Criminal Code which is formulated in Article 55, as following:

1. Prevent did act criminal with uphold norm law for protection society.
2. popularize convict with stage construction so that be a good and useful person.
3. Complete conflict caused by action criminal, recover balance, and bring a sense of peace in society.
4. Release the guilt of the convict.

If notice score humanistic in concept the draft of the Criminal Code Bill which also pays attention to the idea of individualization criminal contain characteristics, such as:

accountability criminal character personal; criminal only given to the guilty (*principle of culpability)*; criminal must customized with characteristics and conditions si perpetrator, so destination the previous conviction still only understood according to opinion expert, more could understood and learned if this KUHP bill has ratified. Orientation sentencing in the Criminal Code Bill aims to: balancing protection community and protection individual convict (Saragih, 2014). Guidelines sentencing the could Becomes reference for enforcer law in operate his job for find justice and not only fixated on certainty law.

Form Threat Criminal to Insult in the Criminal Code Bill

Many Criminal Code Bills get criticism is related with formula act criminal considered insults amount the more grow up so that considered as *over* policy criminalization. Moment this just act criminal insult already enough many, in the Criminal Code act criminal existing humiliation in general shared Becomes two form that is insult in form common and humiliating in form special. Insult in form general set in Chapter XVI and grouped into 7 (seven) parts that is insult, slander, insult light, humiliation to civil servants, slanderous complaints, allegations fake and blasphemy against the dead. Temporary insult in form special, generally the settings scattered beyond the regulated in Chapter XVI of the Criminal Code.

If understand contents from Article 310, Article 311, and Article 315 of the Criminal Code which regulates humiliation and slander name good to individual, Article 320 which regulates pollution name good people who died,(Simamora, 2020) as well as Article 207, Article 208 and

Article 316 of the Criminal Code which regulates pollution to state institutions. Interpret act the so called crime *insulting* (smaad); insult unpretentious (*eenvoudig beleediging)*, and other things formulated as every insult with intentionally not insulting. Somebody with on purpose attack honor or name good people, while the next words could considered is specialization or nature from act criminal blasphemy. With so, if specialization or nature from blasphemy this removed, left behind is deed attack honor or name good people. So could considered that insult means attack honor or name both people and things this same with definition humiliation in general.

Article 310 of the Criminal Code explains rule pollution name good, shared into 3 paragraphs. In Paragraph (1), whoever does attack to honor or name good somebody when accuse something visible clear meant for telling you public, so he threatened by contamination, with punishment prison maximum, nine month or fine maximum three hundred rupiah. Besides that, Paragraph (2) in document this explain that if action the conducted by written or in images distributed on front general, people who have spread it declared guilty on contamination and can imprisoned max, one year four month or fine maximum three hundred rupiah. So, in this Paragraph (3) is the opposite. If action the conducted with clear for interest general or for defend self, emphasized that action the no including in contamination or in contamination written. If the person who did crime requested for give proof for ensure truth with what is alleged, but no prove it and accusation that contrary with what is he know, then punished because pollution name good, for punishment prison maximum four year (Simamora, 2020).

Articles in Chapter XVI of Book II of the Criminal Code only arrange insult or pollution name good to someone (individual) or individual), while insult or pollution name good to agency government, administrator something association, or group population, then set in articles specifically, namely:

1. Insult to President and Vice President (Article 134 and Article 137 of the Criminal Code), articles this has canceled or declared no apply again by the court constitution.
2. Insult to foreign heads of state (Article 142 and Article 143 of the Criminal Code);
3. Insult to group population/group/organization (Article 156 and Article 157 of the Criminal Code).
4. Insult to religious officials (Article 177 of the Criminal Code).
5. Insult to power in Indonesia (Article 207 and Article 208 of the Criminal Code).

As comparison Constitution Information and Transactions Electronic with the Criminal Code, the Act Information and Transactions Electronic threaten insult with threat more punishment heavy than the Criminal Code. one difference Among communication in the real world with cyberspace (*cyberspace)* is the medium used, so that every communication and activity via the internet, for example via data transfer, via distribution, transmission, and/or could accessible information and documents electronics, will have impact for life man in the real world, you can cause impact more negative extreme and massive in the real world. In fact, often public no realize existence rule this.

Constitution Information and Transactions Electronic arrange prohibited act in the form of humiliation and slander name good in Article 27 Paragraph (3). By historical provision Article 27 Paragraph (3) of the Law Information and Transactions Electronic the refers to the Criminal Code, Article 310 and Article 311. Humiliation is offense complaint set with assertive in Article 319 of the Criminal Code, that threatened humiliation with criminal, no sued if no there is complaint from the affected person crime.

Temporary that, the law Information and Transactions Electronic no include insult as offense complaint, so at issue in its application. However, from The Constitutional Court's Decision Number 50/PUU-VI/2008 concerning constitutionality Article 27 Paragraph (3) of the Law Information and Transactions Electronic has there is affirmation that Article 27 Paragraph (3) of the Law Information and Transactions Electronic is offense complaint. Article 27 Paragraph (3) of the Law Information and Transactions Electronic no could separated from norm law tree in Article 310 and Article 311 of the Criminal Code as *delict genus* that requires existence complaint *(klacht)* for could sued. because of that, in Constitution Republic of Indonesia Number 19 of 2016 concerning Changes to the Law Republic of Indonesia Number 11 of 2008 concerning Information and Transactions Electronics, terms in Article 27 Paragraph (3) is offense complaint confirmed in Article 45 Paragraph (5) (Hikmawati, 2016).

One substance in Constitution Republic of Indonesia Number 19 of 2016 concerning Changes to the Law Republic of Indonesia Number 11 of 2008 concerning Information and Transactions Electronic is change threat penalty criminal to

perpetrator insult or pollution name good (Article 27 Paragraph (3)) of beginning threat criminal imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1.000.000.000,00 (one billion rupiah) (Article 45 Paragraph (1)) to 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah) (Article 45 Paragraph (3) of the Law Republic of Indonesia Number 19 of 2016 concerning Changes to the Law Republic of Indonesia Number 11 of 2008 concerning Information and Transactions electronics). However, change the considered no give meaningful change to freedom expression.

Reduction of prison time no have meaning nothing. Anybody permanent overshadowed possible rules worn when course. Landscape law no fully understand critics as something constructive Constitution Information and Transactions Electronic this only legitimize interest government so that the attitude critical Public restrained. Chapter humiliation and slander name good should revoked, no limited lower threat penalties and fines. With norm that still there is freedom expression permanent threatened.

Problem moment this is no clear limitation Among insults and criticism. In condition that, then every critics always potential seen as humiliation. Insult no same with criticism. deed critics no identical with insulting. Insult is words that are criticizing others so that cause loss, while critics have meaning as responses accompanied by supporting data so that created situation constructive.

A critics be delivered following with solutions and suggestions. Criticism also comes from facts and values positive as well as there is desired improvement critics. Critics be delivered no can violate ethics (or conducted by

ethics), if critics violate ethics or no ethics, actions the violate norm ethics, no the criticism. Violation ethics is embryo Becomes deed no deserve or no commendable, or despicable that can be shift Becomes deed oppose law criminal.

Insult emphasized character tendentious, negative, exist intention, done with intentional and can conducted Keep going continuously. Insulting is something deed criminal, because insult is intentional for attack honor or name good someone who started with existence intentional wicked or intention evil *(criminal intent)* so that other people are attacked honor or name good. If it occurs, action criticism preceded, accompanied by or followed with deed insulting, then the one who is punished according to law criminal no deed the criticism, but deed his humiliation (Bakhtiar, 2020).

In 2019 Criminal Code Bill, insults is attack honor or honor and dignity self. (Fernando, 2022) The nature of deed insult is if deed insults committed with method accuse, ok by orally, in writing, or with attacking image honor and name good someone, so harm that person. But in general, humiliation defined as harmful act the reputation of others so could lower view Public against him or prevent third person get along or deal with him. (Widayati, 2018) For example set in Article 353 Paragraph (1) of the Draft Criminal Code which explains: that everyone in advance general with oral or derogatory writing power general or state agency sentenced with criminal imprisonment for a maximum of 1 (one) year 6 (six) months or criminal fine at most category II. This thing meant for power general or respected state institutions.

Threat amplified if insulting via social media contained in Article 354 of the Criminal Code Bill which says: that any person who broadcasts, performs, or paste text or picture or

listen recording, or spread through means technology information that contains insult to power general or state agency, with mean to fill insult the is known or more known to the public convicted with criminal imprisonment for a maximum of 2 (two) years or criminal the most fines category III. Punishment insult Becomes more heavy maximum 3 years prison if cause unrest in accordance Article 240 of the Draft Criminal Code.

Article 354 of the Draft Criminal Code will also implications for the status of the equation position law Among officials and citizens. Chapter contempt devoted to a power public and state institutions will cause canyon gap degrees Among officials and citizens. Rule insult should be devoted to context protection reputation individual no rather refers to the institution. Basically provision about insult to power public and state institutions have long existed in the Criminal Code, specifically in Chapter VIII concerning Crime To Ruler General. Police don't can arbitrary use Related Article 207 of the Criminal Code insult to ruler. That thing regarding with the Chief of Police's Telegram Letter Number ST/1100/IV/Huk.7.1/2020 April 4, 2020. However in decision Court Constitution Number 013-022/PUU-IV/2006 mentions use Article 207 of this Criminal Code that prosecution only conducted on base complaint from ruler. because that, the formula chapter the Becomes offense complaint, no offense ordinary.

Besides threaten insulter government, the Criminal Code Bill threatens insulter president/vice president on social media with 4.5 years sentence prison. Threat this is the highest in offense insulting government or state agency. That thing poured in Article 219 of the Draft Criminal Code.

Chapter insult president and vice president in the Criminal Code Bill is offense complaint. Due to offense complaint, police no can take action if president and vice president no complain to police. That thing set in Article 220 Paragraph (1) and Paragraph (2). Chapter the is offense complaint and mention by assertive that criticize policy government is no humiliation. Likewise the article insult state institutions in the Draft Criminal Code. Chapter it is also offense complaint as stated in Article 353 Paragraph (3).

CONCLUSION

Right basic man arrange right every man universally encompassing freedom opinion and expression. Draft right basic man in Thing freedom opinion and expression related with the concept of the rule of law. Indonesia regulates freedom opinion and expression among others in The 1945 Constitution of the Republic of Indonesia, Law Republic of Indonesia Number 39 of 1999 concerning Right basic Humans, and Law Republic of Indonesia Number 9 of 1998 concerning Independence Convey Upfront Opinion General. Criminal law and crime criminal is one unity that has meaning for give rules and effects deterrent for perpetrator. As for in destination act criminal according to a number of expert is a justification because action taken perpetrator is a error, omission, cause adverse consequences. Naturally other purposes of sentencing is give a sense of justice for victims who are harmed and the means protection society.

In 2019 Criminal Code Bill, insults is attack honor or honor and dignity self. Insulting power general or state agency sentenced with criminal imprisonment for a maximum of 1 (one) year 6 (six) months and a threat

amplified if insulting via social media. Punishment insult Becomes more heavy maximum 3 years prison if cause riot. Besides threaten insulter government, the Criminal Code Bill threatens insulter president/vice president on social media with 4.5 years sentence prison. Threat this is the highest in offense insulting government or state agency.

As a state of law, Indonesia implements law inheritance Dutch colonial regulated in the Criminal Code as reference for arrange Act in demand society. As for the punishment applied though not yet set in the Criminal Code, still permanent enforced for reduce, eliminate fast act criminal in the future come.

About insult still too often and can found on social media. With existence socialization, understanding law, and form the sanctions imposed could Becomes answer for cope existence act criminal that. As for need explanation about what is meant and applied to the Criminal Code and the Draft Criminal Code, so that Public permanent capable To do right express and hold opinions without need fear existence penalty punishment that awaits him.

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Overview of the Principle of Sovereign Equality Analysis Against Investment Law in Indonesia

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Abstract

After joining Indonesia as a member of the World Trade Organization (WTO) and ratifying it into Law Number 7 of 1994, The Principle of Sovereign Equality is a measure for foreign investors to invest in Indonesia as well as a gateway for investors to withdraw from investment. Each country has debts with other countries or with world financial organizations. The debt is getting bigger and bigger, it is feared that the state will not be able to pay its debts in the future, which will result in increasing social inequality and decreasing welfare. For this reason, investors are needed to increase the state treasury. However, the development of the notion of "country first", which puts the interests of the state above other interests. The cause is frustration that the expected welfare has not been realized, because it is hindered by the state debt borne by the majority of countries in the world. As a result, the State must apply the concept of taking as much profit as possible and minimizing expenditure. This practice will threaten the Principle of Soveresign Equality which has been stipulated in Law Number 25 of 2007 concerning Investment, from all aspects, both small and large, where the treatment of investors will differ from one another, of course this will lead to cases which will cause harm to Indonesia.

Keywords: *Principle of Sovereign Equality, Investment*

INTRODUCTION

Notion of "*country first*", which is to put the interests of the state above other interests, is the result of people's frustration with the expected welfare that has not been realized, because it is hindered by the debts borne by the majority of countries in the world. The majority of countries in the world have debts with other countries or with world financial organizations, with increasing interest on debt and worrying economic conditions, where there are countries that cannot pay their debts as happened in Greece and Sri Lanka, so developed and developing countries must apply the practice which avoid unnecessary spending and take as much profit as possible from various sectors.

Almost no country can progress only with local investment, the country's openness to a liberal economy by providing opportunities for foreign investment and facilitating local investment is the key to economic growth. It's just that distinguishing the two types of investment does not have a positive impact, where Indonesia once had a Foreign Investment Law and was considered contrary to the *principle of sovereign equality* (Rahmah, 2020). This means that the formulation of these principles after becoming a WTO member still has room to be studied.

Foreign Investment is influenced by environmental variables and internalization variables. Where there are three types of environmental variables of concern, namely, economic, non-economic, and government. Economic variables can be in the form of labor and capital, technology and the availability of natural resources and management skills. Non-economic variables include political, social and cultural variables. Each country has the peculiarities of each

country. Furthermore, the government variable factors that must be considered by foreign investment companies are where foreign capital will enter. Politicians reflect nation-specific factors, which reflect the diversity in government intervention in international business (investment).

The entry of foreign capital is a demand for good conditions in the economic and political fields of Indonesia. This can generate foreign exchange for the country, especially direct investment activities that can generate very significant benefits for the country, because the purpose of investment (host country) is because of its permanent/long-term nature (Pramono, 2006).

The state will bind investors with an agreement that is designed to be mutually beneficial to both parties (Ibrahim & Lindawaty, 2007), but before that an assessment of the *principle of sovereign equality* is an opening way to invite investors to invest in Indonesia who are trying to gain investor confidence by targeting investors from multi-national companies and bilateral companies. *The World Trade* Organization (WTO) is referred to as a sign of a country accepting provisions in the field of international trade which are compiled in the form of GATT, GATS, TRPS, and TRIM. According to Robert Gilpin, WTO member countries have accepted investment legal norms with standards determined by the world trade organization, which include accepting a liberal economic system as an investment basis, accompanied by security for investors and their assets and no less important is the obligation of members to obtain investor confidence from its political stability (Kustiyahningsih & Eza, 2022).

Economic liberalism is a guarantee of freedom for all economic actors to determine for themselves what to

consume, what to produce, how to produce it, and to trade it. Liberalism is not without rules. Even rules and regulations are mutually agreed upon requirements. Without rules and regulations one's freedom can reduce the freedom of others, and this is against the spirit of economic liberalism. Wholehearted liberalization will certainly be very difficult to do. Liberalization may indeed occur mainly because of the pressures of the situation, regardless of whether society is ready to accept it or not. The challenges of the times, challenges from outside, especially globalization are a strong impetus for Indonesia to continue to carry out liberalization.

Budiono said that there are five benefits of opening trade liberalization. First, wider market access so that it is possible to obtain efficiency because trade liberalization tends to create new production centers that become the location of various interrelated and mutually supportive industrial activities so that production costs can be lowered. Second, the business climate becomes competitive so that it reduces *rent-seeking activities* and encourages entrepreneurs to increase productivity and efficiency and not how to expect to get facilities from the government. Third, the freer flow of trade and investment facilitates the process of technology transfer to increase productivity and efficiency. Fourth, free trade provides more correct price signals, thereby increasing investment efficiency. Fifth, in freer trade, consumer welfare increases because new choices are made. However, to run smoothly, a competitive market needs legislation that regulates fair competition and prohibits monopolistic practices (Rosser, 2002).

Problems in the field of investment are related to the demand to attract investors in the midst of declining

economic conditions and widespread competition, the first threat lies in the *principle of sovereign equality,* whether foreign investors or local investors will be treated differently depending on the situation and legislation, amid demands to take profit as much as possible and improve Indonesia's economic conditions, but this principle is also a way out for investors to withdraw by bringing the case of "unfair treatment" when investing in the arbitration table, so that more or less Indonesia will experience losses. So, it is necessary to explain the concept to understand the *principle of sovereign equality* and its influence in the laws and regulations in Indonesia in the investment sector, so that it can provide a clear picture of the treatment of investors.

Purpose of this study is to determine the concept *of The Principle of Sovereign Equality* in Investment and the effect of *The Principle of Sovereign Equality* on the Investment Law in Indonesia, in order to anticipate in dealing with investment cases for investors who will come due to indications of violation of the *principle of sovereign equality*.

In terms of its type, this research is normative legal research or library research, which examines document studies, using various secondary data such as legislation, court decisions, legal theory, internet media and can be in the form of opinions of scholars. So that the data used in this study is data obtained from the literature. Secondary data is primary data that has been further processed and presented either by primary data collectors or other parties.

Secondary data was collected by obtaining and analyzing documents related to the topics discussed in this study. Information obtained both printed and electronic will

be analyzed in depth to gain understanding and be taken into consideration.

This research is carried out by describing data and analysis of the conditions and phenomena in investment and connecting them between literature, legislation, international agreements, treaties and international arbitration decisions, to be studied so that studies and their effects on the Investment Law are obtained.

DISCUSSION

Concept of The Principle of Sovereign Equality

Attracting foreign investors to invest in Indonesia is a big challenge, both actively and passively or in implementing a free and active policy, Indonesia has always found it difficult to invite foreign investors, such as invitations and statements from President Jokowi to Saudi Arabia, companies moving from China, Elon Musk did not make them interested in investing in Indonesia. In fact, the minimum requirements, such as participating in the world economy, such as joining and participating in the WTO, GATT, AFTA, NAFTA, WIPO, and MEA, should provide a new chapter for the economy, especially investment in Indonesia. The package from the WTO is TRIMs, which is an agreement from a series of GATT/WTO agreements which stands for *Agreement on Trade Related Investment Measures,* to strive for the creation of smooth international trade. A reflection of TRIMs is Law Number 25 of 2007 concerning Investment (Tarigan, 2018).

The investment principles brought by the WTO-TRIMs are: First, the *Most Favored Nation* (MFN) principle or Non-discrimination is the main principle of international trade

given to a trading partner country, so that the host country and the visiting country must act equally. Good for all countries. A country should not be given special treatment or demean other countries. So, in this principle, treatment for all countries is placed on the same position, and all countries must participate in receiving and enjoying good treatment in accordance with the provisions reflected in the liberalization of international trade and all member countries of world trade bear the same obligations. The member countries in question are not allowed to discriminate in treatment between one member and another or may not give special treatment to only one member country, while different treatment is given to other members, both in terms of tariffs or trade restrictions other.

The second is the principle of *National Treatment,* which is almost the same principle as the description above, but applies to objects from other countries. This concept prohibits differentiating the treatment of foreign goods and domestic goods, meaning that when imported goods arrive or stop at a certain country, the object must be treated properly in accordance with the regulated system and does not give special treatment to domestic goods or products. The basis of the Principles of *National Treatment* is Article III GATT 1997 entitled "*National Treatment on International Taxation and Regulation*". This principle provision is explained that it is not justified to discriminate between domestic products and foreign products even though they are similar, meaning that if an imported good has entered the territory of a country because it is imported, then the goods must receive the same treatment as the government for domestic products similar.

The third is the principle of tariffs as the sole instrument for protection. If you consider tariffs, you certainly don't forget the term tariff war between America and China during the Trump administration, which retaliated against the high import tariff policy between the two countries. Basically, GATT gives permission to protect domestically produced products. Protection of domestic products that can be carried out is only limited to the provision of import tariffs or import duties imposed on imported goods, and may not be carried out by means of other restrictions. This principle aims to provide protection and restrictions on domestic products and is applied to imported goods, but its application must be in a clearer or more transparent manner, and the impact of distortion due to such protection can be seen more clearly.

Fourth, the principle of binding tariffs is more predictable international trade guarantees, so that provisions are applied to apply more tariffs to a commitment that binds member countries so as not to increase import duty tariffs on imported goods after they are included in the list of binding commitments.

Fifth is the principle of fair competition, where the GATT rules also contain the principle of *fair competition.* In this principle, it is more about setting subsidies on certain products, especially domestic products, with the aim of avoiding dumping practices. This principle rule applies to GATT participating countries to deal with export subsidies that cause domestic products to be sold at a high price in their own country and vice versa for exported goods to be sold cheaper, so to avoid dumping practices, the text of the GATT agreement includes *anti-Dumping Code* and *Subsidies*

Code clauses. as a result of the *Tokyo Round meeting.* To deal with dumping and export subsidies, importing countries are given the right to impose *anti-dumping duties* and *countervailing duties* as compensation or countermeasures against dumping or export subsidies. Then at the second *Uruguay meeting,* it was again refined and became an integral part of the WTO agreement.

The sixth is the principle of prohibition against quantitative restrictions, which is a general prohibition against restrictions of a quantitative nature, such as on quotas and similar types of restrictions. This provision was considered by the founders of GATT to be very important because at the time the GATT was established, quantitative restrictions were the most serious and most common problem and were considered as a legacy of the depression era that occurred in the past in the 1930s. Even so, there has been an increase in the application of quantitative restrictions in recent years, especially in the fields of agriculture, textiles, steel and industrial products which have significance for developing countries.

Seventh is the *Waiver Principle* and emergency restrictions on imports, which are exceptions regarding tariffs in the GATT in the form of *waivers* and other emergency measures such as those taken by the United States in carrying out its agricultural policies, which actually violated but because they were implemented before the GATT, these steps and policies obtained *waiver.* In certain cases, a country may face an emergency situation that requires handling by taking protective measures because its domestic industry is facing problems. Article XIX allows a country to take such protective measures. However, Article

XIX states that the protective measures are temporary emergency measures. The above exceptions are known as Safeguards measures. GATT member countries can apply a restriction on their imports or revoke tariff concessions that have been granted to other countries for products that have increased imports so much that it creates serious difficulties for the country's domestic industry.

Although the *principle of sovereign equality* is not in the principles that are standard in the WTO, but it is always a concern of investors before investing in other countries even though they are already members, the state also has an interest in foreign investment, where the state also has its own standards for investment. What is seen first is regulation as a provider of arbitration, state regulations and policies that do not harm investors when visiting the host country (Linda, 2022).

In investment law, the principle is updated according to the field of foreign investment, based on the European Union investment law so that it is considered suitable for modern investment by targeting the principle of legal certainty in which the application of the law in certain circumstances must be predictable. The legal principles of investment are, first, *the principle of sovereign equality,* which is the most important principle in state sovereignty which is also referred to as economic sovereignty. *The Charter of Economic Rights and Duties of States* (CERDS) of 1974 states that the state has the freedom to exercise full sovereignty, such as ownership, use and disposal, of all wealth from economic activities derived from natural resources, so that the state has the right to regulate and operate authority over foreign investment in its country in accordance with existing laws

and regulations by prioritizing nationality and the state is justified in forcing to give preferential treatment to foreign investment, on the other hand the state regulates and supervises the activities of transnational companies within the national territory and takes action to ensure that these activities comply economic and social laws and policies, whereby transnational corporations should not interfere in the internal affairs of the host or recipient country. In essence, this will affect the controversial compensation that could possibly lead to the nationalization of foreign companies.

Next up is *The principle of cooperation,* investment policies always cause problems with cooperation with companies from other countries, so they use special measures to encourage foreign investment to invest in developing or less developed countries, on the other hand, countries of origin that send companies to other countries support foreign investment efforts for sustainable development. For this reason, the country that will host foreign investment must offer guarantees against political risks in the host country or provide loans to companies that invest abroad. However, investment in collaboration with companies from other countries can cause sensitive issues that may disrupt the social system of a region. Third, *Principles related to the treatment and protection of international investments,* this principle recognizes that investment protection is one of the determining factors for foreign investment in policy instruments to attract investment, but the protection in question does not exceed the provisions of the WTO, at least foreign investors are protected from political influence in the host country.

Before defining the *principle of sovereign equality,* the definition of words in this discussion starts from defining the *principle* which is a legal principle that is described simply and abstractly in a statutory regulation, in other words the *principle* in question is the principle used as a basic factor in the regulation. and legal analysis, until the judge's decision.

While *sovereign is* defined as sovereignty, the state is said to be sovereign or *sovereign* because sovereignty is an important trait or characteristic of the state. When it is said that a country is sovereign, it means that the country has the highest power. However, this supreme power has its limits. The space for the application of this supreme power is limited by the boundaries of the country, so a country only has the highest power within its boundaries. Finally, *equality* is the degree of equality inherent in every individual or group before a legitimate or legal power by the state.

The *principle of sovereign equality* in the state is not only one of the important principles of law, but also the basis of general international law which has become a habit. Although various countries differ in aspects such as territorial area, population size, economic strength, military strength and cultural quality, the *principle of sovereign equality* in states is one of the principles of modern international law that is most emphasized by the international community. No matter the United States or other regional international organizations, all without exception adopt the *principle of sovereign equality* in international rulings and policies.

Based on the charter of the *United Nations Charter (PBB*) article 2 paragraph 1 which states "*The Organization is based on the principle of the sovereign equality of all its Members*", meaning that international law is the law that applies to the

international community, which mainly consists of countries that sovereign and independent. Each country is independent and sovereign, a principle in international law, namely the principle of *sovereign equality.* In this sense, no state or international organization stands higher above other countries, the law governing relations between equal states is the law of international relations, therefore international law is coordinating with other laws relating to relations between countries (Setianingsih, 2002).

The reason *the principle of sovereign equality is* upheld by every country and international organization is because it contains an attitude of equality in every country. The condition of this principle is that the state is not under other countries and has sovereignty and is independent. In terms of communication between countries, each country's representatives can express themselves to other countries without having to override logic. The United Nations designed this principle to stop war, despite the fact that there are still wars on the ground, until 2022 and the current events are the failure of the United Nations to transform the opinions of each member state in the session.

The principle of sovereign equality needs to be realized even though it is declared impossible, because every country has a different truth that is seen when the country or its representatives express their opinions, on the other hand, they must uphold tolerance and mutual respect between sovereign countries. However, the view of sovereignty and the view of the economy are different things but are seen as the same, due to the fact that a new country with sovereignty will be afflicted with economic and welfare problems, so the sovereignty of a country is currently seen through its

resistance to economic shocks it has ever faced (Koskenniemi &Ville, 2006).

The requirements of the *principle of sovereign equality* based on UNGA (United Nation General Assembly) Doc A/6799 (26 September 1967) are to have sovereignty, have the right to be sovereign; respect the personality of the country; free to choose and develop political, social, economic and cultural; independent; in good faith to fulfill international obligations. Each country is free to determine and develop its economy, so this is the basis for the implementation of *the principle of sovereign equality* in general investment.

Basically, politics, social, and economy cannot be separated from sovereignty. The attribute of state sovereignty is economic sovereignty. Without this political sovereignty is incomplete. Affirming economic sovereignty means controlling economic activities, both legal entities and foreign legal entities that carry out business in a country, whether citizens of that country or foreigners. In particular, international economic law must be based on the principles of *pacta sunt servanda,* freedom, *sovereign equality,* reciprocity, *sovereign economics.*

When the country concerned wants to start an economic policy, one of the first initiatives that must be taken is to consider the benefits it has, one of which is natural resources. States need to assert sovereignty over natural resources and require foreign individuals and companies to comply with new state-defined policies. However, if there are also foreign investors or companies that are given special rights, even though these rights are not recommended by the WTO because it makes it difficult to assert the economic

sovereignty of the host country that provides investment to foreign investors. On the other hand, resistance to the country's economic sovereignty is carried out by countries that allow or send investors abroad in an effort to refuse the application of national law to foreign people or companies and to force respect for concessions and contracts that exist under international law (SP Subedi, 2006).

For investors from developed countries, developing countries have an investment attraction in the form of natural resources that are still abundant such as minerals or the agricultural/plantation sector. Known as the *General Assembly Resolution on the Permanent Sovereignty over Natural Resources* (PSNR), containing state sovereignty over natural wealth and resources that must be implemented in the interests of national development and people's welfare, where exploitation, development and disposition of resources and foreign capital are required, but must comply with the rules and conditions of the country with provisions deemed necessary or desirable based on the authorizations, restrictions, and policies of a country.

Of course, investors are very worried about the state using the *principle of sovereign equality* to nationalize companies built in guest countries, but the resolution in question states that nationalization must be based on reasons for use for public interest, security or national interests which are recognized as the main cause and not for personal interests. Or other parties, but the country carrying out the nationalization must pay compensation, in accordance with the provisions in force in the country taking the nationalization action which is one of the acts of implementing sovereignty and its provisions must be in

accordance with international law or foreign investment agreements freely drawn up by or between sovereign states must be observed with good faith, firmness and respect for the sovereignty of the people and the state as stipulated in the charter and principles stipulated in the resolution in question which until now has become a i customary international law.

As described above, both the United Nations and the WTO put forward the *principle of sovereign equality,* that the important element in this principle is the existence of sovereignty and being able to exercise its sovereignty to develop the country from an economic, social and political perspective, which is the obligation of a sovereign state and when it comes to relations between countries, both related to with the economy, investment, the UN session is adjusted to applicable international law. The standard treatment of the state that reflects the *principle of sovereign equality* for investors is non-discrimination and *fair and equitable treatment,* and the treatment that is of great concern or in other words is feared is nationalization.

Sovereign equality and non-discrimination have a long history in international law, if a foreign company exploits the natural resources of another country, the company is still bound by the laws of the country of origin in the jurisdiction of another country, then the host country is assumed to have no sovereignty, thus resulting in treatment special and discriminatory against a foreign company. In this case, the form of sovereignty in question is regulations and policies that bind investors without distinguishing between local and foreign, so that they can have the same obligations according to their jurisdiction.

Regarding *fair and equitable treatment,* it is the obligation to provide fair treatment as a standard for protection of foreign investors who approve the direct investment module. This refers to first-rate investment guarantees in multilateral trade efforts. This regulation does not always exist in the agreement to provide space for arbitration or experts to give their opinions when there is a case of unfair treatment from the host country, such treatment must be given from the government, officials and experts when carrying out economic activities.

The final standard of treatment in the *principle of sovereign equality* is nationalization, host countries can use sovereignty that is against the interests of foreign investors based on the rules in investment. This is a challenge faced by investment law if there is an adverse sovereign effect, on the other hand each country must respect the agreement. Of course. Liability will be held against foreign investors who are harmed if the country violates customary international law when hosting foreign investment. Nationalization, expropriation, and other takeovers of host governments are a warning to foreign investment. Investigations of potential foreign investors are carried out to calculate the risk of investing, regardless of the benefits obtained such as tax breaks and other incenties that may be offered by the government of the host country. The standard of nationalization regulation that must be carried out by the parties is compensation given to investors at a price close to the actual value, where the expropriation is the responsibility of the state and must be in accordance with international trade law, although later it will be brought to arbitration when no agreement is reached.

Influence of The Principle of Sovereign Equality on Investment Law in Indonesia

Prior to the enactment of Law Number 25 of 2007 concerning Investment. Investment regulation uses 2 types of laws to invest, namely Law Number 1 of 1967 concerning Foreign Investment and Law Number 6 of 1968 concerning Domestic Investment. Each definition is based on "Article 1 of the UUPMA stating that foreign investment must be carried out directly in accordance with or based on the provisions of the foreign investment law specifically for use in running a company in Indonesia", in the sense that the direct owner of the capital must bear the risk of investment made in Indonesia, while domestic investment based on Article 2 of the Domestic Investment Law states that domestic investment is investment in wealth, either directly or indirectly, to run a business according to or based on the provisions of the domestic investment law.

In the explanation of article 2 it is stated that domestic investment is the use of capital for businesses that encourage national economic development. Such investment can be carried out directly, namely by the owner himself by establishing a company or indirectly, namely through bonds, shares, issuance of other securities issued by the company as well as deposits and savings with a maturity of at least one year.

From the description above, the previous legislators who divided the types of investment from the source of funds used were foreign capital and domestic capital which carried risks that would be faced by each capital owner, especially for foreign investors who were required to invest their capital directly automatically. Must submit to

Indonesian sovereignty. No wonder foreign investors are worried about this rule because it is considered unprofitable. In other words, the previous investment law was considered discriminatory between foreign and domestic investors, and was required to comply with the rules and policies set by the government (Sembiring, 2018).

After reviewing the foreign investment law and the domestic investment law, one of the causes of concern for foreign investors to invest is not only the issue of discrimination and sovereignty, but also the issue of liberal understanding in investment regulations. However, this was opposed during the making of the law, where previously the problems that were considered were the high cost of doing business because it was extortion, complicated licensing due to the dualism of regulations between the center and the regions, as well as the declining purchasing power of the people. Therefore, Law Number 25 of 2007 concerning Investment is considered to overcome the main problems of investment, namely improving the investment climate, improving bureaucratic relations between the center and the regions and being efficient, accompanied by the creation of high competition between investors and legal certainty. However, Law Number 25 of 2007 concerning Investment does not adhere to absolute liberalism, even though it has adjusted to the investment principles of the WTO.

The principles or principles adopted in Law Number 25 of 2007 concerning Investment are; first, the principle of legal certainty is a principle in a state of law that lays down the laws and provisions of laws and regulations as the basis for every policy and action in the investment sector; second, the principle of openness is a principle that is open to the

public's right to obtain correct, honest, and non-discriminatory information about investment activities; third, the principle of accountability is the principle that determines that every activity and the final result of the implementation of investment must be accountable to the community or the people as the holder of the highest sovereignty of the state in accordance with the provisions of the legislation; Fourth, the principle of equal treatment and no distinction of country of origin is the principle of non-discriminatory service treatment based on the provisions of laws and regulations, both between domestic investors and foreign investors as well as between investors from one foreign country and investors from another foreign country; fifth, the principle of togetherness is the principle that encourages the role of all investors together in their business activities to realize the welfare of the people; sixth, the principle of fair efficiency is the principle that underlies the implementation of investment by prioritizing fair efficiency in an effort to create a fair, conducive and competitive business climate; seventh, the principle of sustainability is the principle that in a planned manner strives for the development process through investment to ensure prosperity and progress in all aspects of life both for the present and in the future, eighth, the principle of environmental insight is the principle of investment carried out by still paying attention and prioritizing protection and maintenance of the environment, narrowness, the principle of independence is the principle of investment carried out while still prioritizing the potential of the nation and state by not closing oneself to the entry of foreign capital for the realization of economic growth; tenth, the principle of the

balance of progress and the unity of the national economy is a principle that seeks to maintain the balance of regional economic progress within the unity of the national economy.

Through the principles above, it can be seen that the *principle of sovereign equality* in question touches on the principle of equal treatment and does not distinguish the country of origin, according to the conditions stated as non-discriminatory treatment and equality between countries. This principle is followed by the basic investment policy, Article 4 paragraph 2 of Law Number 25 of 2007 concerning Investment which states "that giving the same treatment to domestic investment and foreign investment while still taking into account the national interest", which in the explanation means: of equal treatment is that the government does not discriminate in the treatment of investors who have invested in Indonesia, unless otherwise provided for by the provisions of laws and regulations. This means that the Investment Law does not fully surrender liberal and capitalist understanding and still provides a sovereign space in investment. However, this liberalization principle is contained in the Investment Law by providing full protection to foreign investors and reducing to a minimum the right of the host country government to control the flow of foreign capital. On the one hand, the liberalization of international trade and foreign investment can attract Indonesian products to the world market and get Indonesia to act as an actor in global trade where the main players are multinational companies (Fernando, 2022).

As described above, "the basic form of sovereignty is regulations and policies", one of the regulations that reinforce sovereignty is in the field of business that is assigned to investors. Article 12 of Law Number 25 of 2007 concerning

Investment determines business fields that are closed to investors, namely businesses related to national security and resilience as well as business fields that are explicitly declared closed by law. The President has the authority to determine which business fields are closed, open or open with conditions through a Presidential Regulation. Business fields that are prohibited for investors to open a business are mining of radioactive minerals; air traffic control, ship classification and statutory; operation of radio frequency spectrum monitoring stations and satellite orbits; radio, television, print media; related fields such as taxi transportation and public shipping; agriculture, especially cannabis cultivation, forestry, alcoholic beverage industry, chemical industry that can damage the environment (Harjono, 2012).

Next is a non-discrimination standard that does not differentiate treatment between countries, as Article 6 of Law Number 25 of 2007 concerning Investment states that "the government provides equal treatment to all investors who come from any country that conducts investment activities in Indonesia. Indonesia is in accordance with the legislation with the exception of investors who obtain special rights because they have a contribution to the national economy or because international agreements are bilateral, regional or multilateral.

However the same is not made clear in the troubleshooting module. Settlement of investment problems, especially foreign investment against the government, is a place where treatment based on the principle of equal treatment and does not discriminate against country of origin can be seen, several cases with foreign investors are resolved in international arbitration such as the Amco Asia

dispute, the Churchil Mining Plc dispute, the Rafat Dispute Ali Rizvi, or the East Kalimantan prima coal dispute, is a series of issues included in the ICSID Arbitration, which is considered neutral and sees the country as a whole in the eyes of foreign investors. This proves that the slogan "*The principle of equal treatment is fundamental to the idea of justice, in international arbitration as in any adjudicative system*", which was built by Prof. Maxi Schererni, gives the effect of trust to foreign investors in resolving disputes. So, for foreign investors, the problem resolution system, especially through arbitration as regulated in Article 32 of the Capital Market Law, followed by Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, has not fulfilled the *principle of sovereign equality,* and does not even have an explanation of the principles underlying the regulation in it.

The last is nationalization which is also one of the allowed treatments but it is feared in the principle of equal treatment. Indonesia has twice nationalized foreign companies to Dutch companies, namely Dutch tobacco companies and companies from Britain and America because of the confrontation with Malaysia, resulting in Article 7 of Law Number 25 of 2007 concerning Investment which guarantees the government does not will take action to nationalize or take over ownership rights of investors, except by law, and if nationalization or takeover of ownership rights is required, the government will provide compensation in the amount determined based on market prices, even if both parties reach an agreement on compensation or damages settled by arbitration.

The policy that requires foreign investment companies to form *joint ventures* has an impact that is not conducive to the

investment climate, because it can open up opportunities for nationalization when employees have entered the *"know how"* stage which should be a company secret. However, the national interest in the economy sector is still and needs to be put forward so that this policy gave birth to increase national participation in both the public and private sectors in the ownership of foreign investment companies by limiting the activities of foreign companies in certain sectors and other forms of prohibition another. Even so, the practice of investment protection in the form of a guarantee of no nationalization is an international practice. The requirements for nationalization that apply internationally are very strict, namely they must be based on law, there is compensation and must not be based on political reasons alone (Suparji, 2016).

Clashes between foreign companies seeking profit and sovereignty in investment are always present in every country. Basically, foreign investment wants both parties to fulfill contracts and customary international law before carrying out economic activities in the host country. On the contrary, the State must have sovereignty that can view a country as equal, because this is an absolute law of every international law ranging from international organizations to international arbitration, and this sovereignty is an absolute thing owned by the state, and every regulation and policy must be complied with when investors foreign countries exploit their territory. Thus, the *principle of equal treatment* or the principle of equal treatment and does not distinguish the origin of the country is a principle that views and respects the sovereignty of the state as an independent country and is free to regulate itself so that it must be seen as an equal sign of discrimination.

CONCLUSION

Every country and international organization is required to uphold the *principle of sovereign equality* which describes the equality in every country. The condition is that the state is not under other countries, has sovereignty and is independent. Meanwhile, related to investment where developing countries have an attraction to natural resources that are still abundant with minerals and the agricultural/ plantation sector, the General Assembly Resolution on the Permanent Sovereignty over Natural Resources (PSNR) gives the state the right to carry out economic activities for the sake of development. national welfare and people's welfare can exercise sovereignty over its authority, impose restrictions, and economic policies.

On the other hand, investors are very worried about the state using the *principle of sovereign equality* for nationalization which can be carried out based on reasons of use for the public interest, security or national interest which is recognized as the main cause above personal and international interests, but countries that carry out nationalization must pay compensation. The concept in this principle is the existence of sovereignty to develop the country from an economic, social and political perspective, then *sovereign equality* and non-discrimination, *fair and equitable treatment,* and granting the right to nationalization.

In Law Number 25 of 2007 concerning Investment, the *principle of sovereign equality* has been included as the principle of equal treatment and does not differentiate from country of origin, but treats the same except by the provisions of laws and regulations, in other words Indonesia as a sovereign country does not give up completely liberal and capitalist

ideas and remain sovereign. The non-discrimination element which is one of the important elements in the *principle of sovereign equality* has also been regulated in the law as stated in Article 6 of the Investment Law.

However, the same thing is considered not to be in the problem solving module in the form of arbitration, which must have the slogan *"The principle of equal treatment is fundamental to the idea of justice in international arbitration as in any adjudicative system"*, which was developed by Prof. arbitration, which is regulated in Article 32 of Law Number 25 of 2007 concerning Investment, followed by Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, has not fulfilled the *principle of sovereign equality.* Then related to nationalization, it is still enforced and regulated as one of state sovereignty, even though it guarantees that it will not carry out nationalization as described in Article 7 of Law Number 25 of 2007 concerning Investment.

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Legal Protection and Responsibility of Electronic Systems Operators in Artificial Intellegence Personal Data Management in Indonesia

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Abstract

The development of human progress today is very rapid, because the industrial revolution 4.0 is now heading for the 5.0 industrial revolution which only takes a decade. Entering the 5.0 revolution era, startup companies are developing their services with artificial intelligence (AI). AI is a system that imitates human intelligence, then is applied to technology. However, the use of AI still causes a number of problems, especially related to responsibility in the event of leakage of personal data of users of electronic system services. The formulation of the problem in this paper is how the legal protection of the confidentiality of personal data in Indonesia is. What is the legal responsibility for data information leakage for startup users whose services use AI. The research method of this paper is normative. The conclusion is that Indonesia already has a number of rules regarding personal data partially. For legal certainty, the Law on the Protection of Personal Data should be issued immediately. Electronic System Operators are responsible for leakage and/or misuse of personal data resulting from the use of AI.

Keywords: *Legal Protection, Artificial Intelegence, Personal Data*

INTRODUCTION

The development of human progress today is very rapid, because the industrial revolution 4.0 is now heading for the 5.0 industrial revolution which only takes a decade. In contrast to the 1.0 industrial revolution when the steam engine was invented in 1770, then in 1914 the creation of cars and planes. The industrial revolution has been going on for 150 years. In the current era, there are companies that develop digital technology to reach their marketing. Entering the 5.0 revolution era, startup companies are developing their services with artificial intelligence (hereinafter abbreviated: AI). AI is a system that imitates human intelligence, then is applied to technology. This artificial intelligence system is able to do many things, just like humans. For example, such as data analysis (Mustofa, 2022).

The use of AI certainly creates legal problems, because almost all electronic system operators accessed by digital service users require personal data as part of the register which generally contains name, date of birth, address, telephone number, NPWP, NIK and so on depending on needs and type. applications used by service users. The submission of the data according to the author is a legal event because there are legal subjects who carry out legal actions. However, the data submitted by users of these digital services is carried out and managed by AI, not between individuals. From the start of the data request made by the startup, of course, the next service will require more detailed data. Departing from this, the next question will arise in the event of a data leak, manipulation of data, and other uses of such data information, which party is responsible. Considering that startup companies in carrying

out their activities are of course assisted by other software companies, then permanent employees, temporary employees, hardware providers, network companies, telecommunications companies, cyber security companies, other expert teams, as well as many parties.

The number of parties involved, of course, if there is a leak of personal data, will blame each other and the user will be harmed. Because personal data information in the digital era is an asset that must be protected. Data leakage is not necessarily a direct loss, but the user's privacy is disturbed and the data set is an asset in a business, Personal data is an asset or commodity of high economic value (Greanleaf, 2021). Data leaks don't always arise from startup errors, because hackers can make the data leak. Another thing to remember about the disclosure of service user data is that there is government intervention, which in this case is of course for the benefit of state data or law enforcement purposes.

The concept of data protection is often treated as part of privacy protection. Data protection basically can relate specifically to privacy as stated by Alan Westin who for the first time defined privacy as the right of individuals, groups or institutions to determine whether information about them will be communicated or not to other parties so that the definition put forward by Westin is called the information privacy because it involves personal information.

Data protection is also a fundamental human right, a number of countries have recognized data protection as a constitutional right or in the form of "data clearance", namely the right of a person to obtain security for his data and for justification when errors are found in his data.

Albania, Armenia, the Philippines, Timor Leste, Colombia and Argentina are countries with historical and cultural differences that have recognized the role of data protection in facilitating democratic processes and have guaranteed its protection in their constitutions (Greanleaf, 2011).

In Indonesia in general, regarding the protection of personal data, it has been regulated in various separate regulations in Indonesia, such as in the first Law Number 7 of 1971 concerning Basic Archival Provisions, the second Law Number 7 of 1992 concerning Banking as Amended by Law Law Number 10 of 1998 concerning Banking, the third Law Number 36 of 1999 concerning Telecommunications, and the fourth Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions and their amendments (UU ITE). However, the protection of personal data, especially in electronic devices, has not been specifically regulated in a number of laws, including that it is not explicitly stated in the ITE Law.

This means that the protection of personal data in Indonesia by users of the electronic system from a regulatory perspective at the level of the law cannot be said to be optimal, because the Law on the Protection of Personal Data (hereinafter abbreviated as the PDP Bill) is still in the form of a draft that has not been approved by the DPR. However, there are a number of regulations that at least discuss the protection of personal data in electronic systems, namely the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning the Protection of Personal Data in the Electronic System (hereinafter: Permenkominfo PDP), Government Regulation Number 71 of 2019 concerning the Electronic System Management

System and Regulations Government Number 80 of 2019 concerning Trading Through Electronic Systems.

The absence of a law that protects service user information data is certainly detrimental to the Indonesian people, because if you refer to the existing data for 2021 alone, the number of downloads reaches 7.31 billion applications via smartphones, this means that every 1 minute, more than 13 thousand applications are downloaded by smartphone users in Indonesia, looking at these numbers, you can imagine the amount of personal data that is managed by an electronic system operator. However, the imposition of sanctions so far has only been limited to administration and is not universal in nature, and the only relevant Ministries and/or Institutions in this case the focus is limited to the working area of the Ministry of Communication and Information Technology (hereinafter: Kominfo) only. Data protection of users of electronic system services is regulated in Article 2 paragraph (1) of the Permenkominfo PDP which confirms:

> "Personal Data Protection in Electronic Systems includes protection against the acquisition, collection, processing, analysis, storage, display, announcement, transmission, dissemination, and destruction of Personal Data."

In 2020 in Indonesia, there was a leak at the startup company Tokopedia, an estimated 91 million accounts and 7 million merchant accounts, meaning that almost all accounts on Tokopedia were successfully retrieved by hackers. Perpetrators sell data on the dark web in the form of user ID, email, full name, date of birth, gender, mobile phone number

and password that is still hashed or encrypted. Other data leak cases include:

1. BPJS Health Data Leak

   In May 2021, data on a number of participants of the Social Security Administering Body (BPJS) was sold on Raid Forums for 0.15 Bitcoin. The data is sold by forum users under the id name 'Kotz'. He said the data also includes data on residents who have died. "There are one million free data samples to test. The total is 279 million. A total of 20 million have personal photos," he said. BPJS Kesehatan Managing Director Ali Ghufron Mukti admits that some of the data traded on the internet is similar to what they have. But BPJS has not been able to confirm whether the leak really came from them or not, because the digital forensic investigation is still ongoing.

2. Pay Attention and Lazada Data Leaks

   The case of data leaks from the two companies circulated on the Raidforums website at the end of 2020. In it, there is data that is traded and traded from meticulous.com as many as 2.9 million users taken from the activities of 17 companies, mostly financial activities. Meanwhile, Lazada experienced a leak of 1.1 million data. Meanwhile, Lazada said that the incident related to data security in Singapore involved a special Redmart database hosted by a third-party service provider.

3. Sales of BRI Life Customer Data

   It was widely circulated on social media about the alleged data sales of two million BRI Life customers at a price of $7,000 or around Rp. 101.6 million. The upload was revealed by the Twitter account @HRock. There

were 463,000 documents being traded. The documents listed in the screenshot are photos of electronic ID cards, account numbers, taxpayer numbers, birth certificates, and customer medical records. At that time, the Police said they were ready to investigate the data leak case. According to the Head of the Public Information Bureau, the Public Relations Division of the National Police Headquarters, Brigadier General Rusdi Hartono, the action requires a complaint from the aggrieved party.

4. Leakage General Election Commission Data

   Hackers claim to have broken into 2.3 million Indonesian citizen's data from the General Elections Commission (KPU). The information came from the @underthebreach account, Thursday night, May 21, 2020. The personal data in question includes name, address, ID number, date of birth and others. At that time, the General Elections Commission Commissioner Viryan Aziz said that the final voter list (DPT) data that was leaked on social media was not the result of hacking the site.KPU. He suspected that the leaked personal data came from a third party. He said that the KPU was obliged to hand it over to them in accordance with the provisions of Law Number 8 of 2012 Article 38 Paragraph 5.

From the description above, it can be illustrated that related to the protection of personal data in Indonesia, it still raises a number of problems both in terms of regulation and implementation of law enforcement in the field. Because after all the protection of personal data is one form of protection of human rights, where the protection of human

rights is one of the elements or characteristics of the rule of law according to Julius Stahl.

DISCUSSION

How is the Legal Protection of Electronic System Personal Data in Indonesia?

The principle of recognition and protection of human rights is part of the principle of legal protection. The term human rights in Indonesia is often equated with the term natural rights, basic human rights. Natural rights, human rights, fundamental rights, gronrechten, mensenrechten, rechten van den mens and fundamental rechten According to Philipus M Hadjon, in rights, there is a claim. LeaveFrom the concept of a state of law as mentioned above, it can be said that a country is said to be a state of law if the government respects individual rights or maintains the protection of human rights for its citizens. Regarding the individual rights of citizens (private rights) in the Indonesian context, it has been regulated in the 1945 Constitution, especially in Article 28G paragraph (1) which states:

> Everyone has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right.

The right to protect personal data develops from the right to respect personal life or the so-called right to private life. The concept of personal life relates to humans as living beings. Thus the natural person is the main owner of the right to protect personal data. Based on the search, it can be

seen that the history of the use of the term data protection was first used in Germany and Sweden in the 1970s which regulates the protection of personal data by enacting the rules regarding the protection of personal data into a systematic statutory rule (Shinta Dewi, 2012). It should be understood that there are differences in different countries regarding the term "personal data" with "personal information", but substantively both have the same meaning. For example the United States, Canada and Australia use the term "personal information", while in the European Union countries, Malaysia and in the context of Indonesia use the term "Personal Data".

An explanation of the definition of personal data is important to ensure the protection of that data. So far in several international and regional instruments such as the European Union Data Protection Directive, European Union Data Protection Convention, and the OECD Guidelines, what is meant by "personal data" is all data relating to identified and identifiable individuals (information relating to an identified or identifiable natural person) (Kightingger, 1981).

According to Jerry Kang, personal data describes information that is closely related to someone who can distinguish the characteristics of each individual (Nugraha, 2012) In principle, the form of protection of personal data is divided into two forms, namely the first form of data protection in the form of securing the physical data, both visible data and invisible data. The second form of data protection is the existence of regulations governing the use of data by unauthorized persons, misuse of data for certain purposes, and destruction of the data itself.

In the Indonesian context, Decision No.5/PUU-VIII/2011, the Constitutional Court also wrote that the right to privacy is part of human rights (derogable rights) and the scope of the right to privacy includes information or right to information privacy, also called data privacy (data protection). In Indonesia itself actually already has a number of rules and/or regulations governing personal data, such as Law Number 7 of 1992 concerning Banking as Amended by Law Number 10 of 1998 concerning Banking, Law Number 36 of 1999 concerning Telecommunications, Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 7 of 1971 concerning Basic Provisions for Archiving, Law Number 8 of 1997 concerning Company Documents, Furthermore, for the protection of personal data in the electronic system, this is regulated in Law 11 of 2008 as amended by Law Number 19 of 2016, which in article 26 of the Law states in essence that "...the use of any information through the media Electronic data relating to a person's personal data must be carried out with the consent of the person concerned". In the explanation of the article it is stated that in the use of information technology, the protection of personal data is one part of personal rights (privacy rights), especially related to the right to monitor access to information about a person's life and data.

Furthermore, personal data is also mentioned in the implementing regulations of the ITE Law, namely PP 71 of 2019 concerning Electronic System Operators article 1 number 29 is any data about a person either identified and/or can be identified separately or combined with other information either directly or indirectly. Through Electronic

and/or non-electronic Systems. The government further also issued Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems which in the PP states that every personal data is treated as "property" of the person or business actor concerned, so that "business actors" are required to store personal data in accordance with data protection. and or the prevalence of developing business practices.

Regarding Personal Data also mentioned in the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 Protection of Personal Data in Electronic Systems which expressly states that personal data is certain individual data that is stored, maintained, and kept true and protected by confidentiality.

Based on the above explanation, Indonesia actually has a number of rules related to the protection of personal data, but the regulations are still partial and have not been regulated in a special regulation that regulates the Personal Data Law according to the author, which can hinder the law enforcement process so that it does not run optimally, especially if the existing rules have not explicitly stipulated sanctions for any violation of the protection of personal data. Soerjono Soekanto argues that in law enforcement there are factors that can influence so that law enforcement can have a positive or negative impact. These factors are first, the legal factor, the second is law enforcement factors, third, the facilities or facilities factor, the fourth community factor and the fifth cultural factor.

Referring to this, according to the author, "legal factors" and legal substance are important in efforts to protect and enforce personal data law in Indonesia, because

laws/norms are important factors in law enforcement. Therefore, the Personal Data Protection Act (PDP) must be issued immediately. I hope that the PDP Law can be passed soon as a form of government protection for the data security of each citizen, especially to reduce concerns about data leakage or data misuse by irresponsible parties which in the end can harm the wider community, especially users of electronic system services.

What is the Legal Responsibility for Data Information Leakage for Users of Electronic Systems Whose Services Use AI?

*Artificial Intelligence*or Artificial Intelligence, better known in Indonesian (AI) is one of the technological developments that has become a concern for several countries.HA Simon defines AI as artificial intelligence in the area of research, application, and instruction related to computer programming to do something that in the view of humans is intelligent. Furthermore, Rich and Knight defines that artificial intelligence is a study of how to make computers do things that humans can do better today. Basically, based on what the two experts have said, the AI work pattern refers to a simulation of human intelligence which is then duplicated into a machine that has been programmed to think like a human and imitate its actions. Human work patterns can also be applied to any machine that exhibits traits related to the human mind, including the learning process through information acquisition and information use rules, legal reasoning using rules to reach definite conclusions and self-evaluation. Another thing that AI can do is its ability to rationalize and take actions that

have the best chance of achieving certain goals especially in making choices or decisions.

With human input, it is possible for AI to receive knowledge and by simulating the reasoning process, AI can use its knowledge and think like humans to solve existing problems. Although it cannot accept researchers, experience, and knowledge like humans, but through the efforts given by humans, AI can obtain the knowledge it needs (Kusumawati, 2008). It can be concluded that AI was created in such a way with the aim of being like humans and even exceeding humans in helping or replacing humans to do certain actions. Looking at AI technology that can perform actions and actions like humans, of course this is what underlies a legal arrangement in a country to have special arrangements related to AI. Indonesia already has Law 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, but the ITE Law does not explicitly mention AI, however, according to the author, AI can be categorized as an electronic system and electronic agents.

In the context of the implementation of the electronic system (PSE), as has been explained in the background of this writing, the PSE in its implementation often uses AI to collect data, manage and analyze data belonging to users of electronic system services which are usually at the initial stage the user is asked to register (registration) by completing and submitting personal data such as "**name, date of birth, address, telephone number, npwp, NIK**" and others. In the author's opinion, at that time there had been a transfer of "proprietary" data from service users, both individuals/business actors to AI and/or PSE to be stored

and managed and protected in accordance with applicable regulations. When registering, when the PSE user clicks "OK" there has been an agreement that is where the PSE user submits his personal data to AI and/or PSE this is called the Click warp agreement, and this creates rights and obligations for both service users. and PSE as data recipient.

According to a number of regulations in force in Indonesia that regulate the Operation of Electronic Systems, if there has been a submission of personal data, PSE is responsible for protecting the personal data, as follows:

1. Law 11 of 2008 as Amended by Law Number 19 of 2016 Concerning Information and Electronic Transactions

   Article 26 of the ITE Law states that "... the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned." In the explanation of the article it is stated that in the use of information technology, the protection of personal data is one part of personal rights (privacy rights), especially related to the right to monitor access to information about a person's life and data.

2. PP 71 Year 2019 Regarding Electronic System Operator

   Article 14 of PP 71 2019 basically states that PSE is obliged to carry out personal data protection in data processing. Including misuse, unauthorized access and disclosure, as well as alteration or destruction of Personal Data. And if there is a failure in the protection of the Personal Data it manages, the Electronic System Operator is obliged to notify the owner of the Personal Data in writing.

3. PP 80 Year 2019 Trading through Electronic Systems

   Article 58-59 of PP 80 of 2019 basically states that every personal data is treated as the personal property of the person or actor concerned. And it is the obligation of business actors to store and control personal data in accordance with the provisions of the law.

   The party storing personal data must have a proper security system to prevent leakage or prevent any unlawful processing or use of personal data and be responsible for any unexpected loss or damage that occurs to the personal data.

4. Perkominfo 20 of 2016 Protection of Personal Data in Electronic Systems

   Permenkominfo 20 of 2016 article 1 paragraph (1) explains that Personal Data is certain personal data that is stored, maintained, and kept true and its confidentiality protected. In Pekominfo 20 2016 it is also stated that it is the obligation of PSE to inform PSE service users/personal data owners in the event of a failure to protect personal data.

However, in a number of regulations as mentioned above, it only provides administrative sanctions for the failure of personal data protection carried out by PSE, for example in the event of data leakage and/or misuse of the data it manages. Even though the imposition of administrative sanctions is intended, it does not remove criminal and civil liability.

Then, The next question is how is the data leak caused by AI? According to the author's opinion AI based on the legal arrangements that apply in Indonesia is actually not a

legal subject but only as a legal object, which of course AI itself is a technology operated by humans in its implementation, associated with positive law, AI is operated by electronic system operators, this is in accordance with what is explained in Government Regulation Number 71 of 2019 concerning System Operations and Electronic Transactions (PP 71/2019).

AI no can be equated with a legal entity to become a legal subject, where a legal entity has clear and firm aims and objectives in its establishment and there is a human scope, and AI cannot stand independently which as we know, computers are regulated and programmed by humans and if the computer or AI takes a decision that can be likened to a human, the perfection in the decision cannot be ensured if there is no human supremacy in decision making, because the computer is not always free from system errors). Therefore, the electronic system operator in this case is responsible as a legal subject for the implementation of the electronic systemthe electronic system that it does, including in the event of data leakage caused by management by AI, except for force majeure.

CONLUSSION

In principle, the protection of personal data is part of a form of protection of human rights that has been regulated in the 1945 Constitution, and in this regard, Indonesia already has a number of regulations related to personal data, but it is hoped that the PDP Law can be immediately ratified as a form of government protection. to the data security of each citizen, in particular to reduce concerns about data leakage or data misuse by irresponsible parties, which in turn can

harm the wider community, especially users of electronic system services.

The electronic system operator is responsible as a legal subject for the operation of the electronic systemthe electronic system that it does, including in the event of data leakage caused by management by AI, except for force majeure.

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Potential Threats of Criminal Acts of Money Laundering and Terrorism Financing Crimes in Indonesia through the Implementation of Financial Technology and Virtual Assets

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Abstract

The development of financial technology that has a nature, such as real-time transactions, the ease of transactions across national borders, the absence of the need for non-face-to-face meetings, is often used by criminals to conceal and disguise the proceeds of criminal acts. The potential threat of TPPU through the implementation of financial technology and virtual assets includes the application of Foreign Predicate Offence which must pay attention to the "principle of double criminality." In this case, it must be proved that the defendant knew that if foreign predicate offence was carried out abroad or in Indonesia, the act was threatened with criminality in Indonesia. As for the potential threat of TPPT through the implementation of financial technology and virtual assets, namely the way funds are obtained from terrorist organizations obtained through activities such as Private Donations, Non Profit Organizations (NPOs), and Proced of Criminal Activities. The strategic and disband mass organizations that are proven and judged to be contrary to the state ideology of Pancasila, violate the Constitution and threaten the existence of the Unitary State of the Republic of Indonesia.

Keywords: *Money Laundering, Terrorism Financing Crime, Financial Technology Sophistication, Asset Recovery*

INTRODUCTION

The development of technology and information systems continues to give birth to various innovations, especially those related to financial technology (fintech) in order to meet the needs of the public, including in the field of payment system services, both in terms of instruments, operators, mechanisms, and infrastructure for the implementation of payment transaction processing. Based on Article 1 number 1 of Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Implementation (PBI for Financial Technology Implementation) states: Financial Technology is the use of technology in the financial system that produces new products, services, technologies, and/or business models and can have an impact on monetary stability, financial system stability, and/or the efficiency, smoothness, security, and reliability of the payment system.

The development of financial technology on the one hand is proven to bring benefits to consumers, business actors, and the national economy, but on the other hand has potential risks that if not properly mitigated can disrupt the financial system. The development of financial technology that has a nature, such as real-time transactions, the ease of transactions across national borders, the absence of the need for non-face-to-face meetings, is often used by criminals to conceal and disguise the proceeds of criminal acts.

A technology financial operator is a legal entity that organizes financial technology activities with the obligation to register with Bank Indonesia. Technology financial operators are prohibited from using virtual currency as in Article 8 of the Financial Technology Implementation Regulation which states:

(1) Financial Technology Operators that have been registered with Bank Indonesia must:
   d. Use rupiah in every transaction carried out in the territory of the Unitary State of the Republic of Indonesia in accordance with the provisions of the laws and regulations governing currency;
   e. Apply the principles of anti-money laundering and prevention of terrorism financing in accordance with the provisions of laws and regulations governing anti-money laundering and prevention of terrorism financing;
(2) In addition to the obligations as referred to in paragraph (1), Financial Technology Operators are prohibited from carrying out payment system activities using virtual currencies.

Explanation of Article 8:
(1) e. The application of the principles of anti-money laundering and prevention of terrorism financing is carried out in accordance with the provisions of the laws and regulations governing the principles of anti-money laundering and prevention of terrorism financing including regulations issued by supervisory and regulatory agencies related to business activities and/or the existence of the Financial Technology Operator concerned.
(2) What is meant by "virtual currency" is digital money issued by a party other than the monetary authority obtained by mining, purchasing, or transferring gifts (rewards). Prohibition of carrying out payment system activities using virtual currency because virtual currency is not legal tender in Indonesia.

The prohibition on using virtual currencies is also regulated in Bank Indonesia Regulation Number

18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing, which in Article 34 states: Payment System Service Providers are prohibited from processing payment transactions using virtual currencies.

> Explanation of Article 34
> What is meant by "virtual currency" is digital money issued by parties other than monetary authorities obtained by mining, purchasing, or transferring gifts (rewards) including Bitcoin, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven. Excluding the definition of virtual currency is electronic money.

The innovation of internet-based payment instruments, especially the use of virtual assets or often known as virtual currencies, was originally intended to facilitate, facilitate and create efficiency in transactions because it allows payments to be made peer to peer without the intervention of third parties so as to cut invisible costs which have been a burden for those who transact. In addition, such a payment method also promises security because it carries blockchain technology that guarantees the recording of every transaction that occurs. But like a double-edged knife, the presence of virtual currencies that do not use real identities (pseudonyms) and the absence of financial authorities that control the transactions in question, so that it becomes a loophole that is often misused by irresponsible parties as a means to commit crimes. One of them can be seen from the use of cryptocurrency with bitcoin in the practice of financing terrorism, money laundering, and various other dimensions of criminal acts.

Cryptocurrency itself is a term for a virtual currency that uses encryption to verify each sending of units of money between users, as well as regulate the exit of new currency units. This virtual currency operates independently without the intervention of a central bank. Therefore, "Bank Indonesia affirms that virtual currencies including bitcoin are not recognized as legal tender, so they are prohibited from being used as tender in Indonesia because they are contrary to Law Number 7 of 2011 concerning Currency. The ownership of the virtual currency is very risky and speculative because there is no responsible authority, there is no official administrator, there is no underlying asset underlying the price of the virtual currency, and the trading value is very volatile.

Of all the virtual currencies used, Bitcoin is the type that is most in demand by business actors.

Bitcoin can make transactions quickly without being hindered by national bank holidays and there are no national restrictions on sending and receiving, and the costs incurred are cheaper when compared to transactions using financial service providers. In addition, Bitcoin uses blockchain technology that provides solutions to problems that exist in making transactions, which are not found in the financial industry. Blockchain technology makes all financial transactions carried out in a ledger digitally and not managed by one organization or a particular party. These ledger records are publicly disseminated and managed by thousands of computers in the world at the same time, so that everyone can know that a transaction has taken place and no one can resist the fact. These things caused Bitcoin to be the most in demand. Unlike other online currencies that deal with banks and use payment systems such as PayPal,

Bitcoin is directly distributed between users without the need for an intermediary. Bitcoin combines cryptography and a peer-to-peer architecture to avoid the scrutiny of financial authorities. Thus, transactions using Bitcoin leave no trace because there is no need to pass through intermediary institutions such as banks. Bitcoin can be transferred to any country in the world if it is connected to the internet. The bitcoins will be deposited into the bitcoin wallet. The wallet application must be installed on the devices of both parties with a personal computer or laptop, tablet or smartphone. After installing the wallet application, users will get a bitcoin address (Allan & Overy, 2015).

Bitcoin is widely used by businesses in investing and because of its pseudonymous nature (not using real identity) and decentralized (there is no financial authority or third party to supervise and control transactions) so it is often used by criminals in committing criminal acts. Such as money laundering and terrorism financing, and other criminal acts that use Bitcoin media in transactions. This is a problem for a country in eradicating criminal acts of money laundering and terrorism financing.

DISCUSSION

Potential Threat of Money Laundering (TPPU) and Terrorism Financing Crimes (TPPT) through the Implementation of Financial Technology and Virtual Assets

1. Potential Threat of Money Laundering (TPPU) through the Implementation of Financial Technology and Virtual Assets

   Money Laundering (TPPU) is a criminal act that is usually always closely related to the original criminal act

(predicate offence), because "basically TPPU is the placement of money/property from a crime through a certain transaction which in the end seems to be legitimate money/property (Syahdaeni, 2017). TPPU is simply defined as "a process of making proceeds of crimes or referred to as dirty money, for example the proceeds of dirty money, for example the proceeds from drugs, corruption, tax evasion, gambling, smuggling and others that are converted or converted into a form that appears legitimate so that it can be used safely (Ganarsih, 2015) The definition of TPPU from one country to another is not the same as each other, but there is a certain principle that is always the same that "TPPU is an act related to enjoying or using the proceeds of the crime (money laundering offence)."

Observing the aforementioned understanding illustrates that a TPPU requires an original criminal act, although to prove the TPPU does not have to first be proven to be the original criminal act. This is because "TPPU is Pro Parte Dolus Pro Parte Culpa, which is a delik whose elements are partially overwhelmed by intentionality, and the other part is overwhelmed with negligence (Kanter, 2002). The key word of the TPPU regulated in Articles 3, 4, and 5 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law) is "known or reasonably suspected which is the main element of active TPPU and passive TPPU" (Romly, 2015). If the perpetrator knows "that the property he gets comes from a crime, then the act enters into willfulness (dolus), while if the origin of the wealth he placed is not known to

come from a crime but the perpetrator is negligent and lacks care in judging it, then the act becomes negligent (culpa) (Mantovani & Jatna, 2012). The predicate offences as stipulated in Article 2 of the TPPU Law include:

1) Corruption;
2) Bribery;
3) Narcotics;
4) Psychotropics;
5) Labor smuggling;
6) Migrant smuggling;
7) Criminal acts in the field of banking;
8) Criminal acts in the field of capital markets;
9) Criminal acts in the field of insurance;
10) Customs clearance;
11) Excise;
12) Trafficking in persons;
13) Illicit arms trade;
14) Terrorism;
15) Kidnapping;
16) Theft;
17) Embezzlement;
18) Fraud;
19) Counterfeiting of money;
20) Gambling;
21) Prostitution;
22) Criminal acts in the field of taxation;
23) Criminal acts in the field of forestry;
24) Criminal acts in the field of the environment;
25) Criminal acts in the marine and fisheries sector; or
26) Other criminal acts that are threatened with imprisonment of 4 (four) years or more, which are

carried out in the territory of the unitary state of the republic of indonesia or outside the territory of the unitary state of the republic of indonesia and such crimes are also criminal acts according to indonesian law.

Based on the place where the criminal act occurred (locus delictie), the TPPU Origin Crime is divided into 2 (two), namely the original crime committed domestically and the original criminal act committed abroad (foreign predicate offence). Foreign Predicate Offence is essentially a criminal offence committed outside the jurisdiction in which the TPPU was carried out whose results boil down to the TPPU. The limitations of criminal acts that are categorized as original crimes according to Stephen S Kroll include (Nawawi, 2016).

a. A crime (criminal offence) is a crime that causes the money/funds to arise;
b. The crime (criminal offence) relates to the trafficking of drugs;
c. The crime (criminal act) involves serious violations of the international order that require large transfers of money (such as arms trafficking, and terrorists);
d. Crimes related to organized criminal enterprises/ activities;
e. The crime seriously attacks the credibility of banks and other financial institutions.

The application of Foreign Predicate Offence is connected with article 2 paragraph (1) of the TPPU Law must also pay attention to "the principle of double

criminality, which is illustrated from the sentence "which is carried out in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and the crime is also a criminal act according to Indonesian law", in this case it must be proved that the defendant knows if the foreign predicate offence is carried out abroad or in Indonesia, the act is criminally threatened in Indonesia (Partiana, 2009). With the advancement and ease of connectivity of the financial system globally, Foreign Predicate Crime in TPPU is getting easier and more likely to happen.

Handling crimes that have been using a follow the suspect approach by pursuing criminals is considered ineffective and efficient in handling TPPU. The rapid sophistication of technology makes it difficult for law enforcement officials (APH) to track down criminals, so that the handling of TPPU is directed by using a follow the money or follow the asset approach by pursuing or depriving them of money or assets from crime first. Tracking the flow of money will be easier to identify people involved in crimes.

2. Potential Threat of Terrorism Financing Crimes (TPPT) through the Implementation of Financial Technology and Virtual Assets

The definition of terrorism based on Article 1 number 2 of Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes (Terrorism Law) states:

> Terrorism is an act that uses violence or the threat of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, living environments, public facilities, or international facilities with ideological, political, or security disturbance motives.

Terrorism is a transnational and organized crime with a wide network that threatens national and international peace and security and requires a lot of funds in committing its crimes. The source of funds is a source for crime (lifeblood of the crime). Criminals in carrying out TPPT require large enough funds to be used for the procurement of firearms and sharps, the manufacture of explosives and bomb rafts, fake identities, location surveys, transportation, shelters, propaganda issues, indoctrination, and so on and require the involvement of many parties. Considering that terrorism requires considerable funds, the element of financing is the main factor in any act of terrorism, so that by stopping the flow of terrorism funds, it will effectively stop terrorism itself.

Terrorism matching is cross-border, so prevention and eradication efforts are carried out by involving Financial Service Providers, APH, and international cooperation to detect a flow of funds used or suspected for the suppression of terrorism activities. Indonesia has ratified the 1999 International Convention on the Eradication of The Financing of Terrorism with Law Number 6 of 2006, which was later the promulgation of Law Number 9 of 2013 concerning the Prevention and

Eradication of Terrorism Financing Crimes (Terrorism Financing Law).

The definition of terrorism financing based on Article 1 number 1 of the Terrorism Financing Law states:

> Terrorism Financing is any act in order to provide, collect, give, or lend Funds, either directly or indirectly, with the intention to be used and/or that is known to be used to carry out terrorism activities, terrorist organizations, or terrorists.

Funds are no longer as something visible to the eye, but rather can be in an intangible form in digital format. The definition of funds based on Article 1 number 7 of the Terrorism Financing Law states:

> Funds are all movable or immovable assets or objects, whether tangible or intangible, acquired by any means and in any form, including in digital or electronic format, proof of ownership, or association with all such assets or objects, including but not limited to bank credits, traveler's checks, checks issued by banks, remittance orders, stocks, securities, bonds, bank drafts, and debt recognition letters.

According to the Financial Action Task Force (FATF) report, the ways in which funds are obtained from terrorist organizations are obtained through activities including the following:

a. Private donations

Wealth from private donations is important for the funding of a terrorist organization. In the FATF

report ISIL it is known that ISIL receives some funding through wealth from private donations in its territory.

b. Non Profit Organization (NPO)

Some NPOs abuse the function of NPOs to be used as a means of funding them and utilize the network of those NPOs. The 2014 FATF study that the abuse of NPOs consisted of the following:

1) Transfer of donations through individuals affiliated with terrorist organizations.
2) Exploitation of some NPO authorities in favor of terrorism organizations.
3) Misuse of sending government/programs to support terrorist organizations.
4) Support for recruitment to terrorist organizations and the creation of false representations and shares of NPOs through fraud.

c. Proced of criminal activity

Terrorist organizations will carry out illegal activities in collecting funds, for example: credit card fraud, insurance fraud, tax fraud, smuggling of goods, and bank robbery.

The financing of terrorism cannot be done overtly or transparently. The origins of the funds must first be obscured through money laundering or using media that cannot be detected by financial/banking institutions, one of which is using virtual currency transactions with its bitcoins.

In Indonesia, there are cases related to the use of Bitcoin as a means of payment in committing a criminal act of terrorism, namely the case of the Sumatran Natural Mall Bomb blast.

The case is an extortion from a terrorism man named Leopard Vishnu Kumala to the manager of Alam Sutera Mall, where Leopard works. In July 2015, because he had a huge debt of Rp 300 million, then he threatened and asked for 100 Bitcoins, which was equivalent to Rp 320 million at the time to be transferred to his account. If it is not given, then the Alam Sutera Mall will be blown up. The extortion was sent by Leopard by e-mail to the mall manager twice, but the mall manager considered it a normal terror threat. Then the police tried to track down the e-mail, but because Leopard was an IT, he could use anonymous and was not detected. He had tried to place the bomb four times at different times and adjacent, yet only the second and fourth bombs exploded. After the bomb explosion, Mal Alam Sutera transferred to Leopars' account a sum of IDR 700 thousand or equivalent to 0.25 Bitcoin. Not long after that, the police managed to arrest Leopard and finally he was sentenced to 7 years in prison as a perpetrator of terrorism crimes.

Strategic Steps to Tackle Money Laundering (TPPU) and Terrorism Financing Crimes (TPPT)

Law enforcement officials need to synergize in compiling, determining, and publishing the TPPU Sectoral Risk Assessment (SRA) derived from corruption crimes to be elaborated by PPATK. The preparation of this SAR is one

part of fulfilling Fatf Recommendation Number 1 which specifies that each country must identify, assess, and understand the risk of TPPU. The recommendations also ask each country to take steps to minimize these risks by using a risk-based approach.

Prosecution of TPPU originating from criminal acts of other origin, in addition to corruption and prosecution of TPPU is carried out professionally and proportionately by confiscating assets and or goods related to TPPU. Meanwhile, in the TPPT, the mode that has been a trend is self-funded, such as providing facilities in the form of plane tickets to people who go to Syria who will join the ISIS terrorist group, coming from private money while he himself does not leave.

Expanding the priority areas of TPPU and TPPT investigations, including depriving assets abroad as well as TPPU and TPPT involving corporations and increasing international cooperation through the use of Mutual Legal Assistance (MLA) in the context of asset recovery and in the form of informal cooperation such as through membership in the Asset Recovery Interagency Network-Asia Pacific (ARIN-AP).

In addition, as a form of seriousness from the Government of Indonesia regarding Mass Organizations (CSOs) which are indicated to be involved in terrorism crimes, repressive actions must be taken against these mass organizations as well as against the community organizations Jamaah Ansharut Tauhid (JAT), Jamaah Anshar Daulah (JAD), Mujahiddin East Indonesia, Tauhid Wal Jihad (TWJ) and several others. The decisive action of the Government of Indonesia can also be seen by the

issuance of a Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 concerning Amendments to Law number 17 of 2013 concerning Community Organizations, providing a basis for authority to the state and government to be able to disband CSOs that are proven and considered contrary to the state ideology of Pancasila, violate the Constitution and threaten the existence of the Unitary State of the Republic of Indonesia.

CONCLUSION

The potential threat of TPPU through the implementation of financial technology and virtual assets includes the application of Foreign Predicate Offence which must pay attention to the "principle of double criminality". In this case, it must be proved that the defendant knew that if foreign predicate offence was carried out abroad or in Indonesia, the act was threatened with criminality in Indonesia. For the potential threat of TPPT through the implementation of financial technology and virtual assets, namely the way of obtaining funds from terrorist organizations obtained through activities such as Private Donations, Non-Profit Organizations (NPOs), and Proced of Criminal Activities. The strategic steps for handling TPPU and TPPT include synergizing in compiling, determining, and publishing the Sectoral Risk Assessment (CFS) of TPPU derived from corruption crimes to be elaborated by PPATK, increasing international cooperation through the use of Mutual Legal Assistance (MLA) in the context of asset recovery and in the form of informal cooperation such as through membership in the Asset Recovery Interagency Network-Asia Pacific (ARIN-AP), and disband mass

organizations that are proven and judged to be contrary to the state ideology of Pancasila, violate the Constitution and threaten the existence of the Unitary State of the Republic of Indonesia.

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Review of the Protection of Fictional Characters through a Brand Based on a Dispute Case Study of the Super Mario Bros Brand

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Abstract

The case of a fictional character who became a trademarks is the case of the "Super Mario Bros" trademarks in which individual trademarks holders, Indonesian companies and the Director General of Intellectual Property were sued by a well-known game company, Nintendo. The crew of 'mario bros' characters were used as packaging designs and characters in the game, but because the game has been loved by people in countries such as Australia, Malaysia, India, China, including Indonesia in the 90s (nineties), Nintendo decided to register the character. "super mario bros" and its variants use trademark registration media. This means that the Nintendo company avoids legal turmoil caused by irresponsible parties to use fictional characters have sold tens of thousands of copies. However, even though it has been registered, there are still parties who have managed to get the rights to the brand with the "Super Mario Bros" logo. Registered in 1994 in the name of an individual or individual before being transferred to a legal entity or company.

***Keywords**: Fictional Character, Brand, Copyright, Super Mario Bros and Nitendo*

INTRODUCTION

Fiction characters appear because they are the result of the creation of written works as part of the overall story that

is embodied. Literature in the form of stories, novels and short stories is a place for the realization of fictional characters who are the main elements in making stories. Copyright is a right that is automatically obtained so that a series of registrations does not become an obligation, so currently the term registering copyright uses the term 'registration'. Therefore, the start of copyright protection for fictional characters coincides with the realization of an idea in the form of a story which is also the final work of a written work, and even though the fictional character in the story has been created while the written work is still in progress or has not been completed, the protection of the fictional character cannot yet be protected. realized, because it is assumed that it is still in the idea stage.

But legal protection for fictional characters is not only with copyright through written works. Copyright is the beginning of the protection of works, the success of bringing stories produces derivative works where fictional characters are separated from the story, become adaptations, and can be changed into works with different forms from the form of the original work.

Changes or adaptations of copyright from written works that rely on imagination when reading, into works that can be seen in detail after the fictional character images are manifested in the form of images so that they become the design basis for the manufacture of other works such as dolls, merchandise, or action figures.

Although this is an activity that is preferred by the author who creates the work because the author earns a large income by allowing some use of the rights to his work. But on the other hand, these images also become the basis for

other works by imitating them without permission, in this case there are still uses of images of works that are not authorized by the creator or copyright holder.

The image or image of a fictional character becomes famous and is used for a very long time, by itself the image becomes the face of the company, so like it or not, the protection model for fictional characters from copyright becomes protection for trades that use it as a brand.

Between copyright and brand in Indonesia, there is a mutual need, because prior to the 2014 Copyright Law, in the copyright category one of the categories included was logo work. However, the logo work has been removed in the 2014 Copyright Law as a copyright category, and transferred to a brand which at that time was still using Law No. 15 of 2001 on trademarks. This is stated in the 2014 Copyright Law, that logos are no longer the domain of copyright, because logos are used for brands, so logos for any purpose are included in the domain of brands.

In this case, has given the difference between trading activities and activities in the form of art works are different things in the logo. Brands that are intended for trade must have an identification logo to provide information to consumers, while the logo in copyright must only be semi-permanent which gives its own impression, whether it is beautiful, comedic or satisfying when you see it. However, previously the logo which was registered as copyright, turned out to be used as an identification mark for trading activities, so that there were many cases between trademarks and copyrights relating to logos, where both have different essences such as trademarks whose rights arise because they are registered and copyrights whose rights arise after having a form.

An example of a fictional character becoming a brand is the case of the "Super Mario Bros." brand in which an individual brand holder, an Indonesian company and the Director General of Intellectual Property were sued by a well-known gaming company, Nintendo. The crew of 'mario bros' characters were used as packaging designs and characters in the game, but because the game has been loved by people in countries such as Australia, Malaysia, India, China, including Indonesia in the 90s (nineties), Nintendo decided to register the character. "super mario bros" and its variants use trademark registration media. This means that the Nintendo company avoids legal turmoil caused by irresponsible parties to use fictional characters have sold tens of thousands of copies.

However, even though it has been registered, there are still parties who have managed to get the rights to the brand with the "Super Mario Bros" logo. Registered in 1994 in the name of an individual or individual before being transferred to a legal entity or company. This is of course a disadvantage because there is a dualism in the use of the same brand, where a second or third party who uses a brand with the Super Mario Bros image can sell goods without having to involve the actual brand owner who is domiciled outside Indonesia.

Based on the description above, it is necessary to provide an explanation regarding the function of the brand against fictional characters and explain the possible status of the brand after the decision considering that the Super Mario Bros brand has been registered in various countries.

The purpose of this study was to determine the concept of brand-based protection against fictional characters in Indonesia, as well as to study the impact of judges' decisions on the protection of fictional characters with brands.

In terms of its type, this research is normative legal research or library research, which examines document studies, using various secondary data such as legislation, court decisions, legal theory, internet media and can be in the form of opinions of scholars. So that the data used in this study is data obtained from the literature. Secondary data is primary data that has been further processed and presented either by primary data collectors or other parties.

Secondary data was collected by obtaining and analyzing documents related to the topics discussed in this study. Information obtained both printed and electronic will be analyzed in depth to gain understanding and be taken into consideration.

This research is carried out by describing data and analysis of the conditions and phenomena in investment and connecting them between literature, legislation, international agreements, treaties and international arbitration decisions, to be studied so that studies and their effects on the Investment Law are obtained.

From the description above, this research uses library research methods, namely conducting research with various reading sources such as: laws and regulations, journals, books, dictionaries, internet, and so on related to research. The data were analyzed qualitatively and not statistically analyzed, where the data obtained from writings and literature was based on logic regarding the laws and regulations related to fictional characters and brands.

The formulation of the problem in this research is as follows: first, how is brand-based protection against fictional characters in Indonesia?, and what are the consequences of the decision in the case of the Super Mario Bros. Brand?

DISCUSSION

The Nintendo company has been monitoring the development of IPR in Indonesia since 1992, one of the best-selling video games belonging to the Plaintiffs is Super Mario Bros. which was first released in Japan in 1985 with iconic characters, namely Mario and Luigi. Super Mario Bros. is one of the most popular and popular video games of all time.

The Nintendo company, as the creator of the video game Super Mario Bros, has registered the brand by selecting the fictional characters Mario and Luigi and their variants since 1986 in several countries, including Australia, India, Malaysia, Bahamas, Canada, Philippines, Singapore, Canada, China, Korea, etc. to protect goods and services in class 03 which are preparations for bleaching and washing; preparations for cleaning, polishing, removing grease; soaps, perfumes, essential oils, cosmetics, hair oils; dental care materials, class 05 which are pharmaceutical and veterinary preparations, hygiene sciences for medical purposes; dietary substances to be adapted for medical and veterinary use, baby food; dietary supplements for humans and animals; plaster, dressing material; materials for filling teeth; artificial teeth maker; germicide; preparations for eradicating destructive animals; mildew repellent; weed exterminator, class 08 which is hand tools and tools (manually operated); knife; sword; razor blade, class 09 which is a science, sailing, research, electrical, portrait, kinematographic, weighing, measuring, signaling, monitoring (checking) control, aid and education tool, aircraft and tools for carrying out, exchanging, transforming, collecting, regulate or control electricity; apparatus for recording the transmission or reproduction of sound or images; magnetic data carrier,

recording disc; CD, DVD, and digital recording media, class 10 which is Surgical, medical, medical, dental and veterinary equipment and apparatus, eye sleeves and dentures, orthopedic articles, surgical thread materials, class 12 which is a Vehicle; equipment for movement on land, air or water, class 14 which is precious metals and their alloys and objects made from these materials or plated with these materials, not included in other classes; jewellery; precious stones; clocks and timers, class 20 which is Home furnishings, glass, frames; articles (not included in other classes) of wood, cork, grass, bamboo, rattan, horn, bone, ivory, whalebone, shellfish, amber, pearl shells, selloid and of their substitutes, or of plastics, class 25 which is clothing, footwear, headgear, class 28 which is games and their tools; gymnastics and sports equipment are not included in the aui class; ornaments for Christmas trees, class 35 which is Advertising; business management; business administration; office function, class 36 which is insurance; financial affairs; monetary affairs; real estate affairs and class 41 which is Education; provision of training; entertainment; sporting and artistic activities.

Indonesia, the Nintendo company has registered the Super Mario Bros brand since 1986 to protect goods in class 09 and class 28 so that it has been registered as a trademark with numbers IDM000088541, IDM000088542, and IDM000088543, and there is also a registered mark in the form of the brand "SUPER MARIO BROS + LUKISAN" with No. Application DID2020060079 for class 25.

Through the court filed by the Nintendo company, taking into account the scale of business and the characters named Mario and Luigi and their variants are known to the

world community, filed a well-known mark based on article 18 paragraph (3) of the Regulation of the Minister of Law and Human Rights no. 67 of 2016, after being judged to have complied with the requirements stipulated in the regulation.

The unrest began with the application for registration of the Super Mario Bros. trademark in 1994, which was registered under No. Reg. 331295 to protect goods in class 25 registered individually and then transferred to a company domiciled in Indonesia in 2013 which finally got the right to the mark with number IDM0000007313 in class 25. Application for this mark is considered an application submitted by an applicant who has bad intentions and the brand has been used to confuse consumers as to the origin of a product, and the registered mark (IDM0000007313) has similarities in essence and/or overall with the Super Mario Bros. brand, Mario and Luigi characters and variants belonging to the Nintendo company, which were previously registered.

The Nintendo company finally took legal action to assert ownership of the images, names and logos of fictional characters from the Super Mario Bros game, by filing a lawsuit for cancellation and requesting a judge's statement regarding the famous brand. After going through the court process, the judge finally declared that the trademark with the fictional character Super Mario Bros. was a well-known mark and canceled the registered mark which had the same number as IDM0000007313.

The judge's consideration in this case is that the "Super Mario Bros" brand belonging to the Nintendo company is a registered mark in good faith and does not conflict with state ideology, laws and regulations, morality, religion, decency,

and public order and is based on the definition of a well-known mark as in According to the existing regulations, it is clear that the Super Mario Bros. brand, Mario and Luigi characters and their variants are owned by the Nintendo Company and there is sufficient reason to classify the brand as a well-known brand. Therefore, the brand IDM0000007313 in class 25 is reasonably suspected to have been submitted by an applicant with bad faith, and has similarities in essence and/or overall with the well-known brand Super Mario Bros, Mario and Luigi characters and their variants.

Intellectual property rights, especially trademarks, are rights that arise from realizing ideas so that the creators are guaranteed to enjoy the results of their hard work. Fictional characters that should be protected by copyright automatically, ultimately involve brands to protect and monitor fictional characters that have been created in a particular work. In general, fictional characters do not immediately become brands and not all fictional characters created in works can be branded. It takes time for a work to become a trade mark, but not all fictional characters are branded (Wolfgang Sakulin, 2011).

Fiction characters are protected by copyright as an inseparable part of a work, of course the creator or copyright holder has the exclusive right and moral right to use his work so that he can enjoy the results of his hard work. One of them is adaptation, where a work has changed its shape from the original work. However, in the copyright regime, even though the embodied work has changed form because it allows it to be adapted, the creator or copyright holder must not be harmed, so that whatever the result of the adaptation the creator should not be ignored (R Balkwill, 2008). The

concern with trademark registration of works of fiction is that the trademark registrar, who is usually not the creator of the work, will ignore the creator of the profits or sales made by affixing the mark to the product or service, because it is considered to have changed hands legally. So, the relationship between copyright and trademark needs to be clarified, where a brand is one of the extensions which is a category of copyright, although the objectives between trademarks and copyrights are different, overall it requires awareness not to ignore the origins of which both fall into the category of rights. intellectual property.

Changing or adapting a work into a brand of course has certain reasons, one of the factors that a fictional character is registered as a brand is that first a work, be it a novel, comic or game, which basically has a fictional character has been created, where basically the protection of intellectual property rights is under the auspices of copyright, but must change the policy of the creator or copyright holder, so as to make a fictional character a brand which is basically a sign for trade, even though it is known that the owner who holds the work has its own brand and legally does not prevent a person or legal entity from owning more than one mark. That is, the owner of the work is forced to protect the work with a trademarked model on the grounds that the main guarantee is different from copyright where fictional characters are only part of a work, this guarantee is needed when the intellectual property rights system in a country has comprehensive regulations to solve problems related to intellectual property rights and unfair business competition.

Based on Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition,

unfair business competition is competition between business actors in carrying out production and or marketing activities of goods or services carried out in a dishonest or unlawful manner or hindering business competition. One of the exceptions to the unfair business competition law based on article 50 of the Law on Prohibition of Monopolistic Practices and Business Competition is related to intellectual property rights in the form of licensing, patent rights, trademarks, copyrights, industrial designs, integrated circuit layout designs, and trade secrets. The similarity in the need for regulation of unfair business competition and intellectual property rights is a supervisory function, although both regulations have a supervisory function, in practice there are differences between supervision of unfair business competition and intellectual property rights. First, the supervisory function in business competition, there is a supervisory body, namely the Business Competition Supervisory Commission or KPPU which is in charge of supervising the activities of business actors so that monopoly and/or unfair business competition does not occur, even though the business has indications of monopoly. Action against the indications referred to starts from the report followed by research on the elements of the violation, to the imposition of administrative sanctions (Muhammad Rizki and Imron Rosadi, 2019). On the other hand, the supervision of intellectual property rights is more free in nature which is given the authority to each holder of intellectual property rights to supervise their work or products so that if it is found that a violation of intellectual property rights is found, it will be processed through courts or law enforcement officers as a last step, but it is true. In practice, Intellectual

Property Rights has a function to hinder or hinder competition, as in the case of the use of the 2014 World Cup logo with the aim of inviting people to watch football together so that the person in charge of managing places such as hotels or cafes is subject to billions of fines through several appointed lawyers (Mahadina Risa Assyifa and Siti Umm Adillah, 2018).

The second factor is the guarantee of brand protection against fictional characters. Basically, the brand does not regulate the fictional character in a work because that is the domain of copyright. Indonesia regulates trademarks in Law Number 20 of 2016 concerning and its implementation is regulated in the Regulation of the Minister of Law and Human Rights Number 67 concerning Mark Registration. The definition of a mark based on the law is a sign that can be displayed graphically and has visuals in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) and/or 3 (three) dimensional forms, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by individuals or legal entities for goods and/or services trading activities. The types of marks based on the 2016 Trademark Law consist of trademarks, service marks, collective marks, geographical indications and indications of origin.

The definition of the types of marks in question is a trademark which is a mark that is used and affixed to goods or products traded by one individual or several individuals together or a legal entity that functions to differentiate from other similar products or goods, service marks that are is a mark used on people who sell professional expertise or services traded by a person or several people jointly or a

legal entity to distinguish them from other similar services, collective marks which are marks used on goods and/or services with the same characteristics. regarding, the nature, general characteristics, and quality of goods or services as well as having supervision that guarantees the quality of the products to be traded by several persons or legal entities jointly to distinguish them from other similar goods and/or services, indications of origin which are marks or trademarks are protected without going through pen registration or carried out declaratively as a sign indicating the correct origin of a product and/or service and used in trade in the form of a sign describing the characteristics of the origin of the product and/or service that are not directly related to natural factors, then in the 2016 Trademark Law coupled with a geographical indication which is a sign indicating the area of origin of a product or good because there are geographical environmental factors which consist of including natural factors, human factors or a combination of these two factors so as to give reputation, quality, characteristics and certain characteristics to the goods and/or the resulting product.

As described in the definition above, the essence of a brand is a sign in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more elements. So the elements included in this paper are names, words, letters, numbers, images, logos and color arrangements in 2 (two) and/or 3 (three) dimensions.

The fictional character that is used as the object of the brand can be said to be related to visuals and pronunciation.

The visual is everything that is seen by the eye and has a characteristic, so that as in the function of the brand as a differentiator, of course the visual used is not an image that is always changing, but must be able to provide an identifying impact for everyone who sees it. The same impact must also be listed in the naming brand section which must have the correct pronunciation because in practice or even anyone who sees the brand visually, the pronunciation of the brand can be understood by everyone (Aaron Schwabach, 2016).

Regarding visualization and pronunciation, the 2016 Trademark Law has provided protection guarantees as one of the registration processes in articles 20 and 21 which state that a mark cannot be registered because it is contrary to state ideology, laws and regulations, morality, religion, decency, or public order; image, logo or name similar to, related to goods and/or services for which registration is requested; load. elements that can mislead the public about regional origin, product quality, type of goods, size, type, purpose of use of goods and/or services for which registration is requested or is the name of a protected plant variety for similar goods and/or services; contains information that is not in accordance with the quality, benefits, or efficacy of the goods and/or services produced; has no distinguishing power; and/or is a common name and/or symbol of public property.

In addition, a registered mark may be rejected during inspection on the grounds that the proposed mark has similarities in principle or in its entirety to a registered mark belonging to another party or has been previously requested by another party for similar goods and/or services, because

one of the principles of trademark registration is "*first to file*", which means prioritizing those who register first or first, having similarities with well-known marks belonging to other parties for similar goods and/or services and well-known marks belonging to other parties for goods and/or services of a different kind that meet certain requirements and have similarities with registered Geographical Indication mark. Then, the application can be rejected if the mark resembles the name or abbreviation of the name of a famous person, photo, or name of a legal entity owned by another person, except with written approval from the rightful person, resembling the name or abbreviation of the name, flag, symbol or symbol or emblem of a country, or national or international institutions or resembles an official sign or stamp or seal used by a state or government institution.

The third factor is the guarantee of the principle of the mark starting from registering to filing a complaint to the court. The principle of brand ownership based on "*First to File*" which means that trademark protection will arise if the owner of the mark has registered it first, is a provision for prospective trademark registrants. The point is that a trademark registrar cannot register a trademark with the same image, logo, word, pronunciation, color combination as the previously registered trademark. This principle gives exclusive rights to the first registrant of a trade mark or mark, so for trademark registrants who are in second or third place, those who register with the same brand mark either words or images (the category of trademarks that are most rejected. Principle "*First to File*" is turned into a wetland for other parties who only want to take advantage, the owner of the mark who has not registered his mark but has used the

mark for a long time, can be exploited by other parties who register the mark in question and force him to buy at a price This is because business owners who have been using the mark for a long time cannot change their brand because their business will decline if the brand is replaced or no longer uses a brand that has been used for a long time even though it has not been registered. used the brand before (Rendy Alexander, 2022).

In addition to the "First to File" principle, the principle of good faith determines whether a mark can be accepted or not even after obtaining the rights to a mark, also determines when a trademark is sued, whether the registered mark is continued or cancelled. As in Article 20 of the 2016 Trademark Law described above, to cover the hole in the "First to File" principle, the principle of good faith is an absolute requirement before registering a mark and after the mark is registered. One of the descriptions of trademark registration that does not have good faith is the practice of buying and selling trademarks, especially other people's brands that have not been registered, besides that other parties with bad intentions are those who deliberately imitate or dishonestly register their trademarks or trademark registrations that aim to match the popularity of the brand. Those who are imitated usually use well-known brands, either in part or in whole, which causes consumers to be confused.

The fourth factor after the problem of unfair business competition and the guarantees that exist in the brand, is the assessment of the brand. The function of the brand is as an identification mark to distinguish a product from other products or it can be said as an identification and identity so

that consumers can know the product well and can know the guarantee of product quality and the origin of the product that displays the brand, thus providing a sense of security because already know the owner of the brand who can accept consumers as well as being a promotional tool to potential consumers, and finally the function of the brand is to protect consumers from imitation of goods or products so that there is no need to investigate the quality of the products that have been branded (Hery Firmansyah, 2011). In essence, the assessment of the brand depends on good faith is part of the business value. In the midst of rising inflation today, it is very difficult to apply good faith given the variety of options that must be considered. For example, a reasonable person may be disappointed by future business expectations, such as opportunities to increase business value, competitive threats, and market risks, all of which can affect business value, the reflection of which is a trademark which is a symbol of that goodwill.

However, generally intellectual property rights, especially brands, are intangible assets, so it is quite difficult to assess them where the results of the assessment are never absolute and must be interpreted with caution. The legal basis for a brand assessment is Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy, which regulates intellectual property rights certificates as collateral for debts in financial institutions, thus demanding that intellectual property works must be of economic value based on an assessment. calculated based on the cost approach, market approach, income approach, other valuation approaches in accordance with applicable valuation standards.

Regardless of whether the purpose is to protect fictional characters or to display works of art, copyright and trademarks are different categories that also have different protection regulations. Fundamentally, a brand is one of the industrial property rights that cannot be equated with copyright. The function of the brand lies in the trade sector by placing signs on the products sold and providing information about product quality assurance. The 2016 trademark law has provided benefits for trademark registrants who use fictional characters, where trademarks can be registered not only images, logos and color combinations, with the addition of 2-dimensional, 3-dimensional, hologram and sound forms providing clear and clear details related to visualization. fictional character. So, if the visuals of fictional characters are displayed clearly, it will reduce the possibility of parties with bad intentions taking advantage of the images of these fictional characters.

In general, a brand does not require a detailed display, what is necessary in registering a trademark is to display the distinctive features of the mark on the brand, it can be with a unique name or painting and a combination of several elements, the most important thing is that the mark has never been registered before, so as to avoid the impact of the principle first to files. A fictional character registered as a trademark to avoid unfair competition using the name, image or visuals without the permission of the owner. The visual requirements of fictional characters are included in the brand, starting with the spread of fictional character images that lead to being known by the world community. As a result, additional protection is needed in countries that are considered to have not appreciated the work and this is done

to avoid the use of works in the form of fictional characters by third parties who take advantage of fame to seek profit from the holder of the work whose domicile is outside Indonesia or certain countries.

However, fictional characters do not always have to be widely known by the world community first, broad and abstract product descriptions, fictional characters can also be described first and become iconic characters for their products.

Brands with fictional characters Mario and Luigi derived from video game characters, based on the judge's decision number 58/Pdt.Sus-Merek/2020/PN.Niaga.Jkt, have been declared well-known brands. This judge's statement can have an impact on marks where in the 2016 Trademark Law there is a phrase in article 83 which states "the owner of a well-known mark based on a court decision", which is actually article 83 of the 2016 Trademark Law is related to the right to sue the trademark owner against another registered mark out of good faith. not good or have in common. Article 83 of the 2016 Trademark Law is also followed by an explanation in Article 76 which states that a well-known unregistered mark may file for cancellation of a registered mark on the grounds of bad faith and having the same mark. This can be interpreted by the judge's decision on the brand with the fictional characters Mario and Luigi contained in the video game Super mario bros, no longer has the obligation to renew the brand or re-register with a new variant of the mark, which is caused by the benefits of the well-known brand.

Initially, the Paris Convention did not stipulate the definition or standard criteria for Famous marks. Article 6 bis

of the Paris Convention stipulates that the owner of a well-known mark that has been used by a trademark user who has bad intentions can always file for its cancellation or be canceled by the registration official. In Article 6 bis paragraph (3) it is stated that there is no specified period of time for the owner of a well-known mark to request the cancellation of the mark or prohibition from using the registered mark if it is used in bad faith, while the Paris convention does not provide an understanding of the mark. well-known trademarks instead submits the determination of the definition or criteria for well-known marks to each member country of the Paris Convention.

Article 16 paragraph (2) of the TRIPs Agreement regulates several elements of determining well-known marks as guidelines for member countries, namely to determine whether a brand in question is well-known or not, members must consider the relevant knowledge of the mark in the public sector, including the knowledge of member countries regarding the mark. from the promotion of a brand. This means that Article 16 paragraph (2) of the TRIPs Agreement determines the criteria for the nature of well-known marks by taking into account the factors of public knowledge about the mark among the public in a region, including the knowledge of participating countries regarding market conditions for the mark in question.

The guidelines for the criteria for well-known marks begin with the jurisprudence of the Supreme Court, one of which, in the consideration of the Supreme Court of the Republic of Indonesia No. 1486/K/1991 dated November 25, 1995 which states that the definition of a well-known mark is if a mark has circulated beyond regional boundaries to

transnational boundaries, which has circulated outside its country of origin and is proven by the registration of the mark concerned in various country. Then added to the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 022 K/N/HaKI/2002 dated December 20, 2002 which states that the criteria regarding well-known marks are based on public knowledge, the determination is also based on the reputation of the relevant mark which has been obtained due to promotions that have been carried out by the owner, accompanied by proof of registration of the mark in some countries if these exist, they are one powerful means of proof.

The weakness in this jurisprudence is that the definition and criteria for well-known marks are still abstract, as in the phrase "out of regional boundaries to transnational boundaries", which means a mark registered to another country so that it goes outside the territorial limits of a country. Since 1991 there has been no continuation that provides an explanation about marks that come out of the territory of the country, whether the assessment is based on quantity or quality, meaning how many countries must be registered by the trademark holder in order to be declared a well-known mark, or based on the quality in which the product is known. in a developed country, so that the mark is registered in a developed country so that it can be declared a well-known mark. Whereas in the second jurisprudence where the important phrases from the judge are the assessment based on "general knowledge of the community" and "the reputation of the relevant brand that has been obtained due to promotion", which continues whether this criterion is used in certain areas so that it is not necessary to

register the mark in other countries, while reputation and brand knowledge in each area is different, and whether promotion also affects the number of stores, for example throughout Indonesia an entrepreneur or company has hundreds of stores.

The Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration is a breakthrough in the legal vacuum related to well-known marks. This Ministerial Regulation has provided the criteria for well-known marks in a textual manner as in Article 18, namely paying attention to the general knowledge of the community regarding the mark in the relevant business field where the community in question is the consumer community or the public in general who have good relations with the brand at the production, promotion, distribution, or sale of goods and/or services protected by well-known marks. The determination of a well-known mark is based on considerations of the level of knowledge or public recognition of the mark in the relevant business field, the quantitative results of the sale of goods and/or services by looking at the profits derived from the use of the mark, an assessment of the market share controlled by the mark against the circulation or sale of a product and service to the public, the coverage area of the use of the Mark, the period of use of the Mark, intensive activities to promote the Mark, including the investment value used for the promotion of the mark, having registration or having applied for a mark in another country, the success rate of enforcement law in the field of Marks and the value attached to the Mark obtained due to the reputation of the products and/or services whose quality is guaranteed.

The fictional character owned by the Nintendo company has increased the level of protection provided by Indonesia which was originally still an ordinary registered mark to a well-known brand category based on evidence and judges' considerations which have been judged to meet the criteria of Pemnekumham No. 67 of 2016. As a result, the whole picture, lines, colors, names, 3-dimensional and 2-dimensional shapes with visuals and pronunciation of fictional characters Mario and Luigi are trademarks for the entire class of the Nintendo company. As a result, trademark registration which adheres to the first to file principle, where someone wants to register a trademark with Mario and/or Luigi visuals that lead to a different class from the Nintendo company registration, will be rejected on the grounds of not having distinguishing power or having similarities in whole or in part with well-known brands of other parties, both similar and dissimilar goods and services.

CONCLUSION

Protection against fictional characters basically uses copyright as part of a work that starts from written works such as novels, graphic works such as comics so as to create a detailed visual display from the imagination of the written work.Brand registration for visual fictional characters has the impression of compulsion, although to avoid unfair business competition, this shows that the country does not yet have the awareness to respect the work of others.To sue a mark due to bad faith is the right of the owner of a well-known mark and the owner of a mark that uses a previous mark but has not been registered, either during the registration process or after receiving the registered status from the Director

General of Intellectual Property.Protection of fictional characters must be included in the realm of copyright that cannot be separated, this is related to the basic purpose of the brand to trade, as an identification of product origin for consumers and quality assurance.

Copyright regulations need to be considered in detailing the rights of creators or copyright holders, in order to foster confidence in awareness of intellectual property rights in the eyes of other countries. Although the Minister of Law and Human Rights has provided criteria for well-known brands, in the end those who judge the criteria for well-known brands are met or not given a decision to the judge, even though later the decision is a declaratory decision that explains and confirms a legal situation, but it should be transferred to another institution based on a survey and recommendations.

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Settlement of the Crime of Destruction of Computer Network Systems with Law Number 19 Year 2016 concerning Information and Electronic Transactions

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Abstract

Cyber crime, or better known as cybercrime, is not a simple crime because in terms of proving the existence of a crime, it is certain that there will be many difficulties, even investigators are often faced with the problem of the absence of legal regulations to ensnare the perpetrators of cyber crimes. It is not uncommon for perpetrators who have succeeded in committing a cyber crime to have their investigation process stopped because investigators have failed to find any preliminary evidence or supporting evidence that confirms the occurrence of the cyber crime. This research is a normative legal research. Normative legal research is a type of research on legal regulations, synchronization of legal rules and legal principles that apply in Indonesia, especially in handling hacking crimes. Law enforcement against the criminal act of destroying computer network systems (Hacking) based on Law Number 19 of 2016 concerning Information and Electronic Transactions has been implemented, but in the follow-up action the case has not been completed using the law. Obstacles faced in handling criminal acts of destruction of computer network systems (Hacking) based on Law Number 19 of 2016 concerning Electronic Information and Transactions include: Law enforcement officials lack of budget in handling cybercrime

problems, especially criminal acts of destroying computer network systems (hacking).Admins of existing webs are abroad, of which only 3 (three) things are considered crimes abroad. Namely drugs, trafficking and terrorists. Inadequate crate bureau. Inadequate infrastructure and facilities. Human resources who do not understand hacking problems.

Keywords: *Settlement, Destruction of Computer Network Systems, Law Number 19 of 2016 Concerning Information and Electronic Transactions*

INTRODUCTION

Information and communication technology through the internet has opened up the possibility of reaching activities in all areas of life. Unfortunately, this has not been balanced with the readiness of legal instruments and law enforcement officers. Cyber crime, or better known as cybercrime, is not a simple crime because in terms of proving the existence of a crime, it is certain that there will be many difficulties, even investigators are often faced with the problem of the absence of legal regulations to ensnare the perpetrators of cyber crimes. It is not uncommon for perpetrators who have succeeded in committing a cyber crime to have their investigation process stopped because investigators have failed to find any preliminary evidence or supporting evidence that confirms the occurrence of the cyber crime.

Van Bammelen once stated that crime is every act that is immoral, violates norms, disrupts, and causes so much unrest in people's lives, so that people have the right to denounce, react, or express an attitude of rejection of these actions (Van Bammelen, 2005).

Every time there is a change, it must give birth to various forms of attitudes and behavior, including: an attitude of approving and enjoying change; strong opposition or radical resistance; and there are those who try to sort out and choose which changes have a positive influence and which changes have a negative impact. Among those who fail to respond and read the meaning of this change, they then fall into a-normative actions, such as violating the law or better known as "criminality".

In law, there is the term "punishment", which means the whole compulsory rules that apply in a country. Normatively, the law has coercive power, namely forcing anyone suspected of violating the law or committing a crime to submit to the rule of law. This means that every member of the community is required to obey the legal system that is regulating, commanding, or coercing which this legal system is made by the state. This coercive power will show its impact in society if law enforcement elements are able to implement it.

In the juridical implementation stage, there is a battle between state power (law enforcement officials) and those who violate the law. Legal norms will show their authority when law enforcement officers succeed in empowering the function of law as a force in tackling crime.

The existence of legal norms in human life is very necessary considering that these legal norms not only function as a tool to prevent crime, but also function to take action against crimes in order to restore the balance of life in society.

The function of prevention which is the content of the existence of the law should get more positive responses in

the midst of the current development of the times. If these prevention efforts can be implemented properly, then law enforcement officers will be able to minimize or even eliminate the possibility of falling victims in the community and avoid someone from being a member or a criminal syndicate (Thomas Hobbes, 1996).

Entering today's era of globalization, various patterns of changes in life seem to continue without anyone being able to stop them. Information technology plays an important role in changing the mindset, behavior and lifestyle of people around the world. Along with the change in mindset, behavior and lifestyle, without realizing it has led to competition in order to fulfill these needs, thus placing some members of the community as a "materialistic group". A new form of crime, which is called the criminal act of hacking as part of *cyber crime*.

Crime in cyberspace is a "*cost*" or a high price for the changes that occur in the global community which turns out to be in development beyond the existence of law. The crime of *hacking* is a reflection of the changing behavior of modern society which is always pursued by the desire to fulfill needs by utilizing access to advanced technology through internet media. This shows that the offer of progress in today's era of globalization, in addition to bringing benefits, also contains content that is harmful to the lives of the people and the nation. That society and the state must also be aware of and be good at reading these global changes with moral intelligence.

To anticipate and answer various problems in the era of globalization such as the occurrence of criminal acts of hacking, then ideally legal regulations and law enforcement

officers are able to overcome the development of these crimes. For this reason, legal regulations are needed along with criminal sanctions that are "ready" to ensnare the perpetrators of the criminal act of hacking so that it is hoped that it will be able to cause a deterrent effect and in the end the law will function as a means of stabilizer in the midst of people's lives.

Normative Juridical Research is a legal research method that is carried out by examining library materials or mere secondary materials (Soerdjono and Sri, 1994; Roni, 1994; Amirudin and Zainal, 2004; Achmad, 2009). This research is a normative juridical research on issues related to Law Number 19 of 2016 concerning Information and Electronic Transactions in relation to handling criminal acts of damage to computer network systems.

The data analysis method is carried out by collecting data through the study of library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to normative juridical analysis of the synchronization of the Act on information and electronic transactions in relation to the handling of criminal acts of damage to computer network systems.

To analyze the legal materials that have been collected, this study uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by describing a policy related to improving the performance of the legal system in Indonesia and then assessing whether its application is in accordance with its normative provisions. Primary legal materials, namely research materials

originating from legislation relating to the title and formulated problems (Fajar, M & Achmad, Y., 2010).

Based on the description in the background of the problem, the formulation of the problem is how is law enforcement against criminal acts of destroying computer network systems (Hacking) based on Law Number 19 of 2016 concerning Information and Electronic Transactions, What are the obstacles faced in handling the criminal act of destroying computer network systems (Hacking) based on Law Number 19 of 2016 concerning Information and Electronic Transactions?

DISCUSSION

Law Enforcement Against Criminal Acts of Destroying Computer Network Systems (Hacking) Based on Law Number 19 of 2016 concerning Information and Electronic Transactions

Information globalization has placed Indonesia as part of the world's information society, with the rapid advancement of information technology which has led to changes in the activities of human life in various fields, which have directly affected the birth of new forms of legal action.

Utilization of information technology, media and communication has changed the behavior of society and human civilization globally. The development of information and communication technology has also caused world relations to become borderless and caused significant social, economic, and cultural changes to take place so quickly. Information technology is currently a double-edged sword because in addition to contributing to the improvement of

human welfare, progress and civilization, it is also an effective means of unlawful acts.

Cyber crime until now there is no standard legal term, there is mention of *cyber crime*, *computer crime* and *computer related crime*. *Cyber crime* is a crime that was born from the negative impact of the development of internet applications. Thus the crime is very closely related to the internet media. In the perspective of computers as a means of identification of *cyber crime* as a *computer crime* can be accepted. However, in its development for interaction in cyberspace with internet media as a means used not only by computers, the mention of *cyber crime* and *computer crime* is irrelevant.

In the perspective of criminology, this crime is a new phenomenon in the world of crime. The perpetrators of these crimes are mostly young teenagers who are on average intelligent as well as adults. They usually come from well-established families far from evil impressions. In committing a crime, the motive besides money is also fun.

By using a *differential association* theory approach, that to be able to commit this type of crime, there must be a "learning" process, because this crime (*cyber crime*) uses technology as a means of action.

In the approach of social control and containment theory. This crime (cyber crime) occurs because of weak personal control and social control. This is because this crime is virtual, where the perpetrator is not physically visible. In this condition, fear of crime does not easily arise. That this fear of crime is easy to cause reactions from the public which is a form of social control (Lakasana A,2016) In addition, the perpetrator's personal control is weak so they can commit this crime. This condition arises because of the assumption

that cyber space is a free area, so every individual is free to do anything, including behavior in the real world, including social behavior.

This crime (*cyber crime*) is a crime with a new dimension. This type of crime takes many forms. In the perspective of criminal law, these crimes are conventional crimes but with new modes such as pornography, fraud, defamation and so on, which use the internet to commit crimes. In addition there are also new crimes that were not known before. It is clear that the offense is not regulated in the Criminal Code, for example *hacking, Dos attack (denial of service attack), pheraking, spamming* and so on.

For cyber crime which is the first type of conventional crime but new modes such as pornography, fraud, and defamation and so on that use the internet as a means to commit crimes, which can be charged with the Criminal Code, but for hacking crimes there are no provisions in the law, the ITE law has been made.

Regarding the litigation process, in this case related to jurisdiction and prosecution, it will be even more complicated, considering that this crime is a global crime whose jurisdiction is not clear as well as related to cyber space where the perpetrator is invisible. The Criminal Code (KUHP) has provided clear arrangements for the validity of criminal law laws, this is regulated in Chapter I of Book One of the Criminal Code, which consists of nine articles, starting from article 1 to article 9.

Law Number 19 of 2016 is perceived as Indonesian Cyber Law, which is expected to regulate all matters in the field of internet networks, including giving punishment to perpetrators of hacking acts. The content in Law No. 19 of

2016 has a very broad scope to discuss regulations in cyberspace, although on some sides there are articles that still require interpretation.

The development of science and technology today is not only able to have a positive impact, but these developments have been misused as a means of crime. It is very important to anticipate how the legal policy will be, so that cyber crime that occurs can be overcome with criminal law, including in this case regarding the enforcement system. Indonesia itself already has cyber crime legal rules as stipulated in Law Number 19 of 2016 concerning Information and Electronic Transactions, namely the amendment to law number 11 of 2008 (Suhariyanto, B. 2014).

Criminal liability for hacking is based on the provisions of Article 30 of the ITE Law. In article 30 of the ITE Law, a person can be punished if that person accesses the victim's electronic system or computer and also in this article stipulates that the method is carried out by any means (including hacking) as long as it is done in a way without their rights. If a website is hacked by hackers, the web hosting service provider cannot be held criminally responsible. The web hosting service provider is only a media provider, but the owner of the web hosting service provider cannot avoid being held criminally responsible if the owner makes the service solely to facilitate criminal acts. Similarly, an apartment building provider cannot be held responsible if the apartment owner is entered by a herd of thieves.

Criminalization in Indonesia should refer to a normative approach that is punishing criminals so that it can create a deterrent effect. The existence of law enforcement in

terms of the vision and mission of law enforcement, both at the level of investigators, prosecutors to the court level, should have the same presence according to the demands of law and public justice. law, as already regulated in Article 32 paragraph (1) in conjunction with Article 48 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions, as amended by Law Number 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions. Because criminal acts use electronic media which have been specifically regulated in the ITE Law so that the articles contained in the Criminal Code are set aside in accordance with the criminal principle of lex specialis derogate legi generali which reads "If an act is included in a general criminal provision, it is also included in the criminal law. special criminal provisions, then only the special ones are applied". in a general criminal provision, but is also included in a special criminal provision, then only the special one is applied.

Obstacles Faced in Handling Criminal Acts of Destroying Computer Network Systems (Hacking) Based on Law Number 19 of 2016 concerning Information and Electronic Transactions

There are many obstacles faced by law enforcement agencies in combating cyber crime. These obstacles will certainly affect law enforcement against the cyber crine so that it cannot be overcome to the maximum. The police, prosecutors and other law enforcers are not free from these obstacles. Some of the obstacles that hinder efforts to tackle Cyber Crfime include the following:

1. Investigator Aspect

   Investigators have an important role in the prevention of Cyber Crime. The ability of investigators is needed to uncover cases of Cyber Crime. The existence of Crime in the police environment proves that special investigators are needed with the ability in the field of information and electronic transactions to handle crimes. Special investigators are urgently needed to provide cyber-related knowledge to investigators who specialize in dealing with cyber problems so that they can accommodate them to solve them.

2. Aspects of Evidence

   In the process of investigating Cyber Crime cases, electronic evidence has an important role in handling cases. The evidence in the case of cyber crime is different from other evidence of crime, where the target is data or computer systems. Because the electronic evidence can be deleted and even modified, even though the physical evidence in the form of pictures or writing has been taken by the investigator. So here it takes mastery of technology in the management of evidence.

3. Facilities Aspects

   In uncovering cases of Cyber Crime, facilities are needed that are able to support the performance of enforcement officers. One of them is by maximizing the capabilities of digital forensics. Digital forensics can work in a computer forensics laboratory. Forensic laboratories are needed to secure and analyze digital evidence so that they are obtained in order to obtain facts.

4. Jurisdiction Aspects

The principles of the application of criminal law according to conventional places certainly face challenges in connection with the issue of cyber crime liability. Handling Cyber Crime will not succeed if the judicial aspect is ignored, because the mapping concerning cyber crime involves relations between regions, between regions. Determination of jurisdiction is required and regulated in article 2 of the Law on Information and Electronic Transactions.

CONCLUSION

Law enforcement against the criminal act of destroying computer network systems (Hacking) based on Law Number 19 of 2016 concerning Electronic Information and Transactions because crimes using electronic media have been specifically regulated in the ITE Law so that the articles contained in the Criminal Code ruled out in accordance with the criminal principle lex specialis derogate legi generali which reads "If an action is included in a general criminal provision, but is also included in a special criminal provision, then only that particular one is applied". Obstacles Obstacles in law enforcement Law enforcement against criminal acts of destruction of computer network systems (Hacking) based on Law Number 19 of 2016 concerning Information and Electronic Transactions, among others: 1) investigator aspects, 2) evidence aspects and 3) aspects jurisdiction.

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The Problematic of Interfaith Marriages in Indonesia (Legal Certainty Theory Perspective)

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Abstract

Currently, interfaith marriages have occurred in Indonesia. The pluralism of religions that are recognized by the State also causes this to happen, eventhough the majority of Indonesian people think that interfaith marriages tend to cause controversy in religious life. The legalization interfaith marriage by the Surabaya Court as stated in decision No. 916/Pdt.P/2022/PN.Sby caused controversy. This research aimed to describe The Problematic of Interfaith Marriages in Indonesia (Legal Certainty Theory Perspective). This research used the normative juridical method with a statutory approach. The result of this research is the problematic of Interfaith Marriages in Indonesia because, Marriage Law hasn't been able regulate the problem interfaith marriage which is very complex, although the provisions in Article 2 (1) and Article 8(f) have given the "assumption" that interfaith marriages are prohibited. However, the enactment of Population Administration Law (Article 35 a) and the issuance of decision No. 916/Pdt.P/2022/PN.Sby, who explicitly legalizes interfaith marriage, adds conflict of marriage legal norms in Indonesia. If interfaith marriages are analyzed using legal certainty theory, the issuance of decision No. 916/Pdt.P/2022/PN.Sby and the enactment of the Population Administration Law (Article 35 letter a) form legal dualism which results in legal uncertainty in law of marriage Indonesian.

Keywords: *Problematic, Interfaith Marriages, Legal Certainty*

INTRODUCTION

Law is a social phenomenon in society, because there is a famous adagium stating "ibi societas ibi ius" (where there is society there is law). Based on this adage, it can be identified that the law will exist "around" the community without being asked or without being aware of it by the community itself. In other words, the law will be a tool to achieve peace and harmony for a group of people to meet the needs and all interests that arise in social life. Law is also an important and inseparable part of society.

Aritoteles also said that man is a zoon politicon (Wiloso et al., 2016). The meaning is that humans are social creatures, so that in social life humans will need each other. This need will be realized when there is interaction between human beings when the human concerned fulfills his needs and interests. The word "social" can be realized by the gathering of several humans in a group called society.

However, nowadays, the existing law is not always in accordance with the development and progress of society that changes from time to time. The law is likened to running stumbling to catch up with the development of society. A small example that can be put forward is internet technology that can access all information, including hackers who can break into bank funds just by sitting in front of a computer. In this situation, if you look at the existing legal instruments such as the Act, there is no one that specifically and comprehensively regulates the crime of breaking into funds by hackers and only relies on certain provisions of a general nature.

The formation of the right law or legislation in overcoming the hacker problem above takes a lot of time.

Starting from the formulation of the Draft Law to its ratification, it takes a long time and preparation. When applied in society, there are only forms of "lag behind the law from community development" for example in the form of elements of crime that are not fully regulated. So that if there is no legal instrument that clearly regulates this crime, it is clear that the applied law has not achieved justice and benefits in the community.

These problems are not resolved automatically without the role of the entire community. For this reason, community participation in building law must be applied for human survival so that the legal function of making an orderly and safe society can be realized. However, in reality, society cannot automatically move to realize the legal function if it is not accompanied by the formation of structures, systems, social stratification and patterns that exist in society itself. It is often stated that the law must be in accordance with the legal awareness of the community. This means that the law must follow the will of the community. Besides that, good law is good law in accordance with the feelings of human law (prohibition). The meaning is actually the same, only if legal awareness is said to be with the community, while legal feelings are associated with humans. The problem of public legal awareness is still one of the most important factors of the effectiveness of a law being treated in a country. Furthermore, the effectiveness of the law required by a country will run well, so there are many things that must be considered, one of which is legal certainty itself. This is because sometimes the implementation of legal certainty in daily life does not always run smoothly as it should. For example, when we talk about the social phenomena of a

society that are related to the law, something new always happens and it has not been regulated in an applicable statutory regulation. Even though it is regulated, sometimes there is confusion from one regulation to another.

Then because humans are creatures who are given reason by God, then in order to be able to continue their offspring, humans must obey all the rules that apply in social life, both by rules based on religion and rules originating from the State. In Indonesia, there are several rules that accommodate the principles and provide the legal basis for marriage. Furthermore, after the Civil Code, the Indonesian government has made special regulations regarding marriage, which are regulated in Law no. 16 of 2019 which is the latest amendment to Law no. 1 of 1974. Furthermore, in an effort to realize the unity of Islamic law in written form, especially regarding marriage, the Indonesian government also established, issued and enforced Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (hereinafter referred to as KHI).

The definition of marriage according to Law Number 1 of 1974 is stated in Article 1 which reads marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty.

In principle, a marriage is intended for a lifetime so that it can lead to happiness for the husband and wife concerned. An eternal and happy family is the goal of all married couples. However, there are many factors that trigger disharmony in a household relationship, one of which is interfaith marriage. The implementation of interfaith marriages is currently a polemic among the Indonesian

people, this is due to the pluralism of religions recognized by the State, the contradictions of various cultures originating from the respective regions of the parties and the inadequate bureaucracy of registration of marriages. The polemic of interfaith marriages increased with the issuance of Decision Number 916/Pdt.P/2022/PN.Sby which stipulates it is permissible to hold interfaith marriages before the Office of Population and Civil Registry Office of Surabaya Municipality. While one of the conditions for a valid marriage as regulated in Law No. 1 of 1974 stipulates that marriage is prohibited between two people which according to their religion should not be carried out. So based on this description, the author wants to raise the title.

DISCUSSION

Before the author discusses the problems related to interfaith marriages in Indonesia (legal certainty theory perspective), it is better for the author to discuss what is meant by legal certainty theory and what the interfaith marriage arrangements in Indonesia are like. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed (Zainal, 2012).

According to Utrecht, legal certainty contains two meanings, namely (1) the existence of general rules and these rules make individuals/humans know what actions may and/or may not be carried out; (2) in the form of legal security for individuals/humans from the arbitrariness of the

government, because with the existence of these general rules, individuals/humans can know what the State may charge or do to individuals/humans (Syahrani, 1999).

Legal certainty can be seen from two angles, namely certainty in the law itself and certainty because of the law. "Certainty in law" means that each legal norm must be formulated with sentences that do not contain different interpretations. As a result, it will bring obedient or disobedient behavior to the law. In practice many legal events arise, where when faced with the substance of the legal norms that govern them, sometimes they are not clear or imperfect so that different interpretations arise which consequently will lead to legal uncertainty. While "certainty by law" is meant, that because of the law itself there is certainty, for example the law determines the existence of an expired institution, with the passage of time a person will gain rights or lose rights. This means that the law can guarantee certainty that someone with an expired institution will get certain rights or will lose certain rights. If we talk about the value of legal certainty, then the value of the claim is solely positive legal regulations or legislation. In general, practitioners only look at the laws and regulations or look at formal legal sources (Swantoro, 2017).

Then, as previously explained, after the Civil Code, the Indonesian government has made special regulations related to marriage, which are regulated in Law No. 16 of 2019 which is the latest amendment to Law No. 1 of 1974. The definition of marriage according to Law Number 1 of 1974 is stated in Article 1 which reads marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead, Almighty.

In an effort to realize the unity of Islamic law in written form, especially regarding marriage, the Indonesian government has also established, issued and enforced Presidential Instruction No. 1 of 1991 concerning KHI. According to Presidential Instruction Number 1 of 1991 concerning KHI, the meaning and purpose of marriage is regulated in Article 2-3 which states that marriage according to Islamic law is marriage, which is a very strong contract or mitssaqanghalidzan to obey Allah's commands and carrying it out is worship with the aim of realizing domestic life. sakinah, mawaddah, and mercy.

The outer bond is a formal relationship that can be seen because it is formed according to the law, while the inner bond is an informal relationship formed with a genuine mutual will and binds both parties only. While the birth bond is a bond between the parties as husband and wife who have the rights and obligations of each. Furthermore, the inner and outer bonds that arise are aimed at forming a happy and eternal family or household based on the One Godhead (Sitompul, 2014).

In general, the legal requirements for marriage are classified into two, namely material requirements (subjective requirements) and formal requirements (objective requirements). The material requirements are always related to the conditions attached to the parties who will carry out the marriage. While formal requirements are requirements related to procedures and procedures for carrying out a marriage, both according to positive law and religious law.

Marriage will be valid if it is carried out according to the laws of each religion and belief of each party. This provision is regulated in Article 2 paragraph 1 of Law No. 1

of 1974. Then based on Article 8 of Law no. 1 of 1974 there are several marriages that are prohibited to be carried out between two people who:

1. Blood related in a straight line down or up;
2. Blood related in a sideways lineage, namely between siblings, between a person with a parent's brother and between a person and his or her grandmother's brother;
3. Sexual intercourse, namely in-laws, stepson, son-in-law and mother/stepfather;
4. Related to breastfeeding, nursing children, siblings and aunts/uncles;
5. Having a sibling relationship with the wife or as an aunt or niece of the wife, in the event that a husband has more than one wife;
6. who have a relationship whose religion or other applicable regulations are prohibited from marrying.

So that if one of the prohibited marriages occurs, the marriage will be annulled. Cancellations must be made through a religious court for those who are Muslim (Millah & Jahar, 2019). In other words, the provisions of Article 2 paragraph 1 and Article 8 letter f of Law no. 1 of 1974 provides the "assumption" that interfaith marriages are prohibited and should not be carried out in Indonesia. The prohibition of interfaith marriages is still an "assumption" because Law no. 1 of 1974 does not concretely prohibit the implementation of interfaith marriages. However, it turns out that Article 40 letter c of Presidential Instruction Number 1 of 1991 concerning KHI has concretely regulated that marriage between a man and a woman is prohibited from marrying if a woman is not a Muslim. Furthermore, Article

44 also stipulates that a woman is prohibited from marrying a man who is not Muslim.

In religion, marriage is a sacred institution. Marriage ceremony is a marriage ceremony is a sacred ceremony that connects the two parties to become husband and wife (Haryanti, 2017). In Indonesia, the implementation of marriage law is still pluralistic. This means that in Indonesia there are three kinds of marriage legal systems, namely first, the Marriage Law according to Western Civil Law (BW), which is intended for Indonesian citizens of foreign descent or parties who are Christian; second, the Marriage Law according to Islamic Law, which is intended for Indonesian citizens or parties who are Muslim; third, the Marriage Law according to Customary Law, which is intended for indigenous people who still adhere to customary law (Tutik, 2008).

The pluralism of religions recognized by the State causes marriage law in Indonesia to also have its own regulations regarding interfaith marriages, and this depends on the religion adopted by the parties wishing to marry. Basically, Islamic law strictly prohibits interfaith marriages for its followers. While Protestant Christianity allows each of its followers to perform interfaith marriages by submitting these provisions to national law. It is different with Catholic religious law, which does not allow its followers to marry between different religions unless they get permission from the church with certain conditions. The Buddhist law does not regulate interfaith marriages and returns to the customs of each region, while Hinduism strictly prohibits the implementation of interfaith marriages (Arifin, 2018).

Based on this explanation, it can be identified that in fact Indonesian marriage law has not been able to regulate the very complicated and complex issue of interfaith marriage. When viewed from the perspective of human rights, marriage is a natural right given by God to humans, so this natural right should not deviate from God's provisions (Dardiri et al., 2013). So according to the author the prohibition of interfaith marriages which have been regulated under Law no. 1 of 1974 as well as the Presidential Instruction No. 1 of 1999 concerning KHI in Indonesia has been properly carried out. This is because interfaith marriages, according to the author, have a negative effect on domestic relations, both psychologically (because the parties' belief in God is different, it will cause discomfort in the household) and from a juridical perspective (because Indonesia is a country based on Pancasila, especially, first the precepts of religion).

However, it turns out that based on the explanation of Article 35 letter a of Law No. 23 of 2006 concerning Population Administration, there are provisions that allow or legalize interfaith marriages explicitly, with the sentence "marriages determined by the court are marriages carried out between people of different religions". Then with the issuance of Decision Number 916/Pdt.P/2022/PN.Sby, it also adds to the conflict of legal norms of marriage in Indonesia. This happened because the decision gave fresh air to parties of different religions and beliefs to unite in the marriage bond. Meanwhile, based on the provisions of Article 2 paragraph 1 and Article 8 letter f of Law No. 1 of 1974 it is prohibited.

If the provisions for interfaith marriage are analyzed using the theory of legal certainty, then according to the author, after the enactment of Law No. 23 of 2006 concerning Population Administration and the issuance of decision No. 916/Pdt.P/2022/PN.Sby even created legal dualism regarding interfaith marriages in Indonesia, because one rule (Law No. 1 of 1974) prohibits interfaith marriages from occurring. While another regulation (Law No. 23 of 2006) legalizes interfaith marriages. Furthermore, according to the author, if this legal dualism is left for a long time, it will have negative consequences (both in terms of social life and religious life). One of the negative impacts is the emergence of legal uncertainty in Indonesian marriage law. This is certainly dangerous, considering that marriage is the most important element in forming a happy and eternal family based on God Almighty. As mandated by Article 1 of Law No. 1 of 1974.

CONCLUSION

The problem of interfaith marriages in Indonesia arises because in fact the Indonesian marriage law regulated in Law No.1 of 1974 has not been able to regulate the very complicated and complex issue of interfaith marriages, even though the provisions in Article 2 (1) and Article 8 letter f Law No. 1 of 1974 has given the "assumption" that interfaith marriages are prohibited and should not be carried out in Indonesia. However, the enactment of the Population Administration Law, especially Article 35 letter a and its explanation which allows or legalizes interfaith marriages explicitly and the issuance of Decision No. 916/Pdt.P/2022/PN.Sby, adds to

the conflict of legal norms of marriage in Indonesia. If the provisions for interfaith marriages are analyzed using the theory of legal certainty, the issuance of decision No. 916/Pdt.P/2022/PN.Sby and the enactment of the Population Administration Law (Article 35 letter a and its explanation) form legal dualism which results in legal uncertainty. in Indonesian marriage law, especially related to interfaith marriages.

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Conceptualization of the Adversarial System in Responding to the Digitalization of the Criminal Justice System in Indonesia towards the Time of Revolution 5.0

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Abstract

The internet has given birth to new concepts in various fields, such as in the field of commerce (e-commerce), education (e-learning), government (e-government), business (e-business), and politics (e-democracy). The ratification of Supreme Court Regulation Number 3 of 2018, an initial milestone in the revolution in court administration. Then is it only in the case of administration revolution in court, what about other systems? and how the criminal justice system in Indonesia responds to the challenges of revolution 5.0. Case of administration revolution in the courts can only change by touching the levels of civil procedural law, military justice, and state administration, all of which have a similar system, namely the principle of civil justice/adversarial system. For example, quick trial, and low cost will not be realized if Indonesia still uses the Criminal Procedure Code. The case process in which the suspect has confessed to all the events in the indictment will take at least 3-4 months. With the plea gain in the adversarial system, the efficiency and effectiveness of the criminal justice system can be realized.

Keywords: *Criminal Justice System, Revolution 5.0, and Adversarial System*

INTRODUCTION

Humans will always grow, as long as humans are given the grace of reason. The atomic bomb that destroys, or the internet technology that is currently useful, is man-made. Neither development, nor destruction due to war, are all human creations. Therefore, technology must be developed properly, usefully and, effectively, to produce development that is beneficial for all mankind.

Jimly Asshiddiqie stated that the phenomenal presence of the internet has further confirmed the opinion that information and communication technology has become the cultural mainstream of today's world community. The presence of the internet, has had a significant impact on the development of science and technology today. This technology can bring people to a better level of quality of life, at the same time there is also the potential for major problems as a result of the misuse of information technology.

The internet has given birth to new concepts in various fields, such as in the field of commerce (*e-commerce*), education (*e-learning*), government (*e-government*), business (*e-business*) and politics (*e-democracy*) (This new concept of course brings positive benefits for efficiency and effectiveness of performance. This is also the case with court performances, which have also changed using the internet.

After the Supreme Court issued MA Regulation (PERMA) Number 3 of 2018 concerning administration in court electronically on March 29, 2018, this was done to fulfill the principles of justice, namely simple, fast, and low cost. With the e-court system service as a tool provided to assist the community in the process of registering cases in court. However, currently the e-court service system can only be used

for advocates or legal advisers who have received validation from the Supreme Court of the Republic of Indonesia.

The birth of the e-court application is inseparable from the Supreme Court Regulation Number 3 of 2018. The e-court application is a manifestation of the implementation of the Supreme Court's Regulation Number 3 of 2018 concerning the Administration of Cases in Courts Electronically. The Supreme Court Regulation Number 03 of 2018 is an innovation as well as a commitment for the Supreme Court of the Republic of Indonesia in realizing reform in the Indonesian judiciary (Justice reform) which synergizes the role of information technology (IT) with procedural law (IT for Judiciary).

The Regulation of the Supreme Court of the Republic of Indonesia which was initiated in March 2018 is very relevant to the geographical conditions of Indonesia as a maritime country that has a major issue in access to justice. With the ratification of Supreme Court Regulation Number 3 of 2018, this is an initial milestone in the revolution in court administration. Then is it only in the case of administration revolution in court, what about other systems? and how the criminal justice system in Indonesia responds to the challenges of revolution 5.0.

DISCUSSION

Revolution 5.0

Information and communication technology (ICT) has brought drastic and fundamental changes in many fields of life. Its presence has brought changes in the periodization of the history of human civilization. Postindustrial society has been present because of technological shifts that have

become the mainstay of human life. A massive change from mechanization to digitalization. This is what is called the *ephocal shift* in human civilization.

Alfin Tofler sees the history of human civilization so far can be divided into three waves. The first wave is marked by the invention of agriculture, the second wave is marked by the industrial revolution, while the third wave which is currently emerging is mainly marked by the revolution in science and technology in the era of high technology. Various experts try to describe this new civilization with various terms or concepts such as the space age, the information age, the electronic age and who knows what else (Alvin, 1986).

The dynamics of international life systems in the 21st-century are running very fast and are getting faster, more complex, and simultaneous. Often the dynamics are surprising because they occur beyond the expectations or calculations of reason. The characteristics of the dynamics of the life of the 21st-century world community which is also often referred to as the information society as a substitute for the industrial society which ended in 1989 along with the fall of the Berlin Wall which later became a symbol of a world without borders (Mastuhu, 2003).

Widespread the flow of information throughout the world, the globalization of information and mass media also creates uniformity in reporting and coverage preferences. In the end, the media system of each country tends to determine the events that are considered important to be covered. Events that occur in one country will immediately affect the development of society in other countries. Or in other words, according to the terms John Naisbitt and Patricia Aburdene in their book Megatrend 2000 (1991), the

world has now become a "*global village*" (Kuswandi 1986). Complex technological advances in this century are the incarnation of advanced human intellectual activity. Human intellectual activity has spurred the improvement of knowledge both in the system and in its methods. This passion has resulted in the drastic development of industrial science and technology systems.

The current industry has entered a new innovation, where the production process has begun to change rapidly. The German government took this idea seriously and soon made it an official one. After the formalization of this idea, the German government even formed a special group to discuss the implementation of Industry 5.0.

In 2015, Angella Markel introduced the idea of the Industrial Revolution 4.0 at the *World Economic Forum* (WEF). Germany itself has provided €200 million in capital to support academics, governments and businesses to conduct cross-academic research on the Industrial Revolution 4.0. Not only Germany did serious research on Industrial Revolution 5.0, but the United States also mobilized the *Smart Manufacturing Leadership Coalition (SMLC),* a non-profit organization made up of manufacturers, suppliers, technology companies, government agencies, universities and laboratories whose goal is to advance the way thinking behind the Industrial Revolution 4.0 (Bheananda, 2022).

The Chancellor of the Islamic University of Riau, Syafrinaldi stated that, modern society (*modern society)* lives in the era of information technology (information technology) or also called informative society which is currently popularly called the *disruptive era* or the era of the industrial revolution 4.0. This means that the globalized

world has placed human life in the midst of a rapidly developing technological flow and at the same time poses a threat to humans. Advances in technology (information) are the result of human intellectual work which has brought about extraordinary changes in the pattern of human life today (Shafrinadi, 2022).

Today, the world has experienced what Germany describes as an industrial era with the foundations of automation technology and artificial intelligence. The emphasis of Industry 4.0 is on renewing the world's industrialization, while Society 5.0 focuses on utilizing existing technology in Industry 4.0 with the aim to improving the welfare of the world community.

Various human achievements in the field of patents and copyrights are clear evidence that in world trade, human intellectual works have become a very powerful economic engine for the economic growth of a nation. In that context, it is appropriate to say that the *benefit theory* in the legal protection of *intellectual property rights* is very relevant, because the competition to produce intellectual works is carried out to gain benefits (material and moral) for the creator or inventor.

The Industrial Revolution 5.0 applies the concept of automation carried out by machines without the need for human labor in its application. Where this is a vital thing needed by industry players for the sake of time, labor, and cost efficiency. The application of the Industrial Revolution 5.0 in factories today is also known as *Smart Factory*. Not only that, but currently data retrieval or exchange can also be done *on time* when needed, via the internet network. So that the production and bookkeeping processes that run at the factory

can be authorized by interested parties anytime and anywhere as long as they are connected to the internet. The concept of the Community Revolution 5.0 has the main mission of distributing welfare to all levels of society by utilizing artificial intelligence and *Internet of Things* (IoT) technology.

The development and advancement of information technology globally have had a wide impact amid during in national and international community life. These advances have not only created commerce using electronics (*electronic commerce-e-commerce)*, thus eliminating the concept of conventional buying and selling, but at the same time, it has also raised public concerns and fears about the negative excesses of this technology, such as crimes against credit. card or Automated Teller Machines (ATM) and the threat of the superpower of information technology as a substitute for human labor in the world of work such as the rise of online shopping.

The change in technology towards artificial intelligence has not only changed the economic context in Indonesia through its online stores, but also the legal aspect. After the Supreme Court issued MA Regulation (PERMA) Number 3 of 2018 concerning administration in court electronically on March 29, 2018, this was done to fulfill the principles of justice, namely simple, fast, and low cost. The *e-court system serves* a tool provided to assist the community in the process of registering cases in court.

Digitalization of Technology in Court

Currently *The e-court* service system can only be carried out for advocates or legal advisors who have obtained validation from the Supreme Court of the Republic of

Indonesia. It is undeniable that *e-court system services* in Indonesia are far behind developed countries that have implemented an electronic-based judicial service system. Like Singapore, which implemented an electronic-based judicial service system earlier. Judicial practice in Singapore is more advanced by submitting applications and accessing judicial data, where every Singapore citizen who already has a SingPass ID for individuals or CorpPass ID for legal entities must of course use it if he is going to litigate in court. The birth of the *e-court application* is inseparable from the Supreme Court Regulation Number 3 of 2018.

The *e-court application* is a manifestation of the implementation of Supreme Court Regulation Number 3 of 2018 concerning Electronic Court Case of administration. The Supreme Court Regulation Number 03 of 2018 is an innovation as well as a commitment for the Supreme Court of the Republic of Indonesia in realizing reforms in the Indonesian judiciary (*Justice reform)* which synergizes the role of information technology (IT) with procedural law (*IT for Judiciary*). In March 2018 is very relevant to the geographical conditions of Indonesia as a maritime country that has a major issue in *access to justice.* The ratification of Supreme Court Regulation Number 3 of 2018, this is an initial milestone in the revolution in court administration.

The Supreme Court regulations are the foundation of the implementation of *e-court applications* in the Indonesian judiciary, so that the judiciary has the authority to accept case registrations and receive down payment of court fees electronically. Substantially, the Supreme Court regulations do not abolish or annul the applicable norms, but add to or enhance them. In addition to regulating electronic

proceedings, the existence of Supreme Court Regulation number 3 of 2018 authorizes the bailiff/substitute bailiff in court to submit reports (calls/notifications) *online*.

The Supreme Court issued MA Regulation Number 1 of 2019 concerning Electronic Case of administration and Trial in Courts. The regulation takes effect from today. With this regulation, the entire judicial process can be carried out online. The judicial process will be carried out through the e-Litigation application which was also launched today.

The implementation of Perma Number 1 of 2019, with this application, the e-Litigation which will soon be launched is a continuation of the e-court which is applied to civil, religious, military, and state administrative cases. In the previous e-court system, the electronic or online system was only carried out in state administration or registration. With this regulation, the electronic system is carried out entirely for the trial. In addition, the electronic system is not only applied to case registration, payment of court fees, and summons fees.

The implementation of e-litigation for trial at the first level is also followed by the use of e-court for legal remedies for appeal, cassation and review of cases that use e-litigation at the first level. The Supreme Court has appointed a work unit consisting of 6 District Courts, 4 Religious Courts, and 3 State Administrative Courts for the implementation of the regulation. The 13 courts of the first instance will receive training and assistance.

According to Max Weber, the development of material law and procedural law follows certain stages of development, starting from a simple form based on charisma to the most advanced stage where the law is arranged systematically, and

is carried out by people who have received education and training in the field. the field of law. The stages of legal development proposed by Max Weber are more many are idealized forms of law, and highlight which social forces influence the formation of law at the stages concerned.

A society that lives in a social system certainly expects an ideal social ideal as expected. In theory, the system has a goal, including that the system is open, it can be said that in reality there is no truly closed system because a system interacts with its environment or does not isolate it from any influence from its environment (Tatang, 1996).

A solid justice system that is built harmoniously both vertically and horizontally will provide guarantees in realizing the sense of justice that is coveted by the community. Such a system requires the protection of the rights of the community and demands good and *fair service* from the state, in this case the law enforcement element (Fauzi, 2022). Thus, Indonesia is obliged to establish a system of protection for the rights of the community and demands good and *fair service,* in this case the law enforcement element.

The Challenge of Criminal Justice in Revolution 5.0

The development of technology at this time has become a major need for human life in general, and almost no aspect of modern life can be separated from advances in information technology. Openness (transparency) emerged as a separate paradigm, or in other words, became the unstoppable spirit of the times *(zeist)*. One thing that should be, that public services that start from the principles of transparency, accountability, and contain the principles of simplicity, the certainty of time, accuracy, security, ease of access, and the like will be very

difficult to implement in daily tasks without adopting IT advancements and use it in implementation.

The fundamental question is whether the criminal justice system can be reformed into transparency, accountability, and contains the principles of simplicity, the certainty of time, accuracy, security, ease of access. If without adopting IT advancements and utilizing them in implementation. In the current criminal justice process, some of the ticketing processes already use e-tickets.

Criminal procedural law will not go anywhere as long as the system does not change. The current case of administration revolution in the courts can only change by touching the levels of civil procedural law, military justice, and state administration, all of which have a similar system, namely the principle of civil justice/adversarial system. Civil procedural law is open to accepting technological changes, unlike criminal procedural law. The administrative revolution of criminal procedural law will only be able to change, if there is an adjustment to the paradigm of thinking similar to civil procedural law, and the adversarial system provides it all.

The principle of efficiency and effectiveness will certainly be an important point in the revolution in the administration of cases in court. Therefore, the criminal justice system must also place itself in a judiciary that is based on efficiency and effectiveness. For example, quick trial, and low cost will not be realized if Indonesia still uses the Criminal Procedure Code. The case process in which the suspect has confessed to all the events in the indictment will take at least 3-4 months.

Regarding the renewal of the criminal procedure law, Asfinawati as Chair of YLBHI stated that:

> Reform of the criminal procedure law is absolutely necessary, especially in the law of proof, as well as the words that the suspect and the defendant have the right to immediately be brought to trial, it turns out that the word "immediately" is not enough for Indonesians, because immediately it means that, a person who is detained, even though he has expired If he is detained immediately, then there must be a definite step in determining when someone must be brought to trial. KUHAP must be replaced in its entirety, not partially. The orientation of punishment must also change, from prison to other punishments, because so far prison has been used as a tool to punish people outside the trial process.

Making the file, which takes a long time to arrive at the judicial process in the Criminal Procedure Code, is certainly not in accordance with the defendant's right to obtain *speedy trial rights* in criminal justice. Therefore, it is imperative that the judicial system also changes, accepting social changes, especially in the fields of electronics and efficient justice.

The 5th industrial revolution or Industry 5.0 has started. During Industry 4.0, all emphasized the digital revolution in the form of *cyber physical*. Therefore, in the 5th industrial revolution, the character of the emphasis is more on the role of humans as the center of civilization that utilizes digital technology as a means of life in various fields. Thus, Industry 5.0 emphasizes not only machine- *to-machine relations and robotic* effectiveness, but also *human-to-machine* and vice versa.

Wan Satirah Wan Mohd Saman and Abrar Haider who conducted a study on the influence of technology on the judiciary in Malaysia stated that:

> Court workflow automation has been proliferating in justice system of almost all jurisdictions around the world. The reasons, among others, are its efficiency in managing case files, retrieving case information within seconds, the effective integration between organizations and speedy justice dispensation. It allows justice to take place virtually using the advanced technologies Electronic Case Management System (ECMS), electronic filing system, court recording and transcribing, immersive virtual environment for re-creation of crime scenes, forensic investigation and so on.

Malaysia's current legal system is shaped by a mix of Islamic and English legal systems, as well as Malay customary law. The civil law system is more widely known and has become the mainstream legal system in Malaysia. Its jurisdiction covers all matters, civil and criminal, except for personal and family matters which fall under the jurisdiction of the Sharia Courts under the Federal Constitution of Malaysia. Since the British occupation since 1824, Common English law and justice have been introduced and implemented in Malaysia.

Based on research by Wan Satirah Wan Mohd Saman and Abrar Haider, the benefits of electronic judicial administration include:

> Data exchange is a powerful mechanism to maintain social justice. Effective exchange of information is crucial for effective law enforcement. Information exchange between the police, the public prosecutions office, the courts and the prison are crucial for effective criminal law enforcement, especially for execution of sentences and other court orders.

In the modern justice system, a person's criminal record becomes an important point in the implementation of law enforcement. Based on this data, the police can at least map out the occurrence of crimes. Electronic criminal records can also be used by courts in determining the severity of sentences, especially in recidivism assessments which are currently not integrated. Thus, the electronic criminal record can at least eliminate cases where the perpetrator is really a criminal, with the alleged perpetrator whose case still requires evidence in court.

Malaysia as a neighboring country has proven that the technological revolution in the criminal justice world is real. How about Indonesia? This of course will be a polemic, because of the history of population and legal correspondence that seems to bind Indonesia as a sub-system of *civil law*. The pragmatic assumption about the use of the electronic system in criminal justice certainly comes from the assumption that Malaysia uses the British *case law system*, then what about Indonesia. This is certainly not a significant problem when reforming criminal procedural law such as Italy, Japan and even other countries which actually cross the legal system towards an adversarial system that has the principle of efficiency and is in accordance with the direction of the 5.0 revolution.

CONCLUSION

Case of administration revolution in the courts can only change by touching the fields of civil procedural law, military justice, and state administration, all of which have a similar system, namely the principle of civil justice/ adversarial system. Civil procedural law is open to accepting

technological changes, unlike criminal procedural law. The administrative revolution of criminal procedural law will only be able to change, if there is an adjustment to the paradigm of thinking similar to civil procedural law, and the adversarial system provides it all. The principle of efficiency and effectiveness will certainly be an important point in the revolution in the administration of cases in court. Therefore, the criminal justice system must also place itself in a judiciary that is based on efficiency and effectiveness. For example, quick trial and low cost will not be realized if Indonesia still uses the Criminal Procedure Code. The case process in which the suspect has confessed to all the events in the indictment will take at least 3-4 months. With the plea gain in the adversarial system, the efficiency and effectiveness of the criminal justice system can be realized.

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The Digital of Criminal Justice in Realizing Clean, Fast, Simple, and Low-Cost Enforcement

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Abstract

Technological developments have now entered the era of Society 5.0, where internet use has increased in every aspect of people's lives. This phenomenon also affects the criminal justice system, where people are expected to utilize information technology advances in its implementation. The digitalization of criminal justice has become a necessity. Accordingly, in this case, it is crucial to conduct a study examining the reasons for digitalization in criminal justice to realize a clean, fast, simple, and low-cost justice system. This study also determines how the concept of digitalization the criminal justice system will be in the future. The method employed in this study included the normative juridical method, which contains descriptive and analytical research characteristics. At the same time, the approach implemented included a statutory, a conceptual, and a futuristic approach. The digitalization of criminal justice has implications for preventing corrupt practices since it narrows down the opportunity for a face-to-face meeting, further limiting the chance of corruption. In addition, digitalization can also speed up every law enforcement process at every stage, simplify the procedure at every phase, and reduce costs. In this paper, there are several concepts for developing the digitalization of criminal justice in the future, including system development that can accommodate the administration and criminal trials implementation. Thus, it

is necessary to organize a juridical basis to support the digitalization of the justice system.

Keywords: *Digitalization, Criminal Justice, Enforcement*

INTRODUCTION

Recently, rapid technological developments can be seen clearly as we have entered the era of Society 5.0. This concept allows us to use artificial intelligence-based science for human needs. It is a resolution of the Industry 4.0 concept with no significant difference. The concept of Society 5.0 is an improvement from Society 1.0 to Society 4.0, which starts from the human-gatherer stage of human development, the recognition of writing, to the familiarization of computers and the internet in their daily lives. Therefore, the Society 5.0 era is when technology becomes part of humans since the internet is not only used to share information but also to live a life. However, in this case, humans become the main component in creating new value through technological developments.

Thus, the legal sector must also be able to adapt to Society 5.0 regarding its practice, especially in the judicial environment in Indonesia, which has also begun to enter the digitalization era. The most significant practice was when the judiciary, including the Supreme Court and the Attorney General Office (AGO) of the Republic of Indonesia, put on hold most face-to-face trials during the COVID-19 pandemic. According to the Criminal Procedure Code (KUHAP), the trial process must present the parties beforehand. However, it became inapplicable due to the potential spread and the virus transmission. This online trial is a new method applied in Indonesia's justice system.

In this scenario, the digitalization era has forced the judiciary to adapt to the development of information technology because it would impact social interactions. The use of information technology in the modern justice system is one of the characteristics of an excellent judiciary. Indonesian courts have utilized technology information for a long time. It was performed during the 2002 State Logistics Agency corruption case (Bulog Gate) trial with the former Head of the Agency as the defendant. Prof. BJ. Habibie was not present in the trial while being questioned as the witness. He was in Germany then, and his statement was delivered via teleconference (Adisti, 2021).

The expansion of the use of technology in the judiciary has actually been mandated in the 2010-2035 Supreme Court Reform Blueprint. The concern for the modernization and transformation of criminal justice also requires the stakeholders' commitment to the criminal justice system in Indonesia. It is also in line with the conception of legal development as contained in Law Number 17 of 2007 concerning the National Long-Term Development Plan, which in this case defines legal development as 1) development of legal materials, 2) development of legal structures including legal apparatus, 3) development of legal awareness and culture and 4) development of facilities and infrastructure.

Digitalization, in this case, is closely related to a fast, accessible, and transparent process. Thus, the correlation between law and information technology in criminal justice shall be based on the community's needs for the related information, making it possible to swiftly and quickly obtain information regarding the administration process and legal procedures. The application of criminal justice digitalization

has become a necessity. Therefore, in this case, it is crucial to conduct a study examining the reasons for digitalization in criminal justice to realize a clean, fast, simple, and low-cost justice system. It should also determine how the concept of digitalization in the criminal justice system will be in the future.

DISCUSSION

Digitalization in Criminal Justice in Realizing a Clean, Fast, Simple, and Low-Cost Justice System

The definition of digitalization, according to the Great Dictionary of Indonesian Language (KBBI), is a process of providing or applying a digital system. Erik Stolterman defines digital transformation as the changes that digital technology causes or influences in all aspects of human life (Stortelmen, 2004). Digitalization, in this case, is a meeting point of information products and processes that can perform various audio-visual and computational functions. The rapid technological development that leads to digitalization impacts how people's lifestyles change because the way they currently live is highly reliant on technology. Therefore, digital transformation efforts can provide convenience for stakeholders in the criminal justice system, especially justice seekers, to access information about each stage easily, quickly, and in real time. In addition, all legal process services can be carried out online, resulting in an effortless and fast flow of administrative processes.

In this case, digitalization is interpreted as more than just a shift in the administrative process, which at first conventionally implemented paper use in every process stage; yet, it is a shift from the administration to the implementation of the trial, which is analyzable by adopting

the theory introduced by Lawrence M. Friedman suggesting that the effectiveness of law enforcement in the context of the judiciary is classified into five factors, including:

1. Legal instrument or legal regulation;
2. Law enforcement officers;
3. The availability of facilities and infrastructure;
4. The social condition of society; and
5. Culture (Friedman, 1975)

Considering this theory, the correlation between criminal justice digitalization and Friedman's theory suggested that digital transformation must be complemented by legal instruments or regulations factors. Regarding this view, the legal basis and legal-formal perspectives are not accommodated and contradictive to Article 160 paragraph (1) letter a and Article 167 of the Criminal Procedure Code, in which both provisions stipulate that the physical attendance of the witnesses and defendants is required before the court. However, both also consider provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which requires judges as law and justice enforcement officers to explore, follow, understand, and pursue material facts in criminal law. In consequence, the regulations of the legal instruments stipulating the digital transformation of the criminal justice can be described as follows:

1. Article 27 paragraph (3) of Law Number 11 of 2012 concerning the Child Criminal Justice System, which states that if the child victim and/or child witness cannot be present to provide testimony before a court hearing, the judge, in this case, may order the child victim and/or witness to have their statements heard through an

electronic recording or a direct remote investigation utilizing audio-visual communication tools;

2. Article 9 paragraph (3) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, which states that witnesses/victims can have their testimonies heard directly through electronic devices accompanied by authorized officials;
3. Regulation of the Supreme Court Number 1 of 2009 concerning the Administrative Process of Cases and Trials in Electronic Courts, which serves as an effort to develop an e-court system for judiciary bodies under the Supreme Court to provide legal services;
4. Circular Letter of the Supreme Court Number 1 of 2020 concerning Conduct Guidelines during the Period of Preventing the Spread of Corona Virus Disease-19 (COVID-19) within the Vicinity of Supreme Court and Lower Judiciary Bodies;
5. Circular Letter of the Attorney General of the Republic of Indonesia Number: B-009/A/SUJA/03/2020 dated March 27, 2020 concerning Optimizing the Implementation of Duties, Functions, and Authorities during the Period of Preventing the COVID-19 Spread;
6. Circular Letter of the Minister of Law and Human Rights Number M.HH.PK.01.01.01-03 dated March 24, 2020;
7. Memorandum of Understanding among the Supreme Court, the Attorney General, and the Ministry of Law and Human Rights Number 402/DJU/HM.01.1/4/2020, KEP-17/E/EJP/04/2020 and Number PAS-08.HH.05.05 concerning the Trial Implementation through Teleconference.

Several regulations above constitute the basis of the e-court implementation. However, they do not regulate how to implement e-court partially, considering that the Law on the Child Criminal Justice System and the Law on the Protection of Witnesses and Victims only regulate that a child witness and/or child victim can provide information in the court through remote audio-visual media or audio-visual recordings, instead of regulating the procedures. The same case occurs in the Supreme Court Regulation Number 1 of 2009. Although the regulation has led to the use of information technology facilities, it solely regulates the administration instead of defining the detailed procedures for implementing e-court, while the regulations in points d to g are the response from the institution in dealing with the COVID-19 pandemic. Therefore, e-court in Indonesia has not been thoroughly implemented due to the absence of a legal umbrella regulating the implementation of e-court in criminal proceedings in court.

In terms of law enforcement, this is also closely related to the problems of facilities and infrastructure. In the criminal justice system in Indonesia, the process of the law enforcement system remains segmented. In this case, 3 (three) institutions play a role. Investigations are under the authority of investigators. The Criminal Procedure Code stipulates that the investigators include the Indonesian National Police (POLRI), Civil Servant Investigators (PPNS), the Attorney General, and the Corruption Eradication Commission investigators. Meanwhile, the Criminal Procedure Code stipulates that prosecutors execute the prosecution process as public prosecutors and judicial institutions under the Supreme Court. Law enforcers, as

described previously, have not optimally utilized technology in their authority. This is due to the inadequate knowledge of human resources in each institution in utilizing and optimizing technological facilities to support the work and implementation of the tasks. Accordingly, it is essential to increase their capacity, knowledge, skills, and expertise by conducting regular training, provided that the human resources should be accustomed to optimizing the information technology facilities during the training implementation.

In this case, digitalization has not yet been implemented since each criminal justice system stakeholder already has an administrative system to handle it. This can be seen from the SINERGI (integrated case management system) at the Corruption Eradication Commission, E-Mindik (electronic investigation administration) at the National Police and National Narcotics Agency, the Case Management System (CMS) at the Attorney General's Office, and the SIPP (case tracing system) under the Supreme Court. However, the digitalization process is partially completed because it has not been connected until now. In this regard, digitalization must be realized concretely in the Information Technology-based Integrated Criminal Justice System (SPPT-TI). It aims to run technology-based judicial processes in a transparent and accountable manner.

Regarding societal conditions and cultural aspects, human civilization has transitioned into the Society 5.0 era, in which the internet has become a part of life. However, in this case, the most crucial element is human beings, who are capable of creating new value through technological advancements. As a result, criminal justice shall adapt to

global development, and the legal structure shall accommodate the implementation of this e-litigation. Besides, the character of modern society also underpins the need to implement electronic trials in court. According to Rhenald Kasali's claim, in the Third Wave era, as described by Alvin Toffler, the development of today's society has entered the uber civilization model. This model is characterized by changes in civilization from time series to real-time, individualist attitudes to collaboration or networking, as well as rapid growth, multitasking, and the presence of invisible competitors (Kasali, 2017).

The COVID-19 pandemic has impacted all sectors, including, in this case, the criminal justice system. The digitalization of the criminal justice system to actualize practices free of corruption, collusion, and nepotism can be performed by integrating information technology. It is intended to reduce the opportunity for corruptive actions in court; for instance, the litigants may plan to meet with judges and clerks to bribe them before the trial. It is because corruption always overshadows every stage of the litigation process, including the investigation, prosecution, and judicial judgment. There are various modes of corruption, but bribery dominates. In this regard, the most significant effect of digitalization is the availability of access to information on the stages of case management for the public. Furthermore, examining the correlation between judicial system digitalization efforts, including modernization of administration, services, and case management processes, and the integrity and autonomy of the stakeholder institutions of the criminal justice system should also consider that establishing an information technology-based

modern justice system is the most appropriate and effective way to eliminate corrupt behavior, such as the practice of brokering, case brokering, corruption, gratification, and intervention on the autonomy of judiciary bodies. In this regard, Dory Reiling introduced solutions to three critical problems encountered by courts around the world, which enable easier access to court and justice, as follows:

1. Time-consuming service processes in court;
2. Difficult-to-access court services; and
3. Corrupt judges.

Furthermore, Reiling pointed out three suggestions concerning the application of information technology that will benefit the courts, including:

1. Reforming the procedures of case investigation in courts;
2. Reforming the interaction modes with court service users; and
3. Maintaining courts' integrity (Reiling, 2009).

Meanwhile, the correlation of digitalization with the principle of a simple, fast, and low-cost justice system can be analyzed through the definition of the principle, as Article 2 paragraph (4) states that the judicial process shall be performed in a simple, fast, and low-cost manner. It is the most fundamental principle for the implementation of judicial administration services that leads to effective and efficient systems (Sunaryo, 2015). In this regard, simple can be interpreted as uncomplicated, straightforward, clear, explicable, interpretable, understandable, manageable, applicable, systematic, and concrete from the perspective of the justice seekers and law enforcement officers. It

significantly conforms with the objectives of digitalization, which prioritizes the provision of information in straightforward, effective, and efficient ways.

Meanwhile, fast must be interpreted as a strategic effort that allows the justice system to quickly ensure that justice seekers get what they are entitled to in law enforcement processes. In addition, Romli Atmasasmita clarified that fast, in this context, means a rapid process, trial results, and evaluation of the performance and productivity level of judicial institutions (Romly, 2010). It is also in line with the objectives of digitalization to speed up the administrative and litigation process. With digitalization, every judicial administration process no longer requires a face-to-face method or physically to the court since it can be carried out paperlessly by utilizing a system. In addition, the trial process can be conducted virtually and in real-time, thereby eliminating travel time to the court.

The low-cost principle means that the cost of court proceedings is affordable for the public, as stated in the Elucidation of Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power. It also means that judicial institutions not only guarantee justice but also ensure that justice is inexpensive, cannot be traded, independent, and free from other values that undermine the value of justice itself. In correlation with digitalization, low-cost means that the digitalization process can reduce operational costs in case management processes because, in this case, judicial institution stakeholders can communicate and coordinate by utilizing information technology. In addition, with the utilization of information technology facilities, justice seekers can download any information and administrative products

of case management processes through the system, which prevents the possibility of illegal levies.

The Future Concept of Digitalization of Criminal Justice

Digital disruption in criminal justice can be realized with the support of information, communication, and technology (ICT), which is the main component of administrative transformation (The compatibility of digital disruption with criminal justice must at least be able to fulfill several aspects, such as 1) increasing public access to managing cases in the court so that people are no longer limited by space and time in seeking justice; 2) cutting court costs; 3) realizing justice for the whole society; 4) maintaining fairness, neutrality, and transparency of the judicial process (Temprini, 2015).

Since the e-courts system was introduced in 2018, public services in the judiciary have evolved from a manual method that required face-to-face interactions between justice seekers and judicial officials to a digital system based on information technology that eliminates such interactions. The e-court system is designed to realize case administration services effectively and efficiently in accordance with technological developments. Ultimately, the e-court system is not restricted to judicial administration services; in fact, in 2019, it innovated with electronic trials, also known as e-litigation (Syarifudin, 2020).

E-court is an application that is integrated with SIPP that can be used for several services, such as 1) online case registration (e-filling), 2) payment of estimated court fees (e-SKUM), 3) court summons, notification of decisions, and sending decisions electronically (e-summons). Electronic

court services are not a recent development in law and justice; Malaysia, Singapore, India, Australia, and the United States have adopted the system before Indonesia (Atikah, 2018). Currently, the Regulation of the Supreme Court (PERMA) Number 4 of 2020 concerning Electronic Case Administration and Trial can be summarized as follows:

1. An electronic courtroom refers to a courtroom in a court that includes the prosecutor's office, detention center or correctional institution, or other places determined by the judge or panel of judges (*vide* article 1 point 4). Related to this subject, there is a broadening of the courtroom definition as referred to and regulated in Article 230 of the Criminal Procedure Code (KUHAP).
2. An electronic domicile refers to a messaging service in the form of verified accounts belonging to investigators, public prosecutors, courts, defendants/defendant units, legal counsel, witnesses, experts, detention centres, and correctional institutions (*vide* Article 1 point 9). The legal norms in the article have expanded the definition of legal domicile or residence as referred to and regulated in Article 145 of the Criminal Procedure Code.
3. An Electronic Case Administration refers to the process of delegating, receiving, and numbering the cases; determining the day of the judicial procedure; determining the trial method; delivering summons/ notifications; submitting objection documents; responding to objections, lawsuits, defenses, plaintiff's reply, rejoinder, injunction, excerpts of decisions; and sending copies of decisions to prosecutors and investigators electronically (*vide* Article 1 point 11 PERMA Number 4 of 2020). The legal norms in this

article have expanded the definition of Case Administration as in the Criminal Procedure Code.

4. An electronic trial refers to a series of processes for examining, adjudicating, and deciding the defendant's case by the court, which is carried out with the support of information and communication technology, audio-visual, and other electronic means (vide Article 1 point 12 of Regulation of the Supreme Court Number 4 of 2020). In addition, under certain circumstances, both from the beginning of the case trial and during the case trial, the judge/panel of judges, because of their position or at the request of the prosecutor and/or the defendant or legal counsel, may establish a trial conventionally/face-to-face or electronically (*vide Article 2 paragraph of (2) of the Regulation of the Supreme Court Number 4 of 2020*). The legal norms have expanded the trial definition as referred to and regulated in Article 64 *Jo.* Article 217 *Jo.* Article 230 of the Criminal Procedure Code.
5. A certain circumstance refers to an event that prevents the case delegation and case and trial administration processes from being implemented under the procedures regulated in the Procedural Law due to distance, natural disasters, disease outbreaks, and other conditions defined by the Government as emergencies, or other conditions which the panel of judges stipulates it is necessary to conduct electronic trials (*vide Article 1 point 16 of Regulation of the Supreme Court Number 4 of 2020*).

Apart from the innovations mentioned above, in this case, there are several concepts for the upcoming development of the digitalization of criminal justice as follows:

1. Information Technology-based Integrated Criminal Justice System or SPPT-TI is designed as a magnificent system that allows all administration of each case management process to adopt the digital formats; thus, it requires a system that accommodates document authentication. In addition, this system also provides a digital library that can facilitate stakeholders to access related decisions, lawsuits, pleas, indictments, and other documents as necessary;
2. Data integration with the population database of the accused, the database of investigators, public prosecutors, and judges in the case management; this concept also requires strong security to prevent data leakage; thus, the quality of the case management can be guaranteed. Apart from that, the population data integration is employed to avoid an Error e Personae in the case management process;
3. The development of a business intelligence system; it is a required concept to execute activities relating to deciding the case classification, case complexity, case relations, or case management officers;
4. The last concept is in regard to the implementation of the legal remedy trial, which allows the public to witness firsthand and in real-time the trial judgment process for legal remedy, both appeals and cassations;

Regarding the descriptions mentioned above, the information technology-based criminal procedural law, which will be stipulated at a later date, will be capable of providing convenience for the community as an effort to fulfill the needs of the community. Generally, the objectives of law

enforcement are inseparable from efforts to achieve legal justice, legal benefit, and legal certainty. With reference to the three legal objectives mentioned above, briefly, the *ratio legis* on the use of technology, the author agrees explicitly with the research results by John M. Greacen, revealing that technology is intended to overcome the obstacles encountered by humans. Technology is believed to be a means with function to speed up services, offer high accuracy, and guarantee transparent practices (Mubayinah, 2021).

The digitalization of criminal justice currently does not have legal force for the sustainability of its implementation in the future. According to the author, at least two schemes can be taken, including adopting the reformation policy of criminal procedural law. Theoretically, the discussion of the reformation policy of laws and regulations shall be performed in three stages: formulation, application, and execution. At the formulation stage or law enforcement at the *in abstracto* stage, legislators carry out activities and formulate legislation, commonly referred to as legislative activities. The activities at this stage include an inventory of articles related to the trial implementation process. Afterward, it requires an adjustment through revision, addition, and/or reduction of the articles in the Criminal Procedure Code to make it conform to the needs of conducting conventional and virtual trials.

CONCLUSIONS

Based on the description above, hereby the author can draw several conclusions as follows: The digitalization of criminal justice appears as the most appropriate and effective way to eliminate corrupt behavior, including the practice of

brokering, case brokering, corruption, gratification, and intervention in the judicial body's autonomy. Simply, it can be interpreted as a process that is uncomplicated, straightforward, clear, explicable, interpretable, understandable, manageable, applicable, systematic, and concrete from the perspective of the justice seekers and law enforcement. Further, the digitalization process has allowed the administrative and litigation stages to be managed rapidly. It does not require the judicial administration to be implemented face to face or come to the court physically because it can be carried out paperless by utilizing a system. Moreover, the trial process can be conducted virtually and in real-time; thus, it can shorten the time spent since waiting due to a time-consuming distance factor is no longer applicable. Also, the digitalization process will reduce operational costs in the case management process. On the other hand, concerning the concept of criminal justice digitalization in the future, in addition to preparing facilities, infrastructure, and innovations, it is also essential to design a policy tool for criminal procedural law reformation with the aim to accommodate innovations that utilize information technology facilities to support digital-based judicial implementation.

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The Urgency of Digitalization in the Law Enforcement System for Corruption Prevention

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Abstract

This paper is entitled The Urgency of Digitalization in the Law Enforcement System for Corruption Prevention. This paper aims to identify dan analyze the mechanisms and efforts to use information technology in handling corruption cases and the urgency of digitalization in the law enforcement system for corruption prevention. This paper uses a normative juridical methodology. Normative legal research methodology essentially examines laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior. The results showed that the use of information technology in handling corruption cases could be carried out in various ways, such as the use of technology in handling cases in court and assisting in administrative tasks. Digitalization of the law enforcement system is implemented in order to achieve the simple, fast, and low-cost principle. For the recommendations, the author suggests that, first, the government needs to not only prepare a public service system to use information and communication technology in order to provide better public services but also to improve the quality of public services through the use of information and communication technology on a regular basis. Second, implementation of the digitalization of the law enforcement system for corruption prevention needs to be applied in various sectors to build a culture of mutual supervision for

both users and public service providers to prevent a deviant behaviour.

Keywords: *Digitalization, Corruption, Information and Communication Technology*

INTRODUCTION

The Corruption Perceptions Index (CPI) published by Transparency International Indonesia (TII) on Tuesday, January 25th, 2022 shows an increase in Indonesia's CPI ranking compared to 2020. In 2020, Indonesia is ranked 102, while in 2021, Indonesia rank 96 out of 180 countries. TII uses standardized data sources on a scale of 0-100 where 0 equals the highest level of perceived corruption and 100 equals the lowest level of perceived corruption in a country. In 2021, the global average remains unchanged for the tenth year in a row, at just 43 out of a possible 100 points. Two-thirds of countries score below 50, indicating that they have serious corruption problems. This creates a global reality that is seen as so concerning as depicted in the UN Secretariat General message on International Anti-Corruption Day in 2018, "Corruption is present in all countries, rich and poor, North and South. It is an assault on the values of the United Nations. It robs societies of schools, hospitals, and other vital services, drives away foreign investment, and strips nations of their natural resources".

Corruption has a huge negative impact on a country. This is because problems arising from corruption can hinder development. Therefore, corruption must be eradicated comprehensively. Eradication of corruption needs to be done through both repressive and preventive efforts. Eradication of corruption does not only focus on the handling of ongoing

cases of criminal acts of corruption but also focuses on the prevention of criminal acts of corruption. Corruption cases are countless and growing very rapidly. Corruption develops in line with rapid technological advances that are conducted systematically with sophisticated manipulation and using modern technology, almost everyday news about corruption is circulated in various media.

Technological developments occur because a person uses his mind to solve every problem he faces. Technological progress is something that cannot be avoided in this life because technological advances will work hand in hand with scientific advances. Every innovation is created to provide positive benefits for human life. Technology also provides many conveniences, as well as a new way for humans in doing their activities. Humans have also enjoyed the many benefits brought by technological innovations that have been created in the last decade.

The outbreak of the Covid-19 (Corona virus Disease-19) pandemic and the urge in Revolution 4.0 are certain examples of the need for digitalization in the law enforcement system, not only witnessing the development and maturation of digital technology applied to the science world. Moreover, the development of the use of technology to the era of the Internet of Things (IoT) has also dragged all dimensions of people's lives from trade, transportation, industry, health, education to social (Winarsih, 2020). The use of technology is also followed by law enforcement (*rechtoepassing/rechtshandhaving*) through virtual courtroom using teleconference facilities.

The implementation of virtual trials through teleconference facilities is seen as in line with social

distancing and physical distancing policies, in order to suppress the rate of development of Covid-19. Referring to the provisions of the criminal justice system in Indonesia, this can be categorized as a form of rules breaking in a positive way.

In the globalization era, mastery of technology is critical and an indicator of country's progress. A country is said to be advanced if it has mastery of high technology, while countries that cannot adapt to technological advances are often referred to as failed countries. The development of technology, especially information and communication system technology, makes it possible to prevent corruption by utilizing the application of this technology, or in other words, corruption can be prevented electronically. The application of information and communication system technology is expected to make a significant contribution to corruption prevention in Indonesia.

Based on the background mentioned above, the authors formulate the problem as follows:

1. What are the mechanisms and efforts to use information technology in handling corruption cases?
2. What is the urgency of digitizing the law enforcement system for corruption prevention?

This paper uses normative judicial methodology. Normative legal research methodology essentially examines laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behaviour (Ishaq, 2017). According to **Soerjono Soekanto** and **Sri Mamudji** (2010) normative legal research is research based on literature. The method is conducted by examining the

existing literature or secondary data. This research method focuses on the rules and norms that apply to society, and on the social aspects that live in society so that it affects how digitalization can affect the corruption prevention. This research is a descriptive analytical research which is a research to describe and analyze existing problems and include the type of literature research that will be presented descriptively.

DISCUSSION

Mechanisms and Efforts to Utilize Information Technology in Handling Corruption Cases

An understanding of corruption in Indonesia will simplify the method to overcome corruption in order to improve the strategies that have been carried out to date. Experience so far shows that the establishment of an anti-corruption institution that is part of an anti-corruption program alone will be challenging to overcome hypercorruption. A national strategy organized as a community movement by involving the civil society which actively functions as a co-government will provide greater opportunities to combat hypercorruption. In addition, it is necessary to develop a culture of transparency and accountability in a civil society in the long term (Sujatmiko, 2009).

A good anti-corruption strategy is a strategy that has considered all the influencing factors, as well as by conducting a right analysis of the corruption problems faced. The anti-corruption strategy should also be aimed at strengthening the role of the community in supervising the government as well as strengthening the public and increasing public participation in eradicating corruption.

Public accountability and participation are important instruments in tackling corruption (Kurniawan, 2009).

The government has set the direction of transformation digital 2024 and targeting digital economy growth of 3.17% to 4.66%. Based on the technocratic draft of the 2020-2024 National Medium-Term Development Plan (RPJMN), Bappenas explained that after the movement titled Making Indonesia 4.0, the government would use the digital economy to increasing upstream-downstream efficiency and aggressively contributing to the added value of the processing industry to the economy (Nursobah, 2015).

1. **Use of Information Technology in Handling Cases in Courts**

   The CEPEJ (*Commission Europeenne pour L'efficacite de la Justice*) survey, a European Commission for Effective Justice, categorizes Information Technology functionalities by the purpose of the functionality: direct support for judges and court staff, support for court management, support for interaction between courts and parties (Reiling, 2009).

   Dory Reiling developed a conception of the categories of use of information technology in courts based on the results of CEPEJ research, as follows:

   a. Stand-alone, function information technologies

      Courts utilize the standard functions of information technology to assist with administrative tasks (back office). They do not require a network to function. According to **Reiling**, there are two major information technology functions that often use which are word processing and database technology (Reiling, 2009).

This word processing application is used by judges and court staff to produce paper documents. It includes some calendaring, and simple spreadsheets. The database technology is used in courts for registration and management of cases. Case registration systems replace the functionality of traditional court dockets (Reiling, 2009).

b. Network information technologies

Historically, network technology was introduced after stand-alone functional technologies had been in use for some time. Network technologies facilitate interactions between users, but without specifying their parameters. They allow people to interact but do not define how they should interact. The use of network information technology in courts, includes email, internet connections, jurisprudence databases, sharing documents, electronic files, groupware, audio and video conferencing. It also includes networking to combine databases and word processing for producing court decisions (Reiling, 2009).

c. Enterprise information technologies and external communication

The technologies in this group include workflow management systems, customer relations management systems, and external electronic interaction with customers. The ideal type for this group is an entirely electronic management process: cases are filed electronically, they are managed as electronic files by electronic workflow systems, both individually and according to load, outputs are filed in an electronic archive. In this ideal type, it is the

management process that has gone completely paperless. The process of adjudication can still consist of physical court hearings (Reiling, 2009).

The capabilities of the technologies in this group are: redesigning business processes and standardizing work flows, monitoring activities and events efficiently. This means that processes can be redesigned and standardized much more easily and that reports on events and activities are much more readily available (Reiling, 2009). According to Reiling, courts' external communication occurs with very different counterparts, includes with non-users and users, lawyers and other regular professional court users, and non-professional court users (Reiling, 2009).

2. Preventing Corruption through *E-Government*

In the globalization era, the use of information and communication technology is considered to provide convenience in human life. The government then applies the use of information dan communication technology in its services by creating e-government (Simarmata, 2017). E-government is the use of information and communication technology, especially the internet and website portals in carrying out government services, especially services to the community, the private sector, organizations, and others. Furthermore, e-government is the application of internet-based information technology or other digital devices managed by the government to deliver information from the government to the public, business partners, employees, business entities, and

other institutions online (Simarmata, 2017). *World Bank* defines e-government as the use by government agencies of information technologies that have the ability to transform relations with citizens, businesses, and other arms of government (Cahyadi, 2003).

3. Preventing Corruption through E-Procurement

Currently, the e-procurement has been use in the procurement of goods and services within government agencies. Through e-procurement, maladministration, such as collusion between private sectors (tender actors) and tender committee, will no longer occur (Cahyadi, 2003).

One of the government activities that allowing opportunities to commit criminal acts of corruption, collusion, and nepotism (KKN) is the procurement of government goods and services. Procurement of goods and services is essentially an activity by Ministries/ Institutions/Regional Apparatus Work Units/other institutions to purchase goods and services whose process starts from planning to purchasing goods and services (Asliana, 2012).

E-Procurement (Electronic Procurement) is the process of purchasing goods and services which includes auction announcements, requests for specifications of goods and services along with prices, price negotiations or bargaining, auctions, ordering goods and services (publication of purchase orders), and information on the status of delivery of goods and services. services, which are carried out online using internet technology,

organized by the Electronic Procurement Service Unit (LPSE) (Asliana, 2012).

The National Public Procurement Agency (NPPA) otherwise known in the Indonesian acronym of LKPP is designated as a non-ministerial government agency and has a reporting duty directly to the President of the Republic of Indonesia. NPPA is the only government agency functions and authorities are directed at creating good governance in the public procurement processes. In conducting its function and duties, the NPPA is under the coordination of the State Minister for the National Development Planning.

The services available in the Electronic System include e-tendering. In addition, NPPA also provides an e-catalog facility, which is an electronic information system containing lists, types, technical specifications and prices of certain goods from various government goods and service providers, an online audit process (e-audit), and procedures for purchasing goods and services through electronic catalogs (e-purchasing).

The Electronic Procurement System (SPSE) is an e-procurement application developed by the Directorate of NPPA to be used by Electronic Procurement Services Unit (LPSE) in all Ministries/Institutions/Regional Work Units/Other institutions. The application was developed in the spirit of national efficiency, so it does not require a license fee for either the Electronic Procurement System (SPSE) or the supporting software. The SPSE was developed by the NPPA in collaboration with: National Crypto Agency (Lemsaneg) for document encryption

functions; and the Indonesia's National Government Internal Auditor (BPKP) for the audit sub-system.

In order to prevent corruption in the procurement process, the community has a very important role to control the auction process, which is an open and easily accessible system. The public can submit objections if the auction process is not in accordance with procedures or there are indications of corruption, collusion and nepotism (KKN).

Urgency of Digitalization of the Law Enforcement System for Corruption Prevention

The law of judicial power state that the court assists the seeker of justice and seeks to overcome all obstacles and obstacles to a simple judiciary, quick, and light costs. These provisions are implemented by implementing an effective and efficient case management. The Supreme Court of the Republic of Indonesia in the Blueprint for Judicial Reform 2010-2035 makes modernization of case management an agenda for judicial reform to achieve the vision of a court excellence. The modernization of case management is closely related to the updated of information technology which play as a supporting functions.

The use of information technology in case management is believed to help improve the efficiency and effectiveness of court business processes. Investment in information technology contributes to the performance and productivity of an organization (Rahmawati, 2008). The application of information technology can provide various advantages, includes speed, consistency, precision, and reliability. This is in line with the principle of a simple, fast and low cost trial

(Sutarman, 2009). Although the principle of speedy trial is a universal principle, the problem of delay in handling of cases is an issue experienced by all judicial organizations around the world. According to Reiling, there are three issues any judicial organization or court faces, which are delay, access and integrity (Reiling, 2009).

Talking about crime prevention is actually the domain of criminology. Likewise with the prevention of corruption in public services, the approach that can be used is a criminological approach that is within the frame of criminal policy so that the root of the problem can be identified, including how to control it.

According to **Steven P. Lab (2019)**, crime prevention classifies as either primary, secondary, or tertiary. Primary prevention focuses on community prevention starting from the household and workplace environment and to its relationship with activities outside it. Secondary prevention focuses to identify and predict the potential for crime to occur by looking at social reality. While tertiary prevention is an effort to make a deal with the perpetrators of criminal acts so that they will no longer repeat their actions (Lab, 2019).

Based on this principle, it can be said that when talking about crime prevention or criminal acts, it cannot be separated from the driving factors and the law enforcement process after the crime has happened. So the position of law enforcement officers, an effective judiciary, and an authoritative law can be a stronghold to prevent the recurrence of crimes in the future (Satria, 2019).

The professionalism of public officials affects the reliability of e-government, including to prevent corrupt practices. Professionalism built with a good understanding

of public officials on the management of public services as well as an understanding of the sanctions received if they make deviations, it turns out that it has reduced the potential for corrupt practices (Rahayu & Setyaningrum, 2017). In order to preventing corruption, e-government not only depend on the transparency of the system but also improving the professionalism of the public officials.

The application of electronic-based services in public services is not merely to indicate deviations (corrupt practices) in public services, but is also able to build a culture of shame and mutual supervision between public service providers to prevent a deviant behaviour. Practice in several countries shows that the implementation of this system has a positive impact on changing the pattern of relations between the government, the community within the government and other government partners, as happened in Denmark. Through this change, the improvement and benefits of good public services can really be felt by the community and the state.

Many empirical studies show that information technology has an important role in the revitalization of public services, one of which is an improvement in more efficient public services and public surveillance of the performance of public officials. In order to increase the effectiveness of the use of information technology in preventing corrupt practices, it must be accompanied by certain social attitudes, in addition to increasing the professionalism of public officials as described above. Increasing the participation or concern of citizens by not taking bribes to obtain public services, and reporting corruption practices in public services is a form of community participation that must be carried out. This

participation or concern is aimed at achieving efficiency and transparency in public services (Bertot, 2010).

Through community participation in this social construction, corruption which is considered a crime by the community is no longer tolerated or allowed to occur. Furthermore, the concept of cultural strategy promoted by Van Peursen and Koentjaraningrat, which is concretizing community participation. "Supervision" of the performance of public officials is not solely based on the working of the applied technology applications. There must also be a change in public service practices, both from institutions, public officials themselves and the community. Institutional supervision is carried out, among others, by building an anti-corruption culture within the institution. Supervising and imitating anti-corruption behavior among public officials in an institution is more effective in preventing corrupt practices, compared to only providing large salaries or incentives. As a form of external supervision, the community builds a caring attitude or culture not to involve themselves in corrupt practices to obtain public services and report any corrupt practices encountered in public service practices.

CONCLUSION

The use of information technology in handling corruption cases could be carried out in various ways, such as the use of technology in handling cases in court and assisting in administrative tasks. The use of information technology based on network systems used for document databases and other electronic files, as well as the use of enterprise information technology and external communications. Corruption prevention through E-

Government where the use of information technology, especially the internet and website portals in providing services to the community can be a form of bureaucratic reform in order to create a transparent, effective, and efficient government. Furthermore, corruption prevention through E-Procurement can increase transparency and accountability in the procurement of goods and services carried out by the Government. Digitalization of the law enforcement system is implemented in order to achieve the simple, fast, and low-cost principle. The use of information technology in case management is believed to help improve the efficiency and effectiveness of court business processes. The application of electronic-based services in public services is not merely to indicate deviations (corrupt practices) in public services, but is also able to build a culture of shame and mutual supervision between public service providers to prevent a deviant behaviour.

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Proof of Digital Evidence in Crimes against People

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Abstract

This study aims to identify and analyze digital evidence as a means of evidence in the Indonesian criminal justice system. This paper uses a normative juridical methodology. Normative legal research. The methodology essentially examines the law which is conceptualized as a norm or rule that applies in society, and becomes a reference for everyone's behavior. The results of the study indicate that the use of information technology in handling crimes against people, such as e-mail, recorded files on chats, and various other electronic documents, can be used as legal evidence. In several court decisions, there are decisions that discuss the position and recognition of electronic evidence presented in court.

Keywords: *Digital Evidence, crimes against, people*

Introduction

Proof is an important process to determine whether a person is wrong or not and also whether a case is clear or not, the definition of proof is an act of proving. To prove means to give or show evidence, to do something true, to carry out signifies witnessing and convincing.

According to Prof. Dr. Eddy O.S. Hiariej in his book "Theory and Law of Evidence" the law of proof as provisions regarding evidence which includes tools, evidence, evidence, how to collect and obtain evidence to the submission of

evidence in court as well as the strength of proof and the burden of proof.

Evidence can be defined as anything that can be used to prove the truth of an event in court. The Criminal Procedure Code adheres to a negative evidence system (Negatief Wettelijk Stelsel) as stipulated in Article 183 of the Criminal Procedure Code that "A judge may not impose a crime on a person unless with at least two valid pieces of evidence he is convinced that a crime did not actually occur and the defendant is the one who guilty of doing so." Adapun alat bukti yang sah menurut Pasal 184 Ayat (1) KUHAP adalah "Keterangan saksi, Keterangan ahli, Surat, Petunjuk dan Keterangan Terdakwa".

Digital evidence (eg CCTV footage in the case of cyanide coffee) will have evidentiary power as evidence when it has been processed by the digital forensics lab which will produce documentary evidence (certificate from the digital forensic lab institution) and digital forensic expert evidence.

Article 5 paragraph (1) of the ITE Law can be grouped into two parts. The first is electronic information and/or electronic documents. Second, printouts of electronic information and/or printouts of electronic documents.

Electronic information and electronic documents that will become Electronic Evidence Tools (Digital Evidence). Meanwhile, the printed results of electronic information and electronic documents will be used as evidence for letters.

Article 5 paragraph (2) of the ITE Law stipulates that electronic information and/or electronic documents and/or printouts are an extension of legal evidence in accordance with procedural law in force in Indonesia.

What is meant by expansion here must be related to the type of evidence regulated in Article 5 paragraph (1) of the ITE Law. Expansion here means:

1. Adding evidence that has been regulated in criminal procedural law in Indonesia, for example Law Number 8 of 1981 concerning Criminal Procedure Code ("KUHAP"). Electronic information and/or electronic documents as Electronic Evidence Tools add to the types of evidence regulated in the Criminal Procedure Code;
2. Expanding the scope of evidence that has been regulated in criminal procedural law in Indonesia, for example in the Criminal Procedure Code. Printed results of information or electronic documents are evidence of letters regulated in the Criminal Procedure Code.

The expansion of the evidence regulated in the Criminal Procedure Code has actually been regulated in various scattered laws. For example, the Company Documents Law, the Terrorism Law, the Corruption Eradication Law, and the Money Laundering Law. The ITE Law emphasizes that in all applicable procedural laws in Indonesia, information and electronic documents as well as their printouts can be used as legal evidence.

However, it should be noted that in relation to Article 5 paragraphs (1) and (2) of this ITE Law, the Constitutional Court through Decision Number 20/PUU-XIV/2016 ("MK Decision 20/2016") states that the phrase "Electronic Information and Electronic Documents "contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force as long as it is not interpreted, especially

the phrase "Electronic Information and Electronic Documents" as evidence is carried out in the context of law enforcement at the request of the police, prosecutors, and/or other law enforcement institutions. determined based on the law as stipulated in Article 31 paragraph (3) of the ITE Law.

While Article 31 paragraph (3) of Law 19/2016 itself reads: The provisions as referred to in paragraph (1) and paragraph (2) do not apply to interception or wiretapping carried out in the context of law enforcement at the request of the police, prosecutors, or other institutions whose authorities are determined by law.

When viewed from the legal considerations, basically the purpose of the Constitutional Court Decision 20/2016 above is to emphasize that every interception must be carried out legally, especially in the context of law enforcement.

This paper uses a normative judicial methodology. The normative legal research methodology essentially examines the law that is conceptualized as a norm or rule that applies in society, and becomes a reference for everyone's behavior. According to Soerjono Soekanto and Sri Mamudji, normative legal research is library-based research. The method is done by reviewing the existing literature or secondary data. This research method focuses on the rules and norms that apply in society, and on the social aspects that live in society so that it affects how digitalization is one of the new evidence in criminal cases related to people. This research is an analytical descriptive research, namely research to describe and analyze existing problems and includes the type of library research that will be presented descriptively. Based on the above background, the Formulation of the Problem How can electronic evidence be used as evidence in court and What

are the formal and material requirements that must be met so that electronic evidence can be accepted in court.

Discussion

Legal Basis

Electronic evidence was first introduced in Article 26A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. Then the regulation of electronic evidence is regulated in more detail in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 or hereinafter referred to as the ITE Law.

Definition of Electronic Evidence

According to The Europe Convention on Cybercrime, evidence is evidence that can be collected electronically from a crime. According to ISO/IEC 27073:2012 Information technology -Security-Guidelines for Identification, Collection, Acquisition, and Preservation of Digital Evidence provides a definition regarding digital evidence as information or data, stored or sent in binary form (bineryform) that is relied on as evidence.

In the book "Electronic Evidence in Judicial Practice" by Dr. Eddy Army, understanding electronic evidence is stored data that is transmitted through an electronic device, network or communication system. So the stored data is what is needed to prove the existence of a criminal act that occurred, the proof of which will be tested for truth in front of the trial.

In international principles, handling of electronic evidence is maintained. Data integrity, competent personnel, chain of custody is maintained, compliance with regulations. In contrast to evidence according to Article 184 of the Criminal Procedure Code, electronic evidence has special characteristics, namely invisible, very fragile because it is easy to change, easily damaged because it is sensitive to time, and easily destroyed or easily modified (engineered). Electronic evidence can also move easily, and if you want to see or read it, you need the help of tools, both hardware and software tools.

Electronic Evidence

In accordance with Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016, in Article 1 number 1 Electronic Information is one or a set of electronic data, including, but not limited to writing, sound, images , maps, designs, photographs, Electronic Data Interchange (EDI), electronic mail (electronic mail), telegram, telecopy, or the like, letters, signs, numbers, codes, access, symbols, or processed perforations that have meaning or can be understood by people who can understand it.

According to Article 1 point 4 of the ITE Law, Electronic Documents are any Electronic Information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms that can be seen, displayed and/or heard through a computer or system. Electronics includes but is not limited to writing, sound, pictures, design maps, photographs or the like, letters, signs, numbers, codes, access, symbols or perfocations that have

meaning or meaning or can be understood by people who are able to understand them.

Article 5 of the ITE Law explains that electronic evidence is legal evidence in court.

1. Electronic Information and/or Electronic Documents and/or their printouts are legal evidence.
2. Electronic Information and/or Electronic Documents and/or their printed results as referred to in paragraph (1) is an extension of valid evidence in accordance with the procedural law in force in Indonesia.
3. Electronic Information and/or Electronic Documents are declared valid if they use the Electronic System in accordance with the provisions of this law.
4. Provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to:
   a. Letters which according to the law must be made in written form; and
   b. The letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by the deed making official.

In Dr. Eddy Army "Electronic Evidence in Judicial Practice" explained several types of electronic evidence, the Ministry of Communication and Information (Kemenkominfo) classified the types of electronic evidence submitted to the Scientific Working Group on Digital Evidence in 1999 namely:

1. E-mail, E-mail address (electronic mail).
2. File Word Processor/Spreedsheet.
3. Software Source Code.

4. Image shaped file (jpeg, tip, dan lain-lain).
5. Web Browser Booksmark.
6. Cookies, Calender, to-do list.

According to ISO/IEC 27073:2012 Information technology-Security techniques-Guidelines for Identification, Collection, Acquisition and Preservation of Digital Evidence categorizes electronic evidence, namely:

1. Computer, peripheral devices, and digital storage media.
2. Network devices.
3. Closed Circuit Television (CCTV).

The Association of Chief Police (ACPO), in Good Practice, Guide for Computer Based Electronic Evidence, categorizes the types of electronic evidence, namely:

1. Computers.
2. Network.
3. Video & Closed Circuit Television (CCTV).
4. Mobile Phone.

Muhammad Neil El Himam classified electronic evidence as being sourced from the computer, which consists of:

1. E-mail.
2. Digital image.
3. Electronic document.
4. Spreadsheets.
5. Log chat.
6. Illegal software and other intellectual property rights.

Hard Disk, which consists of:

1. Files, whether active, deleted or in the form of fragments.
2. Metadata File.
3. Slack File.
4. Swap File.
5. System Information, which consists of Registry, Logs, and Configuration Data.

Other sources, consisting of:

1. Cellular Phone, namely in the form of SMS, Called Number, Incoming Call, Credit/Debit Card Number, E-mail Address, Call Forwarding Number.
2. PDAs/Smart Phones, which consist of everything listed in Cell Phones plus contacts, eta, pictures, passwords, documents, etc.

Video Game;

1. GPS Device containing Routes/Route.
2. Digital Camera, which contains photos, videos, and other information that may be stored on a memory card (SD, CF, etc.).

Acquisition of Evidence

In the act of searching and confiscation of electronic systems as regulated in Article 43 Paragraphs (2), (3) and (4) of the ITE Law, searches or confiscations of electronic systems must be carried out with the permission of the chairman of the local district court, search and/or confiscation of electronic systems related to criminal acts in the field of Information Technology and Electronic Transactions carried out in accordance with the provisions of

the criminal procedure law and in carrying out searches and/or confiscations of the electronic system the investigator is obliged to maintain the maintenance of the interests of public services. And referring to Article 75 Paragraph (1) letter K for every action taken based on the ITE Law, an Official Report is made, an Official Report as a document for judges to find out how an investigator has obtained evidence legally or not and as evidence whether it is true that the evidence can be presented in framework of proof.

Electronic Evidence Check

The validity of the electronic evidence presented to the trial must be maintained, that is, it has been examined according to the correct procedure. As regulated in Articles 15 and 16 of the ITE Law, electronic systems must:

1. Reliable, safe and responsible.
2. Can display the full Electronic Information or Documents.
3. Can protect the availability, integrity, authenticity, confidentiality, and accessibility of Electronic Information.
4. Equipped with procedures or instructions and can operate according to the procedures or instructions that have been set.

The ITE Law stipulates that there are formal requirements and material requirements that must be met. Formal requirements are regulated in Article 5 paragraph (4) of the ITE Law, namely that information or electronic documents are not documents or letters which according to the law must be in written form. In addition, such

information and/or documents must be obtained by lawful means. When evidence is obtained in an illegal way, the evidence is set aside by the judge or deemed to have no evidentiary value by the court.

Meanwhile, the material requirements are regulated in Article 6, Article 15, and Article 16 of the ITE Law, which essentially means that information and electronic documents must be guaranteed for their authenticity, integrity, and availability. To ensure the fulfillment of the material requirements in question, in many cases digital forensics is needed.

As is well known, Article 184 of the Criminal Procedure Code states that valid evidence is: witness statements; expert testimony; letter; instruction; and the defendant's statement. However, with the birth of the ITE Law, new evidence in the form of electronic documents was born. In accordance with Article 5 Paragraph (1) of the ITE Law "Electronic Information and/or Electronic Documents and/or their printed results are legal evidence". The legal purpose is when using the Electronic System in accordance with the provisions of the ITE Law (Article 5 Paragraph (3)),

Based on the explanation above, there is no doubt that Electronic Information and Electronic Documents are legitimate to be used as evidence for the trial process in court. However, this electronic evidence still requires a more detailed regulation regarding the search and seizure procedures as well as the mechanism for obtaining electronic evidence, as well as other matters that can strengthen the validity of electronic evidence that can have evidentiary value in court.

Conclusion

In principle, electronic information can be distinguished but cannot be separated from electronic documents. Electronic information is data or a collection of data in various forms, while electronic documents are containers or 'packages' of electronic information. For example, if we talk about music files in the form of mp3 then all information or music that comes out of the file is electronic information, while electronic documents from the file are mp3. Thus, emails, recorded files of chats, and various other electronic documents can be used as valid evidence. In several court decisions, there are decisions that discuss the position and recognition of electronic evidence presented in court.

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Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016.

Law Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, Becomes Law;

Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption;

Law Number 8 of 1997 concerning Company Documents;

34 Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

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Return of State Financial Damages as Law Enforcement Effort against Criminal Acts of Corruption in The Theory Perspective Objectives of Law

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Abstract

The purpose of the study is for knowing the return loss of state finances in enforcement act criminal corruption and for enforcement law to act against criminal Corruption in Indonesia under review from theory Legal purposes. Method research used is Study this study law normative/doctrinal where the researcher will describe problem rule law related with enforcement law to act criminal corruption reviewed Darotepri destination law. The approach used is approached juridical empirical, that is approaching with see from side juridical (rules) or prevailing norms) supported by the approach juridical empirical (practice) enforcement law that occurs in the field). Research results every state/regional loslosscurred by the treasurer/ordinary civil servant (not treasurer) is required to replace loss the as well leader from the agency the right to demand replacement on the loss caused by the perpetrator and the return state finances _ can abolish the penalty criminal however only as judge's consideration for sanctions the crime can be reduced, and enforced law act criminal corruption no can use approach calculator and must permanent enforce what already there is in rule legislation so that achieved theory goals that include

certainty, benefit, and justice law as well as emphasize the principle ultimate remedy.

Keywords: *Return, state finance, theory, objectives, destination law.*

INTRODUCTION

Eradication act criminal corruption is a very close relation to enforcement law enforced by the authorities enforcer law. Effort enforcement law criminal in understanding system law *(Legal System)* as proposed by Lawrence M. Friedman includes operation components of " regulation " legislation/substance (*legal substance)*, apparatus enforcer law/structure *(legal actors)*, and culture law/culture (legal culture)". Enforcement of the law to act against criminal corruption role is needed as well as the public the role of apparatus enforcer law, this showing in the effort that enforcement law needed role as well as all parties enforcement law walk with effective (Muchlis, 2017). Law that grows and develops in a certain area is the result of the interaction process of society. The law has a destination based on a mandate from the constitution for arranging life in society to achieve peace and tranquility.

Corruption is something actions that are classified as actions possibly criminal categorized as act criminal outside ordinary (*extraordinary crime)* because carried out by those who are educated, economically enough even more, and have position and position. So that the consequences _ can be very outside normal, that is can disable or even tear down the economy and cause poverty for society and people in the country (Pitriyah, 2019). The Indonesian government

supports various agencies in charge fight corruption, such as Commission Eradication Corruption (KPK) and the court's anti Corruption national. The government has entered Public civil society and Non-Governmental Organizations (NGOs) in the process of reform for creating many network anti-corruption actors. Quotes words Attorney General S.T. Burhanuddin spoke about corruption with the loss of small state finances under IDR 50 million is must convict or not. Related act of criminal corruption that is not related to loss of state finances, as well as related to loss of state finances with a relatively nominal loss small, for example under Rp 50 million, I guess deserve Becomes ingredient discourse together in case the must conduct dropping penalty criminal prison or could use mechanism dropping penalty another. words Attorney General ST Burhanuddin several months lately reap the pros and cons in various circles, especially in the field of law. Clear and firm in provision Article 2 of the law Number 31 years According to Article 2 paragraph (1) of the Eradication Law Follow Criminal Corruption, Understanding Follow Criminal Corruption said: " Everyone is good " office government nor private oppose law To do deed enrich self alone or corporations that can harmful state finance or the country's economy, shall be punished with criminal prison lifetime life or criminal imprisonment for a minimum of 4 (four) years and a maximum of 20 (two) twenty) years and or a minimum fine of IDR. 200,000,000.00 (two hundred million) and a maximum of IDR 1.000.000.000,00 (one billion) (Adrian Sutendi,2010), deed act criminal corruption naturally results in state losses. In law criminal explanations about the loss of state finances are set in detail only set in explanation Article 32 Paragraph (1)

What is meant by loss of state finance is the loss already could be a calculated amount based on the findings of the results authorized agency _ or accountant designated public. However term loss State finances defined in Constitution Number 1 of 2004 concerning State Treasury and Constitution Number 15 of 2006 concerning BPK, both of which are regulation legislation the is at in room scope law State administration. State/regional losses are lack of money, letters valuable, and goods, which are real and certain amount as consequence deed oppose law good on purpose nor negligent (Suhendar and Kartono, 2020).

Based on the description so writer means for researching more carry-on related to return loss state finances as an effort enforcement law to act against criminal corruption in perspective theory destination law. In realizing destination Gustav Radbruch 's law states that need to be used principle priority from three scores as the basis that becomes destination law. This thing caused because, in reality, justice law often clashes with benefit and certainty law and so otherwise. Between three score base destination law that, at the time occur collision, then must someone was sacrificed. For that, the principle priority used by Gustav Radbruch must hold with the order as the following: 1. Legal Justice; 2. Legal Benefits; 3. Legal Certainty (Muhammad Erwin, 2012).

Based on the description from the background back, then trees the problem you want the writer to review is as follows: *First*, how return loss of state finances in enforcement act criminal corruption? *Second*, how does enforcement law act against criminal Corruption in Indonesia under review from theory destination Law?

Study this character study law normative/doctrinal where the researcher will describe problem rule law related with enforcement law to act criminal corruption reviewed Darotepri destination law. The approach used is approached juridical empirical, that is approaching with see from side juridical (rules) or applicable norms (supported by the approach juridical empirical (practice) enforcement law that occurs in the field).

DISCUSSION

Return Loss State Finances in Enforcement Act Criminal Corruption

Factor main corruption usually poverty root from problem corruption, thing this seen imbalance income and expenses consumptive from state administrators. However, paradigm shifts caused by action the corruption that owns direction to sector private sector (conglomerate) and bureaucracy high level of life that has shone treasure. Development act criminal corruption good seen from side quantity mature this can said corruption in the Republic of Indonesia is not again ordinary crime (Law of Action and others, 2020)

Corruption in Indonesia has developed in three stages, that is elitist, endemic, and systemic. Corruption at the stage elitist still Becomes a pathology typical social within the elite/officials. Next in the stage endemic, corruption Becomes the reaching octopus Public wide. And at a critical stage, at the time corruption Becomes systemic, and every individual inside the system is infected similar disease. Can so disease corruption in the nation has come to the stage systemic. Management high and political high. Crime is a

step over authority law, passing the ability to sense healthy and jump over a range of values cultures, and morality (Djaja, 2010).

Follow Criminal corruption in Law No. 31 of 1999 amended Becomes act Criminal Corruption in Legislation No. 31 Years 1999 old act Criminal Corruption in Law No. 31 of 1999 amended with legislation No. 20 of 2001 Concerning the Eradication act Criminal Corruption (UUPTPK) does not mention the definition of corruption by the firm. The rules in Article 2 paragraph (1) that: "Everyone who opposes law To do deed enrich self alone or someone else or something corporations that can harmful state finance or the country's economy, will convict with punishment in prison lifetime life or criminal shortest prison _ four years and a maximum sentence of two twenty years and a fine of at least IDR 200,000. 000,- (two hundred million) and a maximum of IDR 1,000,000,000 (one billion)."

Term loss State finances are defined and regulated by law No. 1 of 2004 Concerning State Treasury and Constitution No. 15 of 2006 Concerning BPK, both of which are also in room scope law State administration, in context operate function government: " State/regional losses are lack of money, letters valuable, and goods, which are real and certain amount as consequence deed oppose law good on purpose nor negligent." Criminal law general as well as mainly in action criminal corruption: loss of State finances as set in Articles 2, 3 and 4 of Law 31 of 1999 as has changed with Constitution No. 20 of 2001 no arrange about definition state losses, but only explain about state finances as described in the explanation law that.

By specific, according to Tatiek Sri Djatmiati (2011): " in context law State administration, act criminal corruption is responsibility personal officials, with the main parameters that are abuse authority (*abuse of power)* and arbitrariness (*unreasonableness)*. In Thing there is an element *of abuse of power* and *unreasonableness,* then there is an element of maladministration, and of course, there is an element of deed oppose law and action that Becomes responsibility personal officials who did it". Same thing in common words, according to Indriyanto Seno Adji that " characteristic " from act criminal corruption in general among other things use power attached to the position/position civil servant/official government that uses is by perverted and reprehensible", which Adami Chazawi by Specific said that "practice" corruption the more sophisticated, sometimes from outside wrapped with policy very neat public so that nature opposes law the form Becomes no looks ".

Related to return state finance Quotes words Attorney General ST Burhanuddin spoke about corruption with loss of small state finances under IDR 50 million is must convict or not. Related act of criminal corruption that is not related to loss of state finances, as well as related to loss of state finances with a relatively nominal loss small, for example under IDR 50 million, I guess deserve Becomes ingredient discourse together in case the must conduct dropping penalty criminal prison or could use mechanism dropping penalty another (Hafidz, 2022).

Loss State finances in space scope law criminal, actually also go from separation Among responsibility positions and responsibilities personal as in law State administration, in connection authority and action office legitimized by

regulations legislation as legality, that is attribution, delegate nor mandate. This thing appears by implicit contained placed in law criminal that implements order laws and orders position in qualification: no could punish, because belong to into the group base negation criminal. That is, in law criminal, responsibility answer positions and responsibilities answer personal is also separated, separation the constructed in shape: no could convicted action, as long as in qualification not quite enough answer position. Not could convicted deed this, according to several opinions then classified into the reason/basis justification, or reason eraser criminal acts, namely: 1) carrying out order law (*Wettelijk Voorschrift)* affirmed in Article 50 of the Criminal Code: *Neit strafbaar is hij die een feit begat ter uitvoering van een wettelijk voorschrift* (no could punished goods who to do something deed for doing something regulation legislation. 2) implement order position (*Ambtelijk Bevel)* confirmed in Article 51 paragraph (1) of the Criminal Code: *neit strafbaar is hij die een feit begat ter uitvoering van een ambtelijke bevel, gegeven door het daartoe bevoegde gezag* (no could punished goods who to do something deed for doing something order positions that have been given by a competent power for give order position that). 3) carry out order positions that are not legitimate with faith good confirmed in Article 51 paragraph (2) of the Criminal Code: *een onbevoegd gegeven ambtelijk bevel heft de straftbaarheid niet op, tenzij het door den ondergeschikte te goeder trouw als bevoegd gegeven werd beschouwd en de nakoming daarvan binnen de kring zinjer ondergeschikheid was gelegen* (a order positions that have been given without authority, no negate nature could punished from the culprit, except if order position by the subordinate

concerned with faith good has considered as something order legal position is in the power that has give command, and execution order the located in room scope her job as subordinates) (Suhendar and Kartono, 2020).

Then how quoting the statement words Attorney General ST Burhanuddin spoke about corruption with the loss of small state finances under IDR 50 million must convict or not. Related act of criminal corruption that is not related to loss of state finances, as well as related to loss of state finances with a relatively nominal loss small, for example under IDR 50 million, I guess deserve Becomes ingredient discourse together in case the must conduct dropping penalty criminal prison or could use mechanism dropping penalty another. This thing it turns out already set in the letter circular attorney general for a number of the year then and then Becomes crowded and become ingredient Back to talk about is when someone did corruption by article 2 and article 3 of the law corruption enough only returned just amount loss of his country and after that free from penalty another crime. From here understand that the so-called loss of state finances state losses.

Law No. 24 PRP 1960 issued provisions for the investigation, prosecution, and examination of acts of criminal corruption. In Law No. 24 PRP 1960 deed corruption so there are 2 things formulated namely: goods that oppose the law, do deed enrich self alone or someone else, or a body _ direct or no direct harmful state finance fund or the country's economy, or is known or deserve suspected by him that deed harmful state finance or the country's economy; in Articles 2 and 3 of Law No. 31 of 1999 jo. Law No. 20 of 2001 regarding Eradication Follow Criminal Corruption contains the words, "which can "

harmful to state finance or the country's economy ". Element this is important for determining could whether or not the perpetrator corruption convicted. By normative, if all elements in Articles 2 and 3 are proven, then the perpetrator is sentenced to criminal prison as well as replacement money.

Word or. has been included as an element of " can " In Article 2 paragraph (1) and Article 3 of Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning Eradication Follow Criminal Corruption so be clear that the shaper Constitution no requires occurrence/completion as a result of harmful state finance or the country's economy". The word " can " means that " harm " state finance or the country's economy " no must truly have happened, what's important deed perpetrator has the opportunity for cause the result is "*harm*" state finance or the country's economy ". Interpretation the strengthened by interpretation authentic shaper Constitution Eradication Follow Criminal Corruption stating " …..that _ act criminal corruption that is offense formal is there is something act criminal corruption enough with fulfillment elements actions that have been formulated, isn't it with there is emergence result ". Romli Atmasasmita: the opinion is that the judges should mean elements that could be harmful to state finances in the context of offense formal.

The description of the text above tends to agree with experts who state _ that elements of " harm " state finances " interpreted in context offense the form in the rules Law No. 31 of 1999, and not on the offense material like embraced Constitution state treasury. So act criminal corruption in Thing this enough Fulfill element formulated actions and not with emergence something result. So, if something needs corruption already potentially causes something loss of state finances, then

Things that are considered will cause harm to state finances. As for the steps to return state losses due to act criminal corruption, meaning speak about effort enforcement law to cope with crime corruption specifically the ability to return state losses that have been corrupted. because that requires effort comprehensive to deal with it that is To do effort develop a system law because basically, corruption is a crime systemic related close with power. Constitution Corruption specifically Articles 2 and 3 are not mention explicitly which agency or party is authorized to determine count state losses, in practice happened to judges and prosecutors will count as a loss of state finances in case of corruption.

Enforcement law to act criminal corruption with small loss to the state after the enactment of SE Jampidsus that is more focused to return small loss to the state to act criminal minor corruption by perpetrators act criminal corruption that. Whereas return loss to own country has set in Constitution Number 1 of 2004 concerning Article 59 of the State Treasury which explains:

1. Every state/regional loss caused by actions that violate law or negligence somebody must quickly solve by the provision of the applicable legislation. _
2. Treasurer, civil servant not treasurer, or other officials who because of his deed violate law or neglect the obligations imposed to him by direct harmful state finances, mandatory replace loss that.
3. Every leader state ministry/institution/head unit work device area could quickly do demands change loss, after knowing that in the state ministry/institution/unit work device, the area concerned occur loss consequence deed from any party.

Based on the explanation above could understand every state/ regional loss incurred by the treasurer/ordinary civil servant (not treasurer) required to replace loss the as well as leader of the agency have the right to demand replacement on the loss caused by the perpetrator. Including actual _ perpetrator corruption for IDR 50 million as conveyed by Burhanudin. Behavior act criminal corruption that causes loss of state finances must return. So amount of corruption with nominal loss of small state finances and then returned to the country will abolish penalty punishments established by law.

Enforcement law to act criminal corruption with small loss to the state in realize justice carried out by the Prosecutor more put forward aspect return loss from the aspect sentencing to perpetrator act criminal corruption because if aspect sentencing held to perpetrator act criminal corruption with small loss to the state so by no direct enforcement law to act criminal corruption with small loss _ that can cause loss for the country because expenses incurred bigger from the matter being handled so that could be said enforcement law like that no could realize justice.

Enforcement law to act against criminal corruption with small state losses by the Prosecutor eat big cost _ than the loss to the State caused by the case. So the Deputy Attorney General for Action Criminal Special issued a circular Number: B-1113/F/Fd.1/05/2010 which urges the whole prosecutor to rule out case act criminal corruption with a small loss to the state but even though the circular has issued permanent just cases act criminal corruption with small loss to the state permanent next to step trial in court.

Effort enforcement law from apparatus enforcer law in skeleton achievement peace and tranquility in society and the apparatus enforcer law that is one of them Circular letter issued Junior Attorney General for Crime Special Number: B-113/F/Fd.1/05/2010 dated 18 May 2010, one of the points in contents is instructed to whole The High Court which contains an appeal to be in case guess act criminal corruption, a society with awareness has return state losses need to be considered for no follow up on apply restorative justice principles. But although Circular _ Junior Attorney General for Crime Special Number: B-113/F/Fd.1/05/2010 dated 18 May 2010 issued To use focus handling to act criminal corruption with great loss to the State, however permanent just act criminal corruption with small loss still many permanent processed for tried.

In knowledge law criminals two streams discuss Among act criminals with accountability criminals. The genre first is Genre monistic looking in that the inside act criminal also includes accountability. Genre second is Genre dualistic. adherents Genre dualistic understand that in definition act criminal no included in its problem responsibility because act criminal only refers to the prohibition of something deeds. By principle, adherents dualistic and monologists, do have glaring differences related to the meaning to act criminal. Only just for those who think a monistic one who does act criminal already could be sentenced, while adherents of dualistic same very not yet have enough conditions for convicted because must accompany condition accountability the punishment that must be is the person who does it. Genre Dualistic requires that person must take responsibility for the deed he did or if seen from the corner his actions, then deed the must could

accountable to that person, and applies the principle *"geen staff zone schuld"* (none criminal without error). In Thing, this Genre is dualistic looking at though somebody proved to do something act criminal no by automatic he could direct declared guilty, but must more formerly prove he could request the responsibility by a criminal to act the crime he committed. Based on the principle of accountability criminals could know whoever did deed the so he's the one in charge of the answer.

Refund or state loss by the defendant could Become a reason for judges to reduce the sentence imposed on the defendant in question. Return means _ there is faith good for repair error. The refund only reduces crime but does not reduce nature opposing the law. In practice, return results act criminal often linked with the time. When a return is conducted before the investigation started, often interpreted deleted act of crime committed by someone. However, if conducted after the investigation start, return that no delete act criminal. According to him, returned before or after an investigation that permanently opposes the law. For example, if somebody steals, then returns goods stolen before others know, that permanent act is criminal (Hasan, 2018). The concept is accountability criminal for the perpetrator's act of criminal corruption though has returned fixed state finances take responsibility for his actions because the principal returns state finances after investigation only can be made as the basis by the judge for reducing penalty the crime no abolish or remove nature the crime.

Different from the condition if, return state loss before an investigation can delete act criminally. one element of corruption, he continued is element state losses. When already

returned means element the already lost. But conditions must be before there is an investigation. If the investigation has started, he evaluates refunds only to reduce the penalty criminal course. The reason, return state losses are considered in return is because has lightened up state duty. Not complicated by side cost, time, energy, and state of mind. Returns are also considered as confession guilty si defendant. So even though the perpetrator acts criminally the corruption (corruptor) has returned state finances that have the corruption before the decision court handed down, the legal process permanently walks because act the crime has happened. However, refunds that have been corrupted could become a mitigating factor _ for the defendant when the judge handed down the verdict.

Enforcement Law to Act Against Criminal Corruption in Indonesia Under Review for Theory Legal Purposes

Handling case act criminal corruption that gives authority Investigation to second instance enforcer law at the agency police and prosecutors demand second agency the each other synergize Thing this by Article 14 Letter m Perkapolri No. 14 of 2011 concerning the Code of Ethics Profession The State Police of the Republic of Indonesia which states: Every Member Police in doing Duty enforcement law as an investigator, investigator assistants, and investigators prohibited handle potential thing cause conflict interests. So that this gives limitation to Investigator police for not handling case act criminal corruption that has been handled by the Prosecutor's Office and prevents overlap authority Investigation Among Police and Prosecutors.

Synergy Among apparatus enforcer law in to do handling act criminal corruption is very important so that

could simplify the handling process to case act criminal corruption. Handling existence guess act criminal corruption that has Fulfill element: everyone individually opposes law To do deed enrich self alone or someone else or something corporations that can harmful state finance or the country's economy (Law No. 31 of 1999 jo. Constitution No. 20 of 2001 concerning Eradication Follow Criminal corruption), is regulated in Law No. 8 of 1981 concerning Criminal Procedure (KUHAP). Form synergy Among Prosecutors and Police in handling act criminal corruption that is when the Investigation to perpetrator's act of criminal corruption is handled by the police so in Investigation made a Letter of Notification Start Investigation (SPDP) the Head attorney about start Investigation by the Investigator Police.

Quotes words Attorney General ST Burhanuddin spoke about corruption with the loss of small state finances under IDR 50 million is must convict or not. Related act criminal corruption that is not related to loss state finances, as well as related to loss state finances with a relatively nominal loss small, for example under Rp 50 million, I guess deserve Becomes ingredient discourse together is the case they must conduct dropping penalty criminal prison or could use mechanism dropping penalty another. words Attorney General ST Burhanuddin several months lately reap the pros and cons in various circles especially in the field of law if seen from enforcement legal and juxtaposed with theory destination law.

In realizing the destination Gustav Radbruch 's law states need to be used principle priority from three scores as the basis that becomes destination law. This thing caused because, in reality, justice law often clashes with benefit and

certainty law and so otherwise. Between three score base destination law that, at the time occur collision, then must someone was sacrificed. For that, the principle priority used by Gustav Radbruch must hold with the order as follows: legal justice; legal benefits; and legal certainty.

Enforcement law to act criminal corruption with small loss to the state in realize justice carried out by the Prosecutor more put forward aspect return loss from the aspect sentencing to perpetrator act criminal corruption because if aspect sentencing held to perpetrator act criminal corruption with small loss to the state so by no direct enforcement law to act criminal corruption with small loss that can cause loss for the country because expenses incurred _ bigger from the matter being handled so that could be said enforcement law like that no could realize justice. However, returning state finances with enforcement law in Thing act criminal corruption are 2 different things, returns state finances are form or form from the state administration, while that principle enforcement law if seen from aspect certainty law, then what have there is in regulation legislation must be enforced, in principle return State finances can be entered in judge's consideration for reducing criminal to si defendant.

Justice is one of 3 (three) values of the law which are related aspects with benefits, which can interpret justice and benefits always walking concurrently. Correlation Thing the with enforcement law to act against criminal corruption with small loss to the state that is in handling act criminal corruption with small loss _ must prioritize return loss, and return loss state finances at loss state finance _ can abolish criminal, enforcer law should be enforced principle *ultimate*

remedy. Van de Bunt suggests that law criminal as the ultimate remedy have three meaning, namely:

1. Application law criminal only against people who violate the law by ethics is very heavy.
2. Criminal law is the ultimate remedy because penalty law criminal more weight and more hard than penalty field other laws, even often brings impact side, then should apply if penalty field other laws don't capable of complete problem violation law (medicine) last).
3. Criminal law is the ultimate remedy because office administration is more before knowing happening violation. So they are the priority for taking steps and actions than enforcer law criminal

Based on the principle ultimate remedy then, obviously for subject law act criminal corruption that does corruption and causes act criminal corruption, no restricted in an amount small or big _ must permanent follow what has been determined _ _ in regulation legislation for reach a certainty law, it should be enforcement officers law no use approach mathematics or approach calculator in Thing enforce the law will but upholding the moral approach and upholding principle ultimate remedy.

CONCLUSION

Based on the description explanation above _ then get _ conclusion as follows: enforcement law to act criminal corruption with a small loss to the state carried out by the Prosecutor in realizing justice must pay attention to 3 (three) values law that is justice, benefit, and certainty law. Based on 3 (three) values law, Circular Number: B -1113/F/Fd.1/05/2010

which is formed from discretion and enforcement law by full *(Full Enforcement)* carried out by the Prosecutor to act criminal corruption with small loss to the state. Case act criminal corruption could discontinue only on stage investigation with notice justice, benefit, and certainty law. The approach used by the authorities enforcer law specifically the institution attorney must enforce the principle ultimate remedial and not use the approach calculator.

SUGGESTION

Need for conducted assessment repeat or revision to Constitution act criminal corruption Number 31 of 1999 in conjunction with Law no. 20 of 2001 concerning eradication act criminal corruption so as not to overlap each other with various policies under it, and also in Constitution act criminal corruption no in line with principles in law criminal.

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PROCEEDING
International Conference on Digital Law 2022
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Legal Readiness to Face Digital Transformation

Technology is influenced by people's social life, law enforcement, and economic activities with an e-commerce system. The progress of this era makes the law must be able to adapt to technological developments. Law enforcers are also required to adapt to technological advances, so that the law can provide benefits, justice, and legal certainty. Legal issues that occur from technological advances if there is no balance between the role of law and law enforcement, will lead to rampant legal cases that are not completed to be resolved, so that the law as a protector of justice will be far from expectations.

The role of the state through legal policy in digital transformation is very important. Through the management of good governance legal policy, it is hoped that the law can be a protector of technology development for the benefit of the life of the nation and nation. The main mission of the nation and state in realizing social welfare and justice will be formed by the creation of a participatory and emancipatory legal system for the advancement of science and technology. Legal instruments need to be strengthened on the substance, structure, and legal culture, as a protector of humanist digitalization and the welfare of the Indonesian people.

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